



**18 April 2023**

**Agenda Item 5**

**REPORT OF THE INTERIM CORPORATE DIRECTOR FOR PLACE**

**RUSHCLIFFE DISTRICT REF. NO.: 8/23/00027/CMA**

**PROPOSAL: SECTION 73 PLANNING APPLICATION TO VARY CONDITIONS 3 and 12 OF PLANNING PERMISSION 8/19/00378/CMA, TO ALLOW A FOUR YEAR EXTENSION FOR THE COMPLETION OF TIPPING OPERATIONS BEYOND THE CURRENT EXPIRY DATE OF THE 28TH NOVEMBER 2022 (CONDITION 3) AND TO REMOVE THE REQUIREMENT TO CARRY OUT HIGHWAY IMPROVEMENT WORKS AT THE SITE ACCESS ON KINOULTON ROAD (CONDITION 12).**

**LOCATION: CANALSIDE INDUSTRIAL PARK, KINOULTON ROAD, CROPWELL BISHOP, NOTTINGHAMSHIRE, NG12 3BE**

**APPLICANT: MR CHRIS ALLSOP**

**Purpose of Report**

1. To consider a Section 73 (Variation of Planning Condition) application to vary Conditions 3 and 12 of Planning Permission 8/19/00378/CMA and allow a four-year extension for the completion of tipping operations beyond the current expiry date of the 28<sup>th</sup> November 2022 (Condition 3) and to remove the requirement to carry out highway improvement works at the site access on Kinoulton Road (Condition 12).
2. The modification to Condition 3 to allow an extension to the completion period for the tipping operations does not raise any significant planning issues. The modification to Condition 12 to remove the requirement to improve the site access raises issues in respect of ensuring that an acceptable level of road safety would be maintained at the industrial access road to serve the HGV traffic leaving the site.
3. The recommendation is to grant planning permission subject to the conditions set out in Appendix 1.

**The Site and Surroundings**

4. Canalside Industrial Park is located approximately 500 metres south of the village of Cropwell Bishop. The industrial park incorporates a number of

buildings originally developed in association with historical gypsum extraction and processing activities together with some more modern industrial units which are now used for commercial purposes (see Plan 1).

5. The application site is located to the immediate rear (east) of the Canalside Industrial Park. Access is obtained from the existing industrial estate road (see Plan 2).
6. The application site covers an area of around 1.9 hectares. The site was previously part of a larger area of land associated with former gypsum workings that has regenerated with rough grassland following its closure. The site is bordered by hedgerows on its northern, southern and eastern boundaries with the industrial park to the west.
7. The development site and the surrounding area lie within the Green Belt.
8. The development site is not designated for its ecological value. The site was historically designated as Cropwell Bishop Local Wildlife Site (LWS), noted for its gypsum spoil character colonised by a variety of notable native and alien plant species, but the Nottinghamshire Biological and Geological Centre Records show that the LWS status of the site was de-notified in Autumn 2020 on the basis that the habitat did not reach the species threshold to meet LWS status with the ecological value of the site deteriorating due to the ecological succession of the previous grassland habitats from open grassland to impenetrable scrub, with other parts of the site unvegetated.
9. Vehicle access to the site is obtained from the existing industrial estate access road and Kinoulton Road to the north. This road connects to Nottingham Road at a 'T' junction at the south-western edge of Cropwell Bishop village. The A46 is located around 1.5 kilometres to the west of the village, accessed via Nottingham Road.
10. The local road network is regulated by a series of weight restrictions which prohibit vehicles over 7.5 tonnes travelling any further south beyond the Canalside Industrial Park entrance road on Kinoulton Road. A weight restriction also prohibits HGVs travelling through Cropwell Bishop village on Nottingham Road east of its junction with Kinoulton Road (see Plan 3).
11. The area around the village settlement and the application site is predominately agricultural. Large areas of land to the west of Kinoulton Road and north of Nottingham Road to the west of Cropwell Bishop have been subject to opencast gypsum extraction but are now restored.
12. The nearest residential properties are located approximately 300 metres to the south of the site and 500m to the north of the site on Kinoulton Road (see Plan 4).

## **Background and Planning History**

13. In 2011 it was brought to the County Council's attention that clay material had been excavated from the site without planning permission. The unauthorised removal of the clay resulted in the creation of an excavated void within the site.
14. Planning permission was subsequently granted following a planning appeal in November 2016 to regularise the extraction of the clay and import approximately 60,000 tonnes of inert waste material over a three-year period to bring the levels within the site back up to those present prior to the clay extraction taking place. The planning permission was regulated by 28 planning conditions which sought to restrict the duration of the waste imports to three years, the location of tipping within the site, restrictions over the routeing, number and hours of HGV delivery vehicles, controls to limit mud on the highway, ecological controls, dust and noise controls, floodlighting, working hours, site restoration and aftercare. There was also a requirement under planning condition to undertake a junction improvement at the site entrance to enhance the existing visibility to the south (left) along Kinoulton Road which is currently constrained by the presence of bends and a dip in the road (see Plan 5).
15. In April 2019 a Section 73 planning permission (Ref: 8/19/00378/CMA) was granted to allow an increase in the maximum daily HGV movements permitted to access the site from 18 to 40 HGV movements per weekday (20 in 20 out) and from 8 to 20 HGV movements on a Saturday (10 in 10 out), subject to a cap of 392 HGV movements in any four-week period.
16. Planning permission 8/19/00378/CMA was implemented on the 29<sup>th</sup> November 2019 with a comparatively small quantity of waste material delivered to the site using LGV delivery vehicles and deposited in the north-eastern corner of the void since this time. The use of non-HGV delivery vehicles did not trigger the requirement under Condition 12 of the planning permission to undertake the junction improvements on Kinoulton Road. The comparatively small placement of waste was carried out under a waste exemption permit issued by the Environment Agency which allows up to 5,000 tonnes of waste to be deposited. Further importation of waste to the site to progress the restoration of the void will require a bespoke waste disposal permit from the Environment Agency.

## **Proposed Development**

17. Planning permission is sought under a Section 73 (variation of planning condition) submission to vary Conditions 3 and 12 of Planning Permission 8/19/00378/CMA so as to allow a four-year extension for the completion of tipping operations beyond the current expiry date of the 28<sup>th</sup> November 2022 (Condition 3) and to remove the requirement to carry out highway improvement works at the site access on Kinoulton Road (Condition 12).

### Modification to Condition 3

18. Condition 3 of Planning Permission 8/19/00378/CMA states:

### Condition 3: Duration of Development

The importation of inert material into the site shall be completed no later than three years from the date of commencement of importation as notified to the Waste Planning Authority under condition 2 (b). The Waste Planning Authority shall be notified in writing of the date of cessation of the importation of inert material into the site within 14 days of its occurrence.

*Reason: To ensure that the development is completed within an acceptable timeframe.*

19. Given that the original planning permission was implemented on 28<sup>th</sup> November 2019, the existing consented period for tipping operations regulated under Condition 3 expired on 28<sup>th</sup> November 2022. Planning permission is sought to make modifications to Condition 3 to allow a four-year extension for the completion of tipping operations until 28<sup>th</sup> November 2026.
20. The applicant states that a further four-years is necessary because of a combination of delays linked to the Coronavirus outbreak, the inability to resolve technical requirements in relation to the improvement of the site access (discussed in more detail below) and the knock-on implications that these factors have had in restricting the ability to access the site with HGV deliveries making it impossible to make a meaningful commencement of the development due to deliveries being limited to LGV transport only.
21. The requested four-year extension for tipping operations takes account of the Environment Agency's decision period to process and issue a waste disposal permit for the operation of the site. The waste permit application process requires the applicant to monitor environmental baseline data of water quality and gas levels collected from borehole monitoring undertaken over a 12-month period. This borehole data is currently being collated with a formal submission of the permit application anticipated in the next month or two. Once submitted the Environment Agency have indicated that the permit decision period is likely to be 12 months.
22. The applicant therefore states that although a four-year extension to the planning permission is requested, in reality this equates to an additional three years for tipping operations when the time period for the decision of the permit is taken account of.
23. Maintaining a three-year period for the tipping operations ensures that vehicle movements would be undertaken in compliance with the originally projected schedule. These projections show that waste imports are anticipated to be contract driven with inert deliveries likely to be intermittent and deliveries undertaken on a campaign basis with some periods of inactivity between supply contracts.

### Modification to Condition 12

24. Condition 12 of Planning Permission 8/19/00378/CMA states:

Condition 12: Site Access

No HGVs shall enter the site for the purpose of depositing waste materials as part of the development hereby approved unless and until the highway improvement works indicated on drawing F13073/02 have been carried out.

*Reason: In the interests of highway safety and to accord with Policy W3.14 of the Nottinghamshire and Nottingham Waste Local Plan.*

25. Planning permission is sought to modify Condition 12 to remove the existing requirement to improve the existing industrial estate/Kinoulton Road junction prior to it being used for HGV deliveries to serve the inert waste disposal facility and instead manage the movement of these vehicles with a competent banksperson overseen by a HGV Traffic Management Plan to direct HGV movements at the site access.
26. The applicant explains that there have been a number of complications and delays incurred in organising the improvement to the site access pursuant to Condition 12. Technical details for the junction improvement were submitted to NCC Highways in early 2020, however these were not progressed at this time owing to NCC highway engineers being deployed to deal with critical services connected to Covid 19 with subsequent delays resulting from Covid lockdowns in late 2020 and early 2021 further delaying the approval progress.
27. The Section 278 agreement which provides highways consent for works to be undertaken in the public highway was finally agreed in October 2021 along with an acceptable quotation from Via East Midlands to undertake the works. However, it subsequently came to light that there is a high-pressure gas main in the public highway which crosses the Canalside industrial estate road. The gas main is at a shallow depth in the ground and could potentially be impacted by construction works which are required to engineer the road improvement scheme to the south of the junction. Upon becoming aware of the gas main, VIA East Midlands requested further information from the applicant in terms of the depth and location of the gas main to ascertain whether it would be necessary to either move or lower it to engineer the road improvement scheme. Whilst some supplementary information was provided by the applicant, the information was not sufficiently detailed to make a definitive decision as to whether the gas main does need relocating or modifying to construct the road improvement scheme.
28. The relocation or lowering of the gas main has been explored by the applicant who has concluded that the additional costs of these works would be economically unviable for the development it serves. The applicant has therefore explored different solutions to provide safe access into the site with this applicant now favouring a banksperson arrangement to oversee the departure of the HGVs from the site in a safe controlled manner.

29. The applicant states that they will manage all deliveries in compliance with a Heavy Goods Vehicle Management Plan which has been supplemented during the course of processing the planning application to more clearly explain the management arrangements, including notification procedures, monitoring arrangements and disciplinary measures to be taken to ensure the safe access of the development site by HGV.
30. The objective of the Heavy Goods Vehicles Management Plan is to safely control the transport arrangements associated with the operation of the site, seeking to ensure that all vehicles associated with the development/importation of materials enter the Canalside Industrial Park by way of a left turn only from Kinoulton Road and follow the directional signs within the site to the point of waste discharge where they would be logged. Having discharged their load, the HGVs would be escorted back to Kinoulton Road by a site operative where they would be required to turn right on to Kinoulton Road once the banksperson has deemed it safe to do so. In addition, during periods of tipping, signage would be located on Kinoulton Road in both directions to advise oncoming motorists of slow lorries turning ahead.

## Consultations

31. Rushcliffe Borough Council: *Object to the planning application.*
32. *Based on the information submitted, it is considered the proposal has not sufficiently demonstrated that varying condition 12 would be acceptable from a highway safety viewpoint. The development would therefore be detrimental to the amenity of residents and would increase the risk of accidents on the roads in the vicinity, including at the Kinoulton Road/Nottingham Road junction. It would, therefore, be contrary to the Policy 1 of the Borough Council's Local Plan Part 2.*
33. Cropwell Bishop Parish Council: *Raise no objection to the modification to Condition 3 to allow a further four-year period for tipping operations, but do raise an objection to the modifications to Condition 12 in respect of the modified access arrangements.*
34. *The Parish Council reference correspondence from the highways engineer and the planning officer when the planning application for the inert waste disposal facility was originally considered which set out concerns that the existing site access onto Kinoulton Road is inadequate in the context of its visibility to the left. The Parish Council consider the banksperson scheme now proposed to address this deficit in visibility instead of an engineered junction improvement scheme is not a robust or reliable solution having regard to the traffic flow along Kinoulton Road and the busy pedestrian activity around/adjacent to the entrance/egress point. The Parish conclude that the inevitable pitfalls of human error/reliability mean these arrangements are unacceptable.*
35. Environment Agency Midlands Region: *No objection.*
36. *The Environment Agency provides some generic advice in connection with the need to obtain a waste carriers licence for the transport of waste materials.*

37. NCC (Highways): No objection.
38. The Highway Authority is in receipt of additional information which relates to the deliverability of the junction works and a Heavy Goods Vehicle (HGV) Management Plan.
39. In terms of deliverability of the junction improvement works, communications with VIA East Midlands estimating department (who were requested by the applicant to undertake the junction improvement works) show that VIA EM currently have insufficient information to ascertain whether the junction improvement works could be carried out without diverting the gas main apparatus. For that reason, VIA EM were unwilling to start any works on site until further investigation had been carried out with regards to the exact depth of the gas and water main that ran through the area of works. Following this, VIA EM received photos from the Client as evidence of the depth of the utilities, however these were deemed unacceptable to form a definitive conclusion on whether the works were unachievable without diverting utilities. There is therefore still some continuing uncertainty as to whether the gas main would require lowering/relocation to facilitate the construction of the approved junction improvement works.
40. Notwithstanding the above, the Highway Authority has given consideration to the banksperson option for HGVs exiting the site proposed within this current planning application. The Highway Authority considers that the measures for controlling the access arrangements as set out in section 3 of the submitted HGV Management Plan are generally satisfactory, but consider the location proposed for the banksperson appears to be inappropriate. The positioning for the banksperson shown in the HGV Management Plan is approximately 250m from the Canalside junction in a location that drivers would not be able to see. Even if there was a clear line of sight, it is unlikely that hand signals would be interpretable to a satisfactory degree at this distance. The banksperson's role is not to stop traffic but to give drivers confirmation that there are no vehicles oncoming so that they are able to exit the site safely. In view of this, it is recommended that the banksperson location is moved closer to the site entrance so that they would be able to communicate clearly with HGV drivers.
41. Subject to a suitable alternative location being shown for the Banksman/Banksperson, the Highway Authority would have no objections to the variation of conditions, subject to the planning conditions being imposed to:
- ensure all HGV traffic accesses and egress the site in compliance with the HGV Management Plan (subject to revised banksman location);
  - All HGVs follow the approved delivery route to and from the site accessing from the A46 via Nottingham Road and Kinoulton Road;
  - All HGV deliveries are sheeted;
  - The deposit of mud and debris on the public highway is managed in compliance with the previously agreed management plan;
  - HGV movements are restricted consistent with previous agreed levels.

42. NCC (Nature Conservation): *No objection.*

### **Publicity**

43. The application has been publicised by means of a site notice, a press notice in the Nottingham Post and neighbour notification letters to twelve residents who made representations in connection with the previous planning application for waste development at the site. The publicity has been carried out in accordance with the County Council's adopted Statement of Community Involvement. No representations have been received.
44. Cllr Neil Clarke MBE has been notified of the application.

### **Observations**

#### Scope of issues to be considered

45. This planning application has been made under Section 73 of the Town and Country Planning Act to vary the requirements imposed under Conditions 3 and 12 of Planning Permission 8/19/00378/CMA to allow a four-year extension for the completion of tipping operations until the 28<sup>th</sup> November 2026 (Condition 3) and to remove the requirement to carry out highway improvement works at the site access on Kinoulton Road and instead put in arrangements where all HGV's departing the site would be supervised by a banks person (Condition 12).

#### Assessment of Condition 3 to permit a four-year extension to the completion of tipping operations

46. The existing planning permission providing consent for waste importation expired on 28<sup>th</sup> November 2022 and therefore if planning permission is not granted to allow this timeframe to be extended no further waste could be imported to the site resulting in the retention of the existing void.
47. The applicant has explained that they have been unable to make any meaningful implementation with the original planning permission due to a combination of reasons linked to delays from the Coronavirus outbreak, the inability to resolve the technical requirements of providing an improvement to the site access, and delays in obtaining a waste permit from the Environment Agency to import the full quantity of waste to the site. Officers have discussed these matters with the applicant and can confirm these issues have affected progress with infilling the void.
48. As part of the original decision to grant planning permission for the infilling of the existing void at Canalside the Planning Inspector considered the development would bring forward a series of benefits which he concluded supported a decision to grant planning permission for the development. The following considerations were taken into account:



- a) The capacity provided at Canalside would provide a greater choice of disposal sites for inert waste in reasonably close proximity to the greater Nottingham conurbation. The Inspector considered the development was consistent with Nottinghamshire and Nottingham Waste Core Strategy (WCS) Policy WCS3: Future Waste Management Provision which seeks to ensure that there is sufficient waste disposal capacity and WCS Policy WCS5: Disposal sites for hazardous, non-hazardous and inert waste which prioritises the development of new inert waste disposal facilities in close proximity to the Nottingham conurbation to address acknowledged shortfalls in existing capacity. The Inspector acknowledged that the disposal capacity provided within the Canalside void was comparatively small and therefore the facility would not play a major role in addressing wider capacity shortfalls, but did conclude that it would contribute to WCS policy objectives and therefore considered the need for the development should be given limited beneficial weight in the overall planning balance.
- b) The Inspector concluded the landscape benefits from the works were substantial in the overall planning balance, considering the existing void/ground depression was not in keeping with the surrounding landscape character and its infilling would restore the site back to its original ground contours.
- c) The implementation of the approved aftercare arrangements would provide ten years management for the site targeted at re-creating an ecologically beneficial habitat across the infilled void site, with the Inspector giving these benefits limited weight in the planning balance.
- d) The Inspector acknowledged that the infilling of the void with waste was inappropriate development in the context of Green Belt Policy, and thus harmful to the Green Belt as a matter of principle but considered there were very special circumstances to support a grant of planning permission. He considered the very special circumstances included the development bringing benefit to the Green Belt by removing the void which has visual characteristics of previously developed land with further limited weight given to identified benefits that would arise from the provision of a local waste disposal facility, the improvements to the site access and biodiversity. He also noted that the landfill of mineral voids in the Green Belt is supported by WCS Policy WCS7. Whilst it is no longer proposed to improve the site access and therefore this aspect of positive support towards demonstration of very special circumstances has been lost, it is considered that there is still very special circumstances to justify this inappropriate development in the Green Belt.
- e) The Inspector acknowledged that the improvements to the industrial estate access road would be permanent and would remain following the completion of waste importation, permanently benefiting other users of the industrial park and users of the wider public highway, giving these benefits limited weight in the overall planning assessment.

- f) The Inspector acknowledged that there would be no significant adverse amenity impacts from the development in terms of noise, dust, odour and vermin and there would be no unacceptable drainage/pollution concerns.

49. In terms of the current Section 73 planning application to vary Condition 3 and allow a further four years to complete the infilling of the Canalside void, the original planning assessment undertaken by the Planning Inspectorate remains largely relevant and appropriate to the current decision with Officers reaching the following conclusions:

- a) There have been no notable changes to planning policy since the original decision was made with the key development plan policies concerning waste development continuing to be the adopted WCS and WLP.
- b) Since the original 2016 planning appeal decision no significant additional inert waste disposal capacity has become operational in the Greater Nottingham inert waste shortfall area. There is therefore still a need for the development to address these shortfalls consistent with WCS Policies WCS3 and WCS5 and therefore the need for the facility is considered to continue to provide limited beneficial weight in the overall planning balance.
- c) A four-year extension to allow the completion of tipping operations will ensure that the benefits to the landscape following the completion of the development continue to be delivered with these benefits given substantial weight in the overall planning balance.
- d) The Nottinghamshire Biological and Geological Centre Records indicate that the ecological value of the site has deteriorated since the appeal decision in 2016 with the LWS status of the site being de-notified in Autumn 2020 on the basis that the habitat no longer reached the species threshold to meet LWS status. The deterioration of the habitat was attributed to the ecological succession of the previous grassland habitats from open grassland to impenetrable scrub, with other parts of the site being unvegetated. Without intervention the ecological succession is likely to continue, further deteriorating the ecological value of the site. The completion of the consented development will ensure that the site is restored in compliance with the originally approved scheme which will remove the impenetrable shrub and re-instate the grassland habitat utilising the original low nutrient soils which have been stockpiled at the site. Following restoration, the new habitat will receive ten years aftercare management and thus provide regulatory control to develop the replacement grassland habitat and provide management of scrub growth across the site which is the key reason why the original LWS designation was de-notified. The ecological benefits of the development were originally assessed by the Inspector to have limited benefit in the overall planning balance, but it is clear that the deteriorating ecological conditions of the site means that the level of ecological benefit derived from the restoration of the site will be greater when compared to the existing site conditions. This additional level of ecological enhancement in comparison to existing site conditions should be acknowledged in the

overall planning balance with the level of benefit now considered moderately beneficial in the planning balance.

- e) The original overall conclusions reached in terms of demonstration of very special circumstances to support inappropriate development within the Green Belt policy remain, but it is acknowledged that the level of benefit derived from the junction improvement scheme and ecological enhancements has been modified in this appraisal.
  - f) The modification to Condition 12 would mean that the originally approved junction improvements to Kinoulton Road would not be provided. It is acknowledged that as part of the original decision the Inspector gave some limited beneficial weighting to the wider benefits these junction improvements would provide to users of the industrial park and the wider public highway. If these benefits are no longer to be provided they should also no longer be acknowledged in the overall planning balance.
  - g) The original conclusions reached in terms of amenity impacts and pollution risks remain unchanged.
50. Overall, there have been minor changes to the planning merits of the scheme which affect the planning balance since the original appeal decision was made. Specifically, it is noted that the limited beneficial weighting derived from the proposed junction improvement would no longer be delivered if the modification to Condition 12 is consented, but balanced against this there would be greater levels of benefit from the ecological enhancements to the site. Overall, whilst acknowledging this slight change in the planning balance, it is concluded that the changes do not materially change the conclusions previously reached and the overall planning balance continues to be supportive of the development.
51. In terms of the duration of the extended period, the four-year period requested by the developer is one-year longer than currently regulated within the extant Condition 3. The additional one-year period is requested to take account of the period of time likely to be required by the Environment Agency to issue a waste permit and therefore the duration of waste disposal activity would effectively continue to be three years, consistent with the original planning permission. This would ensure that the anticipated daily and weekly HGV movements would continue to operate in compliance with the consented levels. The requested four-year extension period to allow for the completion of tipping is therefore considered to be appropriate.

Assessment of Condition 12 to remove the requirement to carry out highway improvement works at the site access on Kinoulton Road

52. Planning policies in respect of transport, access and road safety are incorporated in both the Nottinghamshire and Nottingham Waste Local Plan (WLP) and the Rushcliffe Local Plan Part 2: Land and Planning Policies RLP). Transport policy is also incorporated within the National Planning Policy Framework (NPPF). The following policies are relevant:

- WLP Policy W3.14 (Transport) states that planning permission will not be granted for waste management facilities where the vehicle movements cannot be satisfactorily accommodated on the highway network or would cause unacceptable disturbance to local communities.
  - RLP Policy 1 (Development Requirements) states that planning permission for new development will be granted where a suitable means of access can be provided to the development without detriment to the amenity of adjacent properties or highway safety and the provision of parking is in accordance with advice provided by the Highways Authority.
  - NPPF paragraph 110 requires all new development to be served by safe and suitable access. Paragraph 111 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
53. These policies seek to ensure that new development is served by a suitable and safe means of access having regard to the advice of the highway authority and that planning permission should only be refused on highway grounds if there are unacceptable impacts on highway safety, or the residual cumulative impacts on the road network would be severe.
54. The existing junction serving the Canalside industrial park has restricted visibility to the south along Kinoulton Road with the visible distance being limited to 32m to the left when viewed at a distance of 2.4m back from the road verge. The visibility is restricted due to the presence of bends and a dip in the road. The restricted visibility increases the risk that vehicles emerging from the industrial estate access road could pull into the path of oncoming vehicles on Kinoulton Road because they do not see them early enough. Notwithstanding this restricted visibility, the accident records for Kinoulton Road confirm that there have been no reported injury collisions at the junction of the industrial estate since 1990.
55. Concerns were raised about the restricted visibility at this junction when the original planning application was appraised by the County Council. To overcome these concerns the applicant's preferred solution at this time was to undertake a junction improvement which sought to re-align Kinoulton Road with the modification having the effect of enabling emerging vehicles at the Canalside junction to see further round the corner to the south, increasing the visibility in this direction to 2.4m by 82m (see Plan 5). The suggested junction improvement was considered to be acceptable in highway safety terms by NCC Highways and was therefore regulated under Condition 12.
56. When the applicant proposed the junction improvement scheme as part of the original planning application submission other options for access to the site were not appraised by the planning authority. The junction improvement scheme suggested by the applicant provided an acceptable in road safety terms and therefore there was no need to look at other options. Alternative junction

improvement options including the current proposed banksman arrangements have therefore not been previously explored and accepted or dismissed.

57. The applicant states that at the time they agreed to these junction improvement works they were unaware of the presence of a gas main in the road verge. The gas main is comparatively shallow in the ground and the applicant states it would be impacted by the road improvement works. VIA East Midlands are not so certain that the approved road improvement works would physically impact the gas main and their most recent correspondence with the applicant requested further assessment work to enable a final decision to be made in terms of whether the depth of the gas main would be a constraint to constructing the approved road improvement scheme.
58. Notwithstanding this, the developer has investigated the cost of either relocating or lowering the gas main to enable the approved highway improvement works to progress. The applicant states that the additional cost of undertaking these works to the gas main makes the road improvement no longer economically viable to the development project. The applicant has also investigated alternative solutions to constructing a more cost-effective junction improvement but has not identified an alternative junction improvement design which is economically viable to the business.
59. The National Planning Policy Guidance in connection with the use of planning conditions states that planning conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. The costs of carrying out the road improvement scheme is therefore a material consideration in the determination of this planning application, however the weight that can be given to this issue in this planning decision is very limited/minimal because of the uncertainty as to whether the gas main actually needs re-locating or lowering.
60. The applicant's preferred solution in lieu of an improved access point is the provision of a banksperson to oversee the exiting of the HGVs from the site in a safe controlled manner with the access arrangements overseen by a wider traffic management plan for the three-year effective operational life of the planning permission for receiving waste deliveries.
61. The policy test in WLP Policy W3.14, RLP Policy 1 and the NPPF to assess the acceptability of these alternative access arrangements is whether the banksman arrangements provide safe access to the development site. The access arrangements do not have to be the optimum solution in terms of providing access to the site, but most maintain highway safety. This is clearly stated in NPPF paragraph 110d which confirms that planning decisions should ensure that where development has any significant impacts on the safety of the transport network the planning system should ensure these impacts are cost effectively mitigated to an acceptable degree. The advice of NCC Highways is key to informing the assessment as to whether the banksperson arrangements now proposed will maintain highway safety.
62. The use of a banksperson to oversee vehicle movements and safely direct HGVs accessing development sites is a common solution on construction

projects to ensure that road safety is maintained during vehicle movements connected with temporary development projects. The banksperson would be used to ensure they have a clear view of approaching traffic on the public highway and address the deficiencies in visibility at the junction.

63. NCC Highways have reviewed the banksperson arrangements and have provided clear advice to confirm these arrangements will ensure that HGV delivery vehicles associated with this construction project can safely access the public highway from the development site. NCC Highways recommend the banksman should be positioned closer to the Canalside junction than currently detailed within the submitted scheme to provide more satisfactory visibility for drivers using the junction with this minor modification recommended to be regulated by planning condition. The modifications to the site access will not change the effect the development would have on the wider amenity of the area from the levels previously assessed as being acceptable.
64. Since both the approved road improvement scheme and the banksperson scheme ensure the HGV delivery vehicles associated with this construction project can safely access the site from the public highway it is recommended that the original planning condition 12 is reworded to provide consent for HGVs to access the site by either an improved junction or under the supervision of a banksperson.
65. As part of the original appeal decision the Inspector acknowledged that the junction improvement scheme would provide wider benefits insofar that it would deliver a permanent junction improvement that would benefit the existing users of the industrial estate in the longer term. These benefits would no longer be delivered by the banksman arrangements now proposed. Whilst this is acknowledged, the emphasis of transport policy is to ensure that the development itself is served by a safe access, which it would be, and there is not an obligation on developers to address and overcome existing deficiencies in the highway network which are not connected to the development proposed.
66. Both Rushcliffe Borough Council and Cropwell Bishop Parish Council have objected to the revised access arrangements.
67. Cropwell Bishop Parish Council's concerns primarily relate to the robustness of the banksperson solution and potential that human error/unreliability could mean that some HGV movements are not safely supervised. Whilst these concerns are noted, NPPF paragraphs 55 and 56 encourage planning authorities to use planning conditions to make development schemes acceptable subject to the planning condition being necessary, relevant to planning, precise, reasonable and enforceable. The recommended new Condition 10 which replaces the existing Condition 12 is compliant with these tests and will regulate that all HGVs leaving the site are supervised in compliance with the HGV Traffic Management Plan by an appropriately trained banksperson. It is not appropriate for the planning authority to refuse planning permission for the development on the basis that the planning condition may be breached. If there were issues of human error/unreliability which meant that the HGV Management Plan was not being appropriately followed this should be regulated by

enforcement of the planning condition and not by refusing planning permission for the development on the basis of unquantified concerns that the planning condition may be breached sometime in the future.

68. The consultation response from Rushcliffe Borough Council raises objections to the development on the grounds that the Borough Council considers the modification to Condition 12 would have a detrimental impact to the amenity of residents and would increase the risk of accidents on the roads in the vicinity, including the Kinoulton Road/Nottingham Road junction. Examining these concerns, it is noted that the modification to Condition 12 would not result in any changes to the number of HGV's accessing the site or their routing on the wider highway network compared to that approved on appeal and therefore would not alter the pattern of vehicle movements from the levels previously examined in the original planning appeal decision. In his decision the Inspector closely examined the Kinoulton Road/Nottingham Road junction and concluded there would not be any significant detrimental impacts to the amenity of local residents, significant risk of accident or any severe impacts to the highway network associated with the traffic connected to the development. There has been no significant change since this appeal was determined to reach a different conclusion on these matters.
69. It is therefore concluded that the amended access arrangements provide a workable traffic management solution to regulate traffic accessing and exiting the development site which is acceptable in road safety terms and would not result in any significant detriment to the amenity of surrounding properties. The amended traffic management arrangements therefore satisfy the policy requirements within WLP Policy W3.14 and RLP Policy 1 which seek to ensure that developments are served by a suitable means of access which does not cause detriment to the amenity of adjacent properties and ensures there would be no severe residual cumulative impacts on the road network compliant with NPPF transport policy.

#### Schedule of Planning Conditions

70. The original planning permission incorporates a series of planning conditions which required the submission of various environmental protection schemes for the planning authority's approval prior to the commencement of the development.
71. Since these schemes have now been approved by the planning authority, the opportunity has been taken as part of this Section 73 submission to update and re-word the original planning conditions so that they reference the now approved schemes/documents. The opportunity has also been taken to generally update and tidy up the schedule of planning conditions into a more logical sequence with the updated recommended planning conditions being set out in Appendix 1.
72. Specifically, the new schedule of planning conditions incorporates the following modifications:

- Condition 1 and 2 have been updated to reflect the fact that the original planning permission has been commenced, referencing the extended date for the completion of tipping operations (28<sup>th</sup> November 2026) and the completion of the restoration (28<sup>th</sup> November 2027) reflecting the development sought planning permission in this current planning application submission.
- Condition 4 references the approved landscape protection scheme.
- Condition 7 references the approved dust management scheme.
- Condition 8 references the approved noise and vibration management scheme.
- Condition 10 introduces scope for the HGV departures from the site to be overseen by a banks person under the arrangements of the wider HGV Management Scheme in addition to retaining scope for the developer to undertake the improvements to the Canalside/Kinoulton Road junction as originally approved.
- Condition 11 references the approved controls for managing mud entering the public highway.
- The restoration and aftercare planning conditions set out within conditions 17-24 have been updated to reference the approved biodiversity management plan with consequential changes to the wording/numbering of these planning conditions so that they follow a more logical sequence.

### **Other Options Considered**

73. The report relates to the determination of a planning application. The County Council is under a duty to consider the planning application as submitted. The report appraises alternative options to extend the duration of the planning permission and the approved junction improvements for the site.

### **Statutory and Policy Implications**

74. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, the safeguarding of children and adults at risk, service users, smarter working, and sustainability and the environment, and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

#### Crime and Disorder Implications

75. In its present condition, the site could attract anti-social behaviour and it is considered that its restoration would help to alleviate any such issues.



### Data Protection and Information Governance

76. Given that no representations have been received from the public, it is considered that no data protection issues have been raised.

### Human Rights Implications

77. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

### Implications for Sustainability and the Environment

78. These have been considered in the Observations section above.
79. There are no financial, human resource, public sector equality duty, safeguarding of children and adults at risk or service user implications.

### **Statement of Positive and Proactive Engagement**

80. In determining this application, the Waste Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussion; assessing the proposals against relevant Development Plan policies; all material considerations; consultation responses and any valid representations that may have been received. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

### **RECOMMENDATIONS**

81. It is RECOMMENDED that planning permission be granted subject to the conditions set out in Appendix 1. Members need to consider the issues set out in the report and resolve accordingly.

**DEREK HIGTON**

**Interim Corporate Director - Place**

**Constitutional Comments (JL 24/03/23)**

82. Planning & Rights of Way Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference set out in the Constitution of Nottinghamshire County Council

**Financial Comments** (SES 17/03/2023)

83. There are no specific financial implications arising directly from this report.

**Background Papers Available for Inspection**

The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985 and you can view them at:  
[www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=V/4492](http://www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=V/4492)

**Electoral Division(s) and Member(s) Affected**

Bingham West

Cllr Neil Clarke MBE

Report Author/Case Officer

Mike Hankin

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