

Planning and Licensing Committee

Tuesday, 24 November 2020 at 10:30

Virtual meeting

AGENDA

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|---|--|----------|
| 1 | Minutes of the last Meeting 13 October 2020 | 1 - 16 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Declarations of Lobbying | |
| 5 | Vary Approved Layout of Waste Recycling Facility, Loughborough Road, Bunny | 17 - 66 |
| 6 | Local Enforcement Plan Update | 67 - 96 |
| 7 | Development Management Progress Report | 97 - 104 |

Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

- (3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact Peter Barker (Tel. 0115 977 4416) or a colleague in Democratic Services prior to the meeting.

- (4) Councillors are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.
- (5) This agenda and its associated reports are available to view online via an online calendar - <http://www.nottinghamshire.gov.uk/dms/Meetings.aspx>

Meeting PLANNING AND LICENSING COMMITTEE – VIRTUAL MEETING

Date Tuesday 13 October 2020 (commencing at 10.30am)

Membership

Persons absent are marked with 'A'

COUNCILLORS

Chris Barnfather (Chair)
Jim Creamer (Vice-Chair)

Pauline Allan	John Longdon
Andy Brown	Rachel Madden
Neil Clarke MBE	Tracey Taylor
Sybil Fielding	Keith Walker
Tony Harper	Andy Wetton
Paul Henshaw	

OFFICERS IN ATTENDANCE

Pete Barker – Chief Executive’s Department
Rachel Clack – Chief Executive’s Department
Sally Gill – Place Department
David Marsh – Place Department
Joel Marshall – Place Department
Fiona Needham – Place Department
Jonathan Smith – Place Department

1. MINUTES OF LAST MEETING HELD ON 8th SEPTEMBER 2020

The minutes of the meeting held on 8 September, having been circulated to all Members, were taken as read and were confirmed and signed by the Chair.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS

There were no declarations of interest.

4. DECLARATIONS OF LOBBYING OF MEMBERS

Councillor Taylor informed Committee that for Item 7, Temporary Operations for 10 Years for Soil Treatment Facility at Daneshill Landfill Site, Daneshill, she would be speaking as the Local Member and would therefore take no part in the debate or the vote for that item.

5. ANNUAL REPORT OF THE LICENSING WORK CARRIED OUT BY THE TRADING STANDARDS AND COMMUNITIES SERVICE

Ms Needham introduced the report which updated the Committee on the work carried out by the Trading Standards & Communities Service.

Following Ms Needham's introduction members then debated the item and the following comments and questions were responded to: -

- The decline in the number of smaller independent petrol storage and dispensing premises continues, in part because automotive garages rarely dispense petrol as they did in the past. Ms Needham undertook to supply members with more information outside of the meeting.
- The new Asda store referred to in paragraph 18 of the report is now open and is dispensing petrol.
- Members paid tribute to the hard work of the small Trading Standards team.

On a motion by the Chair, seconded by the Vice-Chair, it was: -

RESOLVED 2020/016

- 1) That the appropriate use of the media to highlight the results of the fireworks safety inspections programme for the coming licensing period (October/November 2020) be approved.
- 2) That a further update report be brought to the meeting of the Committee in June 2021, to cover the complete financial year 1st April 2020 – 31st May 2021.

The Chair informed the meeting that the original Item 6, Change of Use of Land to Allow for the Extension of the Existing Yard, Briggs Metals, Great North Road, Newark, had been withdrawn.

6. TEMPORARY OPERATIONS FOR 10 YEARS FOR SOIL TREATMENT FACILITY AT DANESHILL LANDFILL SITE, LOUND

Mr Smith introduced the report which considered a full planning application seeking a 10-year permission for a proposed soil treatment facility (STF) to treat imported non-

hazardous and hazardous soils, including those containing hydrocarbons and bound asbestos debris, on land forming part of the Daneshill landfill complex near Lound, north of Retford. Mr Smith informed members that the key issues related to the principle of the development at the site and its relationship with the wider landfill site, including its restoration, the impacts on local amenity and ecology, and the concerns raised in relation to possible health effects from airborne emissions of asbestos fibres.

Mr Smith informed Committee that as part of the permit application process the Environment Agency (EA) may choose to hold a public consultation exercise, especially given the significant public interest generated around air emissions. Mr Smith stated that if the Committee were to approve the application then it is proposed that the Chair of the Committee write to the EA requesting that such public consultation is carried out as part of the permit application process.

Mr Smith then informed the Committee of correspondence that officers had become aware of after the papers for this meeting had been published. Mr Smith informed members that officers had been copied into correspondence from Friends of the Earth (FoE) that requested the Secretary of State issue a screening direction as it considers the application one that constitutes Environmental Impact Assessment (EIA) development and which therefore requires an environment statement prior to the determination of planning permission. Mr Smith referred members to paragraph 69 of the report which stated that the applicant had requested a 'Screening Opinion' from the Waste Planning Authority (WPA) but that the WPA was not of the opinion that one was required. Mr Smith informed Committee that officers had continued to keep the situation under review and though it is still considered that a screening opinion is not required, given the FoE's correspondence officers have revised the Recommendation as follows :

"It is RECOMMENDED that, subject to the Secretary of State first issuing a negative EIA Screening Direction, planning permission be granted subject to the conditions set out in Appendix 1 of the report."

Mr Smith informed Committee that in this case if the application were approved, planning permission could not be issued until it was confirmed by the Secretary of State that an EIA is not required. If the Secretary of State responded by stating that an EIA was required, the applicant would have to prepare an EIA which would be subject to consultation and publicity and the application would then be reported back to Committee for determination following that public consultation.

Following Mr Smith's introduction, Mr Chris Chambers was then given the opportunity to speak and a **summary** of that speech is set out below:

- I would like to comment upon the risks of asbestos and state that I am recognised as one of the UK's leading independent experts in the field.
- This application represents a significant risk from asbestos in the transport of contaminated soils and the subsequent tipping, screening, storage and picking operations.
- The controls proposed by the applicant fall well short of those required in common law. Similar work at another of the applicant's sites at Rowley Regis

in the West Midlands, is undertaken indoors with filtration and water suppression used.

- This application could result in the handling of one of the most dangerous types of asbestos outdoors.
- There is the possibility of contaminated soils being rejected at the applicant's other site and being transported to Daneshill for processing resulting in an increase of lorry movements.
- The sampling undertaken by the applicant is not sensitive enough to gauge whether the emissions will exceed normal background levels.
- The application should be refused or paused pending a decision on the screening direction and more conditions agreed with the applicant.

Following Mr Chamber's speech, the following comments and questions were responded to:

- One result of the permit application could be the requirement for this operation to take place indoors. If this proves to be the case, planning permission for that building would be required from this authority and members would have the opportunity to consider the matter again.

Ms Vivienne French was then given the opportunity to speak and a **summary** of that speech is set out below:

- I will refer to NCC reports relating to Daneshill for September 2018 and October 2020.
- The variations suggested in September 2018 are for a short-term restoration plan reducing over time until 2023.
- Why does this revised short term restoration plan remain unapproved? What are the 'unresolved concerns' raised in 2020 parts 27 and 163?
- Point 110 says "the variations do not relate to a new facility which in principle would not be acceptable in the open countryside"
- FCC in October 2020 is now applying for a new facility - soil treatment with asbestos picking in open countryside.
- Confusion, misleading and contradictory statements refer to a "temporary, ten-year open-air project" A similar operation by FCC at Rowley Regis is described as "completely safe" however there the asbestos picking is not in the open air but enclosed inside a large building.
- How can any decision be made today concerning a project with such hazardous material as asbestos without input from the Environment Agency which admits that they have insufficient information?
- FCC has not followed standard protocol to "twin track" this with an Environmental Impact Assessment to ensure the Planning Authority are cognisant of the likely significant environmental effects before making a decision. This would have reassured the local residents that there would be

safety controls and monitoring of emissions and dust from this potentially dangerous project.

- Does this development qualify under schedule 3 for an Environmental Impact Assessment on grounds of "pollution risks to human health and risks due to air pollution from loose asbestos fibres"?
- FCC says " HGV's would tip their loads and soils would be moved by front loaders" Surely dust emissions are an obvious consequence.
- To align with the Waste Core Strategy Policy there must be a clear need for such a new facility. It would appear that by failing to find uncontaminated soils locally for restoration they have created this need for the financial gain of their Company.
- I suggest that the best outcome is for the September 2018 revised plan to be approved, importing soils from the many large, local building projects.

Following Ms French's speech, the following comments and questions were responded to:

- The NCC report of 2018 referred to by Ms French granted planning permission to create an inert waste facility with the applicant at the time believing that there would be enough inert material available to restore the site. It has not proved possible to source sufficient quantities of suitable material so the applicant has changed their rationale and submitted this application.
- Officers have recommended the twin track approach to the applicant but this advice has not been followed. There is no legal requirement to adopt a twin track approach, with the applicant in this case preferring to try to gain planning permission before applying for a permit. Officers understand that the permit application has been drafted and is ready to be submitted to the EA. The permit process is a thorough and robust one and if any changes are needed then the application may well come back through the planning process, but officers cannot insist that applicants adopt the twin track approach.
- The applicant's approach in this case is not unprecedented and as the report makes clear the processes for obtaining planning permission and a permit are completely separate. The EA administers the permit application and considers such matters as air borne pollution whereas this authority deals with the planning application and considers whether the proposed development is a suitable use of the land. The EA often recommends the twin track approach and it is clear they prefer this approach but if this does not happen then the applicants still have to go through the full process.

Mr Ian Prince was then given the opportunity to speak and a **summary** of that speech is set out below:

- I understand the health risks associated with asbestos fibres better than most and there is no safe health limit for airborne asbestos fibres. These fibres are microscopic so cannot be picked out when dumped by lorry.

- I am appalled that this is even being considered as a reasonable use of the land. This will affect nearby villages and residents and the wider area as the fibres get carried in the air.
- The twin track approach should be forced on to the applicants who are just here for profit. If they have a site in the West Midlands why do they need to bring material they cannot dispose of elsewhere to Daneshill?
- Daneshill has changed significantly in the last 30 years. Why can the applicant not find suitable materials locally? It is a failure on the Council's part who are now taking the worst option.
- Given the negative long term health effects of asbestos fibres, including the development of tumours, this application should be rejected.
- This is not an operation that should be taking place in the open air.

Following Mr Prince's speech, the following comments and questions were responded to:

- Officers reiterated that the permit process considers the issue of asbestos and though it would be useful if the applicant had adopted the twin track approach but this is not a statutory requirement and the authority cannot force the applicant to take this approach.
- The asbestos arriving at the Daneshill site would be bound.
- The development cannot go ahead without both planning permission being granted and a permit being issued. They are two separate processes and the granting of planning permission does not automatically guarantee that a permit will be issued.

Mr Nick Prout, on behalf of Lound Parish Council, was then given the opportunity to speak and a **summary** of that speech is set out below:

- This proposal to handle the most dangerous types of asbestos in the open air at Daneshill has struck fear into the residents of Lound. It is a fear of a substance which, if allowed to escape through inadequate containment and control, is a killer.
- You have already heard about the applicant's facility at Rowley Regis, where the type of asbestos handled is many times less dangerous than that proposed for Daneshill. Despite this, the asbestos at Rowley Regis is handled inside a sealed building, which, in the applicant's words, "provides regulators with some degree of comfort that emissions can be controlled more easily".
- In contrast, at Daneshill, the applicant plans to handle this hazardous material entirely in the open air. The picking operation is to take place in a small shelter, which will in no way contribute towards the containment of fine asbestos particles picked up on a dry windy day. The ability to handle the most

dangerous forms of asbestos will attract even more hazardous waste to Lound and this will necessitate the material being transported over even longer

distances. The proposed operating procedures are summed up by Via (Reclamation) in Mr Marshall's report "These processes and procedures are heavily dependent on the competence and integrity of the operatives undertaking the work and therefore risk cannot completely be eliminated". It is unfortunate then that a visit by the Committee to see the Rowley Regis plant was discouraged by the applicant.

- Given the above, it is hardly surprising that the residents of Lound have not found the description of the proposed operation to be reassuring. In reality, it will be almost impossible for the applicant to consistently exercise proper control over these very manual operations, outside, 5½ days a week, for the next 10 years, in such a remote location, without incidents occurring which will release hazardous asbestos particles into the environment. No mention is made of the senior site manager who will be needed to run the operations and to ensure that they are carried out correctly at all times.
- Very surprisingly, no Environmental Impact Assessment has been carried out for this project. Also, liaison with the communities affected has been less than adequate. We believe that the proposal simply does not demonstrate the protections required to ensure a safe and successful operation.
- Ladies and Gentlemen, Lound Parish Council urges you to refuse the application.

There were no questions.

Ms Angela Close, on behalf of Sutton Cum Lound Parish Council, was then given the opportunity to speak and a **summary** of that speech is set out below:

- We fully support and agree with the concerns being raised in the presentations by our colleagues from neighbouring Parishes.
- Our concerns with this application focus on two points:
- First, the lack of consultation with our residents who live less than two miles from the Daneshill site and
- Second, the question of an increased volume of heavy goods vehicles travelling through the village illegally in breach of the current 18 tonne weight restriction.
- Sutton cum Lound Parish Council was initially not invited to comment on the application. A resident complained to the Council about lorries travelling through the village. The Case Officer contacted about this confirmed that this planning application had been submitted; but that he had not consulted with us due to this weight restriction. Presumably he felt that this application would not affect us.

- So - a village which is positioned less than 2 miles away from the site, would therefore have had no consultation at all had not lorry drivers for FCC broken the law travelling illegally through the village.
- I therefore contest that the consultation process for this application has not been conducted correctly and should be reopened to allow all our residents to have their say on this issue.
- If lorry drivers for FCC already break the law knowing that there is an 18-tonne weight restriction through the village, what other laws would FCC allow to be broken or deviate from to achieve their aims?
- We have to rely on the integrity of local businesses to respect and observe the law and if they don't how can we believe they will safeguard our health and wellbeing when it comes to handling asbestos?
- This may be a minor indiscretion, but it adds weight to local community beliefs that this company will not comply with other regulations unless strictly governed.
- As a Planning Committee you need to be assured that when you grant permission for any company to operate such a business for a 10-year period, they will undertake the required regulatory process seriously. This issue gives cause for doubt in this area.
- Should you be minded to approve this application, then we request that a condition is included in the approval that specifically details legal routing of vehicles.
- If FCC are found to breach this at any time during the 10-year period of the application, they will have breached this planning process and any licences provided to them should be revoked.
- In conclusion we believe that:
- We have not been adequately and correctly consulted in relation to this application and so it does not take into consideration our community's views.
- The company requesting this 10-year permission has already proven to be unreliable with respect to its adherence to the law and cannot therefore provide sufficient assurance around its handling of contaminated soil to safeguard local community health.
- Any approved application needs to include a condition detailing required vehicle routes and strict penalties for non-compliance.

Following Ms Close's speech, the following comments and questions were responded to:

- Officers were aware of the recent breaches by HGVs and when considering this application understood that vehicles may pass through Mattersey and as a

result drafted Condition 21 to ensure that HGVs would use the established route to and from the A-Road network.

- Officers included Lound, Torworth and Mattersey Parish Councils in the consultation process as these villages are on the available lorry routes. As Sutton Cum Lound is subject to an HGV restriction there is no reason for lorries to pass through the village and as no material impact could be identified Sutton Cum Lound Parish Council was not included in the consultation process. It is a judgement call taken on a case by case basis about who to consult. Officers are always prepared to receive and consider all contributions. In this case officers have exceeded the minimum consultation requirements.

Ms Alison Duce, on behalf of Torworth Parish Council, was then given the opportunity to speak and a **summary** of that speech is set out below:

- The land fill site has been in operation since 1982 - 38 years and millions of tonnes of waste has already passed through Torworth and made a significant impact resulting in loss of local amenity.
- This was inert waste, but the current proposal to process hazardous soils is a significant change in operation and would increase both short term risks for the 10 years of operation, but also will have longer term impacts on the site and surrounding areas after completion and restoration.
- Of major concern is the transportation of the hazardous soils to the site and contaminated waste products from the site. The HGV route to the site uses unclassified country lanes.
- Buildings down Daneshill Road are blackened due to exhaust pollution. The lanes have suffered years of litter and waste. Sheeting is not sufficient to prevent loss of loads along the route. This is worrying when future contamination could be hazardous waste.
- Comparable soil processing sites are indoors; this proposal for open air operations raises concerns on how effectively the asbestos fibres can be contained. The picking operation only removes visible fragments of asbestos, it will not remove all asbestos pieces and fibres and these do not degrade. There could be airborne spread and they will remain in the soil. FCC as operator and NCC as freeholder will remain morally and legally culpable for any resultant human suffering and health compensation claims.
- The bioremediation process requires containment of and safe disposal of polluted waste water and will result in some contaminated ground water capture. The site sits on the secondary Sherwood A aquifer, which is used for drinking water and watering food crops. It is a sensitive setting to be at risk of water pollution.
- The overall intended use of the site is a public access, nature and leisure area. Families, children and pets will play on this site - a site that would be created

from 300,000 tonnes of asbestos and oil spill waste reclamations. The association with such hazards will create a stigma and hinder successful adoption and enjoyment by the public.

- The site shares a boundary with Mattersey Hill Marsh SSSI and is opposite Daneshill Lakes and Nature Reserve. We do not believe the introduction of hazardous waste immediately adjacent to such sites demonstrates environmental responsibility and duty of care, when the world sits in such a delicate balance of environmental pollution.
- Decisions made now will be felt and judged by future generations, so they must be the correct ones. We all must take responsibility and be accountable for our part in these decisions. Please think carefully about this one.

Following Ms Duce's speech the following comments and questions were responded to:

- It is correct that the current site deals with non-hazardous waste and that the proposals involve the receiving of soil that may contain asbestos, but the permit scheme should ensure that ultimately the soil used on site will be safe.
- Condition 11 covers the management of all foul, surface or process waters on site.
- Litter picks in the area have found waste near the site but is difficult to link its presence directly to the site operations, though there is more commercial waste than general litter present.

Mr Dan Simpson, on behalf of Ranskill Parish Council, was then given the opportunity to speak and a **summary** of that speech is set out below:

- We object to this proposal and echo the comments made by the other Parish Councils.
- We question the need to use contaminated soils given the length of time being granted to complete the scheme and find it difficult to believe that the applicant cannot source adequate supplies of suitable material given the amount of development that has occurred locally.
- Ecological grounds have already been covered by previous speakers, but the processing of hazardous material in the open air is not acceptable.
- Ranskill Parish Council has not been consulted by the applicant or by Nottinghamshire County Council, this is disappointing, especially give the parish council's initial involvement in the development of the nature reserve. Residents have also complained about the lack of consultation.
- The pandemic has been given as a reason for not holding the usual public meetings, but we would have expected alternative on-line methods to have been used. The consultation has not been adequate.

- We object on transport grounds – there are frequently unsheeted lorries in the area and this has been an historic problem, especially along Daneshill Road. Traffic is likely to increase in the Ranskill area anyway given the expansion of

the sand and gravel operations at Scrooby Top meaning HGVs will pass through Ranskill and use the surrounding routes.

Following Mr Simpson's speech, the following comments and questions were responded to:

- Officers referred to paragraph 44 of the report which stated that only registered waste carriers would be allowed to transport contaminated soil to the site and that they would be subject to a high level of scrutiny as part of the Environmental Permitting conditions and Duty of Care Regulations.

Mr Sam Thistlethwaite, on behalf of the applicant, was then given the opportunity to speak and a **summary** of that speech is set out below:

- I would like to thank the planning officers for the considered report we have just heard and for their proactive engagement throughout the determination process, the entirety of which has occurred over the last challenging 6 months.
- At the outset, I would like to state our complete understanding of the local residents' concerns regarding particularly the asbestos element of the proposals. There is no difference in the material permitted at the Rowley Regis site and the Daneshill site.
- Whilst this would be a new operation on this particular site, it needs to be highlighted that the approach proposed is a well-established method for treating soils with hydrocarbons and asbestos debris and is widely undertaken with full regulatory approval across the UK on many development sites in residential settings.
- What I hope is clear for members is both the high level of technical scrutiny and safeguarding measures that will be in place, as well as the anticipated very low volumes of actual asbestos containing material that are ultimately likely to enter the site which will be the equivalent of up to 1 skip full over a year.
- The applicant and the operator have committed to not exceeding an agreed background reference level for asbestos content in the air, not at the closest residential premises, but actually at the proposed operations.
- This is the most stringent air quality restriction on operations of this type that I have experienced in over 15 years of working on similar projects in the industry.
- The planning process which we are part of today, sits alongside the environmental permitting process to be completed by the EA. The application for which has been completed and will be submitted immediately following any planning approval.
- The EA will undertake a further very detailed review of the proposals to ensure it involves the best available technology and meets their comprehensive technical standards for environmental protection required prior to a permit being issued.

- This provides a “belt and braces” approach to the environmental controls in place on the scheme and should, I hope, provide comfort to members and local residents alike.
- Put simply, the project cannot proceed without the EA being satisfied that the environmental controls proposed are the best they can be and they will ensure that these high standards are always maintained through regular enforcement visits and by regularly reviewing air quality data amongst other information during the lifetime of the treatment facility.
- The EA have expressed no objections to the planned operations and have been consulted regularly by Nottinghamshire County Council.
- The site will provide employment for 10 local people.
- Given the government’s encouragement to boost the economy there should be an increase in the demand for the type of facilities provided at the Daneshill site.

Following Mr Thistlethwaite’s speech the following comments and questions were responded to:

- Although the operation at Rowley Regis is carried out inside, the majority of operations of this type take place outside using mobile equipment.
- Staff on site not processing the incoming material will only require standard PPE such as hats and boots.
- The applicant will check the soil at source for the presence of any asbestos fibres before the soil is transported to Daneshill. There is no point in the applicant taking soil to Daneshill that cannot be used there. The client carries out the initial acceptance testing but the applicant then checks that the waste description is accurate and a third check is made when the material arrives on site. Out of 4,000 loads received by the applicant last year only 3 were rejected. If an unacceptable load is tipped on site then dust suppression measures are adopted to ensure that no contamination occurs when it is removed.
- The applicant did not adopt the twin track approach as they did not want to pre judge the outcome of the planning process and also because the fee for the permit costs tens of thousands of pounds and is non-refundable. The applicant confirmed that the application for the permit had been completed and was ready to be submitted.

Councillor Taylor was then given the opportunity to speak and a **summary** of that speech is set out below:

- It is important that the concerns of the residents and the Parish Councils are taken into consideration. Many objections have been received.

- There are 5 parish councils who are affected by this development and 4 of them have spoken today – I think that shows the level of concern that there is locally.
- A safe outcome depends on the Environment Agency (EA) and the Waste Planning Authority (WPA) carrying out their respective roles properly.
- From a resident's point of view it does feel as if there is some abdication of responsibility taking place here. The WPA can grant planning permission without accounting for the fears of the objectors in terms of the ecological impacts and the EA has not commented with any great vigour though have mentioned the issue of groundwater.
- This is a longstanding, non-hazardous site but this application proposes to bring in hazardous materials.
- Residents are concerned that as it is an outdoors operation it poses a risk to health.
- This application speaks of holding areas, bunding and sealed drainage but I note that a past application in Councillor Fielding's division also involved asbestos but that was carried out inside.
- The applicant speaks of being commercially viable and that there are limited sites offering what Daneshill can, but my concerns are with the residents and not the applicant's commercial viability.
- The report states that the location makes practical sense as it is in a sparsely populated rural area but the asbestos fibres do travel in the air and I ask Committee members to consider the effects on my constituents.
- In my time as an elected member for the area applications have been heard regarding quarries, test drilling for methane and shale gas, landfill centres and recycling facilities. The only application not yet heard is for a nuclear reactor! My residents have taken more than their fair share for Nottinghamshire.
- An emotional plea might not count in planning terms but I ask members to consider the impact on residents and vote against the recommendation.

Following Councillor Taylor's speech the following comments and questions were responded to:

- If planning permission is granted, residents can still make their voices heard by writing to the EA about the applicant's permit application asking for a public consultation as the size of public interest is one of the criteria used to decide whether to hold a public consultation.
- The EA have engaged rigorously in the planning process but had no other observations to make other than about the issue with drainage/contamination. The EA does have its own thorough procedure which it will follow.

- From a planning point of view the site is acceptable for the proposed purpose – it is well screened with good access.
- If planning permission is granted, the Chairman confirmed that given the clear local concerns he would write to the EA requesting a public consultation on the applicant's permit application.

Members then debated the item and the following comments and questions were responded to:

- Officers acknowledged the concerns that the Committee had for the welfare of the residents and confirmed that following the receipt of consultation responses officers had sought and been given assurances by the applicant that the operation would be operated safely.
- If the application is successful both the EA and this authority would monitor the site. NCC has an enforcement team and the site has been visited twice this year. The frequency of visits depends on how busy the site is. Spot checks can also be carried out. There are many other developments in that part of the County so that it would be straightforward for the team to visit when passing. Condition 32 covers on site monitoring to ensure that airborne concentrations of asbestos fibres do not exceed background concentrations. Off-site monitoring may also be required by the EA as a result of the permit process if planning permission is granted. Condition 10 requires the establishment of a local liaison forum to ensure that any residents' concerns are addressed.
- Condition 21 governs the movements of HGVs, including those used as part of any contract with third parties for delivering or taking away materials to/from the site.
- Condition 8 refers to external lighting which is designed to be bat friendly. In terms of light pollution, each application is taken on its merits, in this case the light spill is minimal and the operation will not take place after dark.

On a motion by the Chair, taking into account the Screening Direction, and seconded by the Vice-Chair, it was: -

RESOLVED 2020/017

That subject to the Secretary of State first issuing a negative EIA Screening Direction, planning permission be granted subject to the conditions set out in Appendix 1 of the report.

7. CHANGE OF USE OF CARETAKER'S BUNGALOW TO SCHOOL USE AND ERECTION OF HIGH SECURITY FENCING, WOODLAND VIEW, HUTHWAITE

Mr Marsh introduced the report which considered a planning application for the use of a former caretaker's bungalow as a school nurture unit at Woodland View Primary

School, Huthwaite. Mr Marsh informed the Committee that the key issue related to the amenity impact at a school entrance gate.

Following Mr Marsh's introduction there were no questions.

On a motion by the Chair, seconded by the Vice-Chair, it was: -

RESOLVED 2020/018

That planning permission be granted for the purposes of Regulation 3 of the Town and Country Planning General Regulations 1992 subject to the conditions set out in Appendix 1 of the report.

8. DEVELOPMENT MANAGEMENT PROGRESS REPORT

Mrs Gill introduced the report, stating that it was the usual report brought regularly to Committee.

On a motion by the Chair, seconded by the Vice-Chair, it was: -

RESOLVED 2020/019

That no further actions are required as a direct result of the contents of the report.

The meeting closed at 1.06pm

CHAIR



24 November 2020

Agenda Item: 5

REPORT OF CORPORATE DIRECTOR – PLACE

RUSHCLIFFE DISTRICT REF. NO.: 8/20/01279/CMA

PROPOSAL: RETROSPECTIVE SECTION 73 PLANNING APPLICATION SEEKING PERMISSION TO VARY THE APPROVED LAYOUT OF THE WASTE RECYCLING FACILITY AT BUNNY, NOTTS, TO PROVIDE ADDITIONAL INCINERATOR BOTTOM ASH STORAGE FACILITIES

LOCATION: BUNNY MATERIALS RECYCLING FACILITY, LOUGHBOROUGH ROAD, BUNNY, NG11 6QN

APPLICANT: JOHNSONS AGGREGATES & RECYCLING LTD

Purpose of Report

1. To consider a variation application which seeks retrospective planning permission to regularise alterations that have been made to the approved site layout and working arrangements at the waste recycling facility at Bunny Materials Recycling Facility (MRF), Loughborough Road, Bunny, to increase the storage facilities for processed incinerator bottom ash (IBA aggregates or IBAA).
2. The key issue relates to whether the proposed changes to the working practices would give rise to any unacceptable environmental and amenity impacts, particularly dust, odour and noise emissions on local residents and two nearby care homes (Greenwood Lodge and Hillside Farm).
3. The site lies within the Green Belt. Accordingly, the application has been treated as a 'departure' from the Development Plan. The recommendation is to approve this Section 73 application subject to the conditions set out in Appendix 1 of the report and the rolling forward of the legal agreement attached to extant planning consent 8/16/00059/CMA, dated 12th July 2017.

The Site and Surroundings

4. The application site lies on the southern side of Nottingham approximately 10.2 kilometres from the city centre and approximately 11.5 kilometres to the north-

east of Loughborough. Situated within the Nottingham-Derby Green Belt, some 0.75 kilometres to the south of Bunny Village, it is located off the main A60 Loughborough Road to the south-west of its junction with Gotham Lane, just beyond the former Bunny Brickworks.

5. The nearest residential properties to the site are Woodside Farm, situated approximately 120 metres to the east of the site entrance, on the opposite side of the A60 (see Plan 1); and Chestnut Farm and Hillside Farm Care Home some 160 metres to the south-west. Broadly to the north of the site beyond the former Bunny Brickworks lies residential development fronting Gotham Lane including Greenwood Lodge Care Home which is the nearest sensitive receptor within Gotham Lane, at a distance of 220 metres from the site. More distant residential development is situated beyond Gotham Lane within Bunny Village on Main Street, approximately 750 metres to the north of the site.
6. Both to the south and west, the application site is bounded by open countryside (including a restored former landfill site), with a former brickworks adjoining the site's northern boundary, beyond which a wood and field separate the industrial works from residential development on Gotham Lane.
7. The application site comprises approximately 1.06 ha. of operational land and is an established recycling/recovery facility for the crushing and screening of inert construction and demolition waste, and non-hazardous commercial and industrial waste, comprising incinerator bottom ash (IBA). Vehicular access into the site is gained via the A60 Loughborough Road including a dedicated right turn lane for vehicles travelling from the north.
8. The site benefits from screening from mature vegetation, bunding including that along its south-eastern boundary, providing screening along Bunny Hill, and natural topography; and there are limited viewpoints into the operational parts of the application site.
9. The current alterations to the site layout mean that there is now a relatively extensive storage area located in the eastern sector of the operational site containing stockpiles of processed IBAA materials (presently exceeding the 6 metre permitted stocking height).
10. The new IBAA storage area partially abuts the eastern elevation of an existing storage bay dedicated to the receipt and storage of unprocessed 'raw' IBA on delivery into the site. The IBA storage bay now occupies a more central location within the southern sector of the operational site, with an overall footprint of 2,300sq.m. To the north-west of the storage bay is a trommel and beyond this, the existing IBA processing building located towards the northern boundary of the site. Any remaining area within the central part of the application site together with the western sector of the site is now dedicated to IBAA and aggregate material storage/screening and mixing, using mobile equipment (it is noted that the balance of these waste activities is highly dependent on customer requirements).

11. It is noted that under the altered site layout there is no longer a separate area for crushing and screening construction and demolition waste, with this having formerly occupied the western part of the waste processing site, nor are there now separate stocking areas for any resulting processed secondary aggregates and soils from this particular waste stream (although the stockpile height controls of up to 6 metres for manufactured aggregates would remain and continue to be controlled by existing extant planning conditions).
12. Abutting the eastern edge of the IBAA storage area is a strip of land, designated for overnight vehicle parking. Directly south of the IBA acceptance and storage bay and storage area lies a wheel-wash, a weighbridge, weighbridge office, main office and workshop which collectively occupy the south-eastern part of the site outside the operational area.
13. There is no fixed plant except in the waste transfer building which contains a feed hopper and conveyor belt system with mobile plant including a crusher, loading shovels, hydraulic grab, trommel and stockpile conveyors.
14. The site is substantially screened from view from the nearest receptors by the topography of the land, earth bunds, concrete fences, material stockpiles and mature, dense vegetation comprising tree belts, hedgerows and mature trees.
15. The nearest designated nature conservation sites are Bunny Works Grassland Local Wildlife Site (LWS) to the north of the site, and Bunny Old Wood LWS and Nature Reserve which lies approximately 400 metres to the south-east on the opposite (eastern) side of the A60 Loughborough Road.

Planning history and background

16. The application relates to an established MRF which has operated under a number of planning permissions granted by the County Council as Waste Planning Authority over the years.
17. Planning permission (Plg. Ref. 8/94/00164/CMA) was originally granted in September 1994 to Safewaste (UK) Ltd, for a recycling centre on land adjacent to Bunny Brickworks, for the receipt and processing of a range of inert construction and demolition wastes. An annual operational throughput of 100,000 tonnes of inert waste material was established under this planning permission.
18. In December 1996, a further planning permission (Plg. Ref. 8/96/79/CMA) was granted for a change of use on buildings and land in the south-eastern part of the MRF site, to allow for the receipt and processing of non-hazardous commercial and industrial wastes.
19. Two further planning permissions (Plg. Ref. 8/00/976/CMA and 8/00/973/CMA) were granted in December 2001 and November 2002 respectively, for the storage of secondary recycled aggregates and storage of skips and wood associated with the recycling operations.

20. March 2013 saw retrospective planning permission (Plg. Ref. 8/12/01028/CMA) being granted for the erection of outdoor IBA storage bays, and a change of use on land to extend the commercial and industrial waste transfer/processing area to accommodate IBA storage.
21. Finally, two temporary retrospective planning permissions were granted in March 2014 (Plg. Ref. 8/13/01494/CMA) and June 2015 (Plg. Ref. 8/15/00050/CMA) to use land abutting the northern boundary of the MRF site for reclaimed aggregate storage, initially for twelve months and then for a further 6 month (time limiting the permission until 31st August 2015). The March 2014 permission also permitted a temporary relaxation of working hours to enable IBA to be processed until 8pm on weekdays, again time limited to 31st August 2015. A variation to conditions 7 and 9 of planning permissions 8/96/79/CMA and 8/94/00164/CMA respectively, allowed for these extended working hours.
22. Following on from the temporary permissions expiring, planning permissions 8/94/00164/CMA, 8/96/79/CMA and 8/12/01028/CMA were the three main planning permissions the MRF operated under until July 2017 when retrospective planning permission (Plg. Ref. 8/16/00059/CMA) was granted to allow a maximum of 12 heavy goods vehicles (pre-loaded) to leave the site from 6am. This is the extant planning permission and it is subject to a Section 106 lorry routing agreement.

Current operations

23. IBA recycling operations have now been carried out for approximately eight years at the Bunny MRF. HGVs (articulated tipper lorries) bring in raw material to the site where it is unloaded onto raw material stockpiles and left to mature. On receipt into the MRF, the raw IBA is unloaded into the open-air storage bay where it undergoes a cooling, crushing and weathering process. Outdoor operations involve the crushing of the raw IBA using a loading shovel to both feed the unprocessed IBA into a hopper and remove processed materials. Following the outside storage and partial processing of the raw IBA material, the matured IBA is fed into the 'in-feed' hopper by a front-end loader shovel and is then transferred to the waste transfer building where it is blended with other inert waste to make a secondary aggregate (IBAA aggregate).
24. The MRF also carries out aggregate and soils recycling operations. This involves construction and demolition waste including soils, stone and masonry products being brought to the site to be crushed, sorted and stored, prior to being dispatched to customers as secondary aggregates and graded soils.
25. The existing MRF site operates under a bespoke Environmental Permit issued by the Environment Agency for waste management purposes including the outdoor receipt and storage of IBA. The operator is required to control the on-site activities through an Environmental Management System (EMS) which takes account of the environmental risks posed by the activities on site, including those brought to the attention of the operator through complaints. The existing site layout is set out on Plan 2.

Current context

26. The environmental and amenity issues raised by a number of local residents and the Parish Council during the consultation process have been subject to ongoing monitoring by the County Council's Monitoring and Enforcement Officer, and all issues are actively checked at regular site inspections by the WPA.
27. The current status of the operations and compliance with the extant planning conditions were reviewed on 23rd June 2020. A primary purpose of the site visit was also to examine the issues raised about the ongoing operations during the consultation process for the current planning application. The results of this are set out below:

Dust

28. It is noted that dust is the main focus of a number of comments received. This issue has been raised in the past but following a review and discussions with the applicant, various changes were made and the issue has not been raised directly with the County Council over recent months.
29. The site has various dust management procedures in place to minimise the potential for fugitive dust to be generated, this includes the provision of a bowser, mist sprays, water cannons, sweeping hard surfaced areas, minimising vehicle speeds, minimising drop height, and controlling stockpile heights.
30. The site has a dust mitigation scheme in place as required under Condition 22 of extant planning permission 8/16/00059/CMA and whilst inspections of the site only give a 'snapshot' of the adequacy of dust control, dust control measures have been in operation whenever the site has been inspected. On this occasion, measures to control dust were in place and generally considered to be effective. No significant dust issues have been identified by the WPA, although on this occasion, which was a warm, dry day, a limited quantity of dust was seen being blown from the ends of conveyors on the mobile plant screening the IBA towards the front of the site and from the open working face of one of the IBA heaps in this area.
31. In order to address these issues, it has been advised that coverings are placed on the ends of the conveyors on the mobile plant to reduce the potential for dust from this part of the process. It is further advised that the working face of the IBA heap is kept to a minimum to retain the crust intact and minimise the potential for dust. The measures to control dust will continue to be kept under review by the County Council.
32. Dust was also seen being whipped off the surface of the land to the north of the site, some of which is now being used for unauthorised development associated with the site. The applicant has been advised to review activity on this area to ensure that this does not generate dust.

Noise

33. Noise has also been raised by the consultee responses. At the time of the site visit, noise was noted to be minimal, however, some of the primary plant and processing equipment was not operating at the time. Extant planning permission 8/16/00059/CMA, Condition 17 limits site noise to 56 dB(A) LA eq 1 hour at Hillside Farm at any time and provides for the WPA to request a noise survey in the event that a justified complaint is received and there is the option to require further mitigation measures to be introduced if considered necessary. The applicant has been instructed to keep this aspect under review. In the event that the County Council receives more detail regarding noise issues, it will investigate this further and take matters up with the applicant. There is scope under the extant planning conditions to require a further noise survey including further mitigation measures to ensure compliance with the noise criteria. Any additional mitigation measures would be required to be maintained throughout the operational life of the site.

Odour

34. Odour has been raised as an issue in the received consultee responses, which has been identified as the cement type of smell which comes off the IBA. Odour was not noted as an issue at the time of the site visit but was noticeable when stood immediately adjacent to open IBA stockpiles. Whilst odours are limited, there is always potential for odour to migrate from the site in specific climatic conditions and as such, the applicant has been advised to keep exposed working faces of IBA to a minimum (which will also contribute to dust control). Controls relating to odour would be contained within the Permit for the site, issued by the EA and these control measures should be followed by the applicant.

Stockpile heights

35. Both the height of current stockpiles and the location of these stockpiles has been raised with the applicant by the County Council and has subsequently led to this application. The extant planning permission currently limits stockpile heights in three ways. Firstly, IBA in the IBA reception bay should be no higher than the retaining walls which are to a maximum height of 4.5 metres; raw material stockpiles and recycled material stockpiles should be no more than 7 metres and 6 metres high respectively.
36. At the time of the inspection, the IBA in the reception bay was below the height of the walls. The stockpile of IBAA at the front of the site had been reduced in height since the previous visit in March and it has been confirmed by the operator that stockpiles would be kept at a height where it is not easily visible from the A60. The stockpiles of material in the currently approved aggregate storage area were well in excess of 6m (or 7m for unprocessed material which given that the majority of material was IBA based, it is assumed it is processed). It is appreciated that the ground levels rise and that as such those materials

stocked to the south are on higher levels but those recently noted have been well in excess of this.

37. It is appreciated that the supply chain is currently disrupted due to the impact the coronavirus has had on business and that the site is storing more IBAA than would normally be the case. As restrictions are now being slowly lifted, it is expected that the mounds would gradually be reduced in height. The County Council will revisit this matter at subsequent visits and keep the situation under review, bearing in mind the circumstances at the time. In the meantime, the applicant has been instructed by the County Council that where possible, the heights of stocks should be reduced as soon as the situation allows.
38. Finally, the operations associated with the recycling have again extended onto the land to the north. This has been raised in the past and the use was ended. It was again pointed out that much of the material stored on the land (bagged, processed IBA product) is only stored there as the customer is currently on lockdown. It is appreciated the difficulties that the current situation gives rise to, but notwithstanding this, this use is unauthorised. Moving forward, the applicant stated that this material would be removed once the customer is back in business and that this ought to be within 3 or 4 months. On this basis, the County Council's Monitoring and Enforcement Officer confirmed that no further action would be taken if the bagged material was removed from this land in its entirety by 30 September 2020. The most recent follow-up site visit (14th October 2020) confirmed that the land to the north of the approved site is still in use for the storage of bagged, processed IBA product and that the unauthorised use is still extensive. A Planning Contravention Notice has now been served by the County Council on the operator regarding this breach in planning control.
39. The above issues are subject to ongoing monitoring by the County Council's Monitoring and Enforcement Officer and are actively checked at regular site inspections.

Proposed Development

40. Retrospective planning permission is sought to regularise alterations that have been made to the operation of the waste processing facility at Bunny involving extending the storage facilities for manufactured IBAA and/or recycled aggregates. The extended storage area is located entirely within the established site boundary and approved operational area of the MRF and the proposed site layout is shown on Plan 3.
41. The planning application is a Section 73 variation application which seeks to vary a number of planning conditions on the current extant planning permission 8/16/00059/CMA to regularise the amendments to the site layout. The modifications are set out below.
42. Condition 1 of extant planning permission 8/16/00059/CMA defines the development permitted under the terms of the consent as being for the retention of existing incinerator bottom ash, aggregate and soil recycling operations and

changes to daily operating hours to allow up to 12 outbound heavy goods vehicles (pre-loaded, sheeted and pre-wheel washed) to leave the site daily between 6am and 7:30am Mondays to Saturdays. For purposes of clarity the designated parking area is shown on Plan titled 'IBA Processing and Early Start HGV Parking Areas' received by the Waste Planning Authority in March 2016.

43. Under these proposals, Condition 1 seeks to amend the definition of the development to reflect the increased IBAA and recycled aggregate storage areas; the more flexible use of the western and central part of the operational area for both IBAA and aggregate materials storage, screening and mixing, and the minor modification to the designated lorry parking area.
44. Condition 3 of planning permission 8/16/00059/CMA is a standard extant condition which sets out a schedule of the approved documents and plans under which the permitted development has been carried out. This planning permission seeks retrospective permission for a revised site layout plan incorporating the following alterations:
45. The positioning of a relatively extensive storage area on the eastern sector of the operational site designated for the stockpiling of manufactured, processed IBAA (recycled). It is understood that there would be a limited amount of secondary processing of the IBA aggregates, using a mobile screening plant, which would effectively allow further processing of this material in order to recover any residual valuable metals, both ferrous and non-ferrous, from the aggregate material. This final phase of secondary processing improves the quality of the finished recycled aggregates. The County Council's understanding is that no processing would take place on the additional storage area and this is confirmed on the revised site layout plan.
46. The amended site layout plan also confirms the storage of IBAA in the western and central parts of the site, in an area currently authorised for the storage, screening and mixing of aggregate material and soils from construction and demolition waste. This allows the main operational 'pad' to be used more flexibly, for both IBAA and aggregate material storage/screening and mixing (using mobile plant) rather than having segregated and separate operational areas for each of the two waste streams, as has historically been the case.
47. A minor revision to the parking arrangements, involving an extension to the designated parking bay (for pre-loaded, early morning start HGVs), resulting in its footprint being extended northwards by approximately 25 metres.
48. Condition 8 of extant planning permission 8/16/00059/CMA places controls over the receipt of raw incinerator bottom ash into the site and its external storage and initial processing. Under Condition 8, these activities are confined to an authorised storage bay with a closed water system in the south-eastern part of the MRF site shown on Drawing No. MS231-2B received by the WPA in November 2012. The only modification to this extant condition would be to update the site layout plan with the revised drawing.

49. Condition 20 of extant planning permission 8/16/00059/CMA defines the HGV parking area and places controls over the vehicles themselves stating that the lorries are to be pre-loaded, sheeted and pre-wheel-washed the previous day, parked overnight in accordance with the authorised site layout plan in a forward gear ready for a 6am start the next day. The lorries would be ready to leave the site the next morning with minimal noise and disturbance to the nearest sensitive receptors. The only modification to this extant condition would be to update the site layout plan with the revised drawing showing the minor variation to the designated parking area.
50. Plans are attached for the purposes of this report showing the approved operational plan and the proposed plan for which planning consent is currently being sought (see Plans 2 and 3). The revised drawing seeks an increased area within the operational boundary for IBAA storage. The proposals also provide scope to use the extended area, which has increased incrementally over time, for either IBAA storage or inert aggregates and soils from construction and demolition waste, depending on levels of throughput of each waste stream, thereby providing a level of flexibility to allow the operator to alternate between the two waste streams depending on customer demand.
51. It is stated that the additional IBAA storage land is permitted by the EA and is surfaced and drained such that surface water is capable of being managed appropriately. The existing dust management arrangements would be carried over to the extension area although further details have been sought regarding dust controls and mitigation. It is stated that operations continue to be screened by existing bunds, vegetation and natural topography.
52. The applicant has stated that the part of the proposed area to be used for additional IBAA storage was previously underused land set aside for lorry parking. Under these proposals, sufficient land would continue to be available for the parking up of early morning outbound HGVs.
53. The supporting statement has confirmed that there are no proposals to increase the amount of IBA waste processed at the site over and above the current limit established under previous extant planning consents and environmental permit conditions covering the waste operations. Nor would there be any increase in HGV movements associated with the site.
54. No other changes are being proposed and the waste operations would continue to be controlled by the re-imposition of extant planning conditions to any new planning consent.
55. In terms of the authorised site, the layout does not accord with the various approved plans, but the current planning application seeks to regularise this. The layout of the site has evolved over the years and if granted the current application will approve a single layout plan that will be clearer for all concerned. Through the application, the applicant is seeking a site layout which allows some fluidity in terms of where material can be stored and processed to allow the business to adjust operations to meet demand, whether this be focussed on IBA or inert construction and demolition waste. From a site monitoring

perspective, the County Council's Monitoring and Enforcement Officer has confirmed that there are no significant issues regarding this approach subject to suitable environmental controls being in place to ensure dust and noise emissions are controlled and that stockpile heights across the site are restricted to minimise visual impact.

Consultations

56. **Rushcliffe Borough Council (RBC)** *No objection subject to the application not being approved by the County Council until receipt of satisfactory additional information in relation to vehicle movements and dust management is received. The site shall thereafter only be operated in accordance with any vehicle movement and dust management plans which have been subsequently approved by the County Council, in the interests of local residents and in accordance with Policy 1 of the Rushcliffe Local Plan Part 2: Land Use and Planning Policies.*
57. *As part of this consultation response, comment was sought by RBC from their Environmental Health Officer (EHO) who stated that provided the applicant complies with the conditions within the Environmental Permit, as issued by the EA, then there are no objections to this application nor are there any further conditions to recommend.*
58. **Bunny Parish Council** *Objection on the following grounds:*
59. *Existing concerns have not been addressed, and still awaiting a report concerning dust and noise due before this planning application was made.*
60. *Planning creep with attention being drawn to the fact that previous applications have been temporary for twelve months, but work continues at the site to levels of the 'temporary' application that seem to have expired years ago.*
61. *An increase in levels of IBAA will result in increased traffic through the village. An extra 15 lorries would imply 30 extra movements per day. There are concerns over the safety of villagers and alleged speed infringements of the lorries.*
62. *There are environmental issues and concerns that the dampening down of the waste could lead to run-off down Bunny Hill into the populated parts of the village.*
63. *Attention is drawn to the fact that residents are complaining of noise and dust.*
64. **The Environment Agency (EA)** *No objection.*
65. *The applicant's attention is drawn to the fact that the permit for the site may need to be varied. An informative to this effect would be attached to any decision notice.*
66. **NCC (Nature Conservation)** *No objection.*

67. *The application would not give rise to any significant ecological impacts, given that the works would take place within the approved operational area, and that there would be no increase in the amount of IBA processed at the site.*
68. **NCC (Highways)** *No objection.*
69. *It is noted that there are no plans to increase the amount of IBA waste processed at the site over and above the limit previously set by planning and environmental permit conditions nor increase the number of HGV movements associated with the site. Furthermore, the additional IBAA and IBA storage is proposed on an area of land previously underused and set aside for the parking of HGVs that are pre-loaded on an afternoon and leave the site the following morning. Notwithstanding this, a reduced area of HGV parking is retained under these proposals. There are therefore no Highway Authority objections to the proposal.*
70. **Cadent Gas Limited, Severn Trent Water Limited, Via Safer Highways and Western Power Distribution** have made no response. Any comments received will be reported orally to Committee.

Publicity

71. The application has been publicised as a departure application by means of site notices, and a press notice. Twenty-two neighbour notification letters have been sent to the nearest occupiers on Gotham Lane, Bunny Hill, Bunny Hill Top, Moor Lane, Moor View and Loughborough Road, Bunny; including Hillside Farm Care Home, Greenwood Lodge Care Home, and Woodside Farm; and also to Fleming Gardens, Clifton and Burton Walk, East Leake, in accordance with the County Council's adopted Statement of Community Involvement.
72. Three letters of representation objecting to the proposed development have been received by the County Council from three separate households, on Gotham Lane, Loughborough Road and Moor View, Bunny.
73. The grounds of objection can be summarised as follows:

Odour impacts

- a) cumulative odour impacts as residents are already subjected to bad smells;

Traffic impacts and access

- b) Increasing numbers of vehicles have been passing through the village since the company started storing the product (mistakenly identified as de-sulphurised gypsum DSG);

Cumulative impacts

- c) additional incinerator bottom ash storage facilities should be refused because at this present time with the facilities Johnson Aggregates already have, local residents are subjected to bad smells and a very high volume of dust, which covers cars and windows, and gets inside the house, so to add extra storage would be detrimental to the surrounding area;

Health issues

- d) concerns over public health, as no figures for emissions and public health risks are provided; when was the last time that emissions from this site were independently surveyed;
- e) the increased capacity would seem to raise a public health risk due to increased ash falling on a residential area;
- f) we dread to think what local residents are breathing in;
- g) is this dust going to cause a health hazard to local residents in years to come;

Air and dust pollution

- h) the continuous accumulation of dust/fine particles omitted from the site, has been endured throughout the ten years of residing in the area and has been the 'bain of our lives' with all surfaces within the property having to be physically wiped on a daily basis with a damp cloth to remove the dirty residue which can only be attributed to the recycling centre. Vehicles also have to be cleaned more regularly than would be expected and then the dust is back within the hour;
- i) particularly in the warmer weather there is a reluctance to have doors and windows open because of the dust;
- j) Dust can be seen coming from the increasing numbers of vehicles passing through the village, even though they are covered over;
- k) Surely it is in the best interests of everyone to carry out tests to check the existing emissions before considering any more from the planning application, to reassure villagers that there is no detriment to health and well-being;

Other considerations

- l) The retrospective nature of the planning application is concerning as it seems that changes have taken place without proper consultation with the local community during a time of pandemic;

- m) Have previously tried to discuss dust with one of Johnson Aggregate's directors only to be informed that he was not aware of any issues at the plant, but would look into it;
 - n) Vehicles are not obeying the 30mph speed limit through the village.
74. Councillor Reg Adair and Councillor Andrew Brown have been notified of the application.
75. The issues raised are considered in the Observations Section of this report.

Observations

76. The planning application seeks retrospective planning permission to regularise alterations that have been made to the approved site layout and its working arrangements. These have evolved incrementally over time but have been heightened under the current economic conditions. A number of objections have been raised by Bunny Parish Council and local residents relating to the potential for environmental impact from the proposed changes and alleged breaches of existing environmental controls.
77. The applicant's supporting statement sets out that the proposal seeks to extend the area of the site used to store IBA (Incinerator Bottom Ash) and IBAA (recycled aggregates). The applicant states that over the last year there has been an upturn in the amount of waste being disposed of and demand for these types of recycling facilities is high. As a result of the Covid-19 pandemic, the volume of IBAA material requiring to be stored on site has also been increased as there is less demand for manufactured IBAA due to the recent and on-going slow-down in economic activity. It is stated that there is a need for increased flexibility in the use of the storage space within the site, and the better use of the available space to reflect the changing waste streams which the MRF might be dealing with at any given time. The supporting statement stresses that there is no proposal to increase the amount of material being processed or the number of HGV movements associated with the site.
78. The principle of using the site for non-hazardous waste recycling operations (construction and demolition waste, and more recently Incinerator Bottom Ash) has been established under a number of previous extant planning consents, with the suitability of the site having been assessed against relevant policy criteria at the time, with this including the physical and environmental constraints on the development; existing neighbouring land uses; and any significant adverse impacts on the quality of the local environment. Therefore, in terms of assessing the planning merits of the modification being sought, it is not considered proportionate to review this principle aspect again.
79. The key issue however with the determination of this planning application is whether the proposed changes to the operational/working practices for which planning permission is being sought, would have acceptable environmental effects.

80. Reference is now made to those material considerations relevant to the determination of this planning application.

Compliance with waste planning policy

81. Section 38(6) of the Planning and Compulsory Purchase Act 2004 directs that planning decisions are to be made in accordance with the Development Plan unless material considerations indicate otherwise.
82. For the purposes of this application, the Development Plan consists of the Nottinghamshire and Nottingham Waste Core Strategy 2013 (WCS); the saved environmental protection policies of the Nottingham and Nottinghamshire Waste Local Plan 2002 (WLP) and the Rushcliffe Local Plan Part 1: Core Strategy (2014) (LPP1) and the Local Plan Part 2: Land and Planning Policies (October 2019) (LPP2).
83. The relevant national policy considerations material for this proposal are those contained within the National Planning Policy Framework (NPPF) (February 2019) and the National Planning Policy for Waste (NPPW) (October 2014). The proposal should be considered within the context of a presumption in favour of sustainable development as a core principle of these core policy documents. Also relevant is the overarching policy direction set out in the NPPW with a presumption in favour of sustainable development, resource efficiency, and supporting activities which drive waste up the waste hierarchy.
84. The waste hierarchy set out in Appendix A of the NPPW and Figure 2.1 of the WCS identifies that recycling and preparing for reuse of waste material is preferential to disposal, with this being reflected in WCS Policy WCS3 which prioritises the development of new or extended recycling facilities. Aspirational in terms of its objectives, WCS Policy WCS3 seeks to achieve levels of 70% recycling (and/or composting) of all waste streams by 2025, hence the need to prioritise new or extended waste recycling over both energy recovery proposals and finally, disposal. There is a requirement to expand both waste management capacity and levels of recycling and reduce disposal requirements. The Bunny MRF as an inert waste recycling facility is positioned higher up the waste hierarchy. The changes in the site layout, including the provision of extra storage capacity on the site would enhance the facility's capacity to beneficially manage inert IBA waste. As such, the development would accord with WCS Policy WCS3 and the NPPW, delivering on the key objectives of maximising the recycling rates of an inert waste stream and assisting in the process of driving waste up the waste hierarchy. This would facilitate the local recycling of more waste material subject to there being no unacceptable environmental impacts.
85. Also of relevance is WCS Policy WCS8 which seeks to promote the extension or improvement of existing waste management facilities where there would be an increase in capacity or an improvement in existing waste management methods.

86. Whilst the proposal does not technically involve an extension to the site in terms of increasing its overall size or throughput of waste material, the proposed increase in storage area for IBA aggregates on what is understood to be an underused part of the site, would allow for significant improvements in terms of the internal operation of the site. The additional storage capacity would build in more flexibility across the site and allow for the beneficial secondary processing of the material in order to enhance the recovery of valuable metals from the IBAA material. The enhanced processing improves the overall quality of the finished recycled aggregates. The proposed additional storage capacity would also enable the operator to assist other incineration facilities currently dealing with increased household waste disposal, but with limited on-site storage capacity for IBAA material, allowing the Bunny MRF to receive this aggregate. As such, it is considered that the proposal would accord with WCS Policy WCS8 in terms of facilitating the handling of additional IBAA material and improving existing waste management methods on the site, thereby meeting the policy objectives.
87. The proposal seeks to support and enhance a sustainable system of waste management already in place on the MRF site, contributing towards working practices which promote an increase in the levels of IBAA materials being effectively recycled, treated and/or recovered to produce a quality finished recycled aggregate.
88. It is therefore concluded that the local development plan is supportive of the principle of this proposal subject to the development meeting the requirements of WCS Policy WCS13 (Protecting and enhancing our environment) and the saved environmental protection policies in the WLP which require the modifications to the site layout to demonstrate acceptable environmental impacts.

Unauthorised operational development

89. This planning application has been submitted as a direct result of discrepancies identified through the site monitoring visit undertaken by the County Council's Monitoring and Enforcement Officers in March of this year. The operator had not notified the County Council of the substantive changes that had been made to the approved site layout, particularly with regards to the outside storage area on the eastern side of the MRF site. The County Council only became aware of the full extent of these changes following its routine monitoring of the site.
90. Once the inconsistencies had been identified between the approved site layout plan and the current operations on the ground, the County Council requested that a planning application be submitted to regularise the unauthorised layout of the site.
91. The decision taken by the County Council's Monitoring and Enforcement Officers is entirely consistent with the direction of national policy. The Planning Practice Guidance (PPG) and paragraph 58 of the NPPF state that enforcement action should be both discretionary and proportionate when responding to

suspected breaches of planning control. In deciding the most appropriate way forward, it is advised that formal enforcement action should be avoided where development is acceptable on its planning merits and where formal enforcement action would solely be being used to regularise the development. PPG paragraph 012 advises that a local planning authority can seek a retrospective application where it is considered that an application is the appropriate way forward to regularise identified unauthorised works. The County Council's adopted Local Enforcement Plan (May 2015) reflects this approach; identifying that retrospective planning applications are an appropriate method in terms of dealing with breaches of planning control in order to regularise any identified unauthorised works.

92. Submission by the applicant of a retrospective planning application seeking to regularise unauthorised development does not guarantee that planning permission will be forthcoming. Such an application must follow the same procedures as any regular planning application and be considered in terms of its own planning merits.

Assessment of environmental effects resulting from the amendments

93. The policy support for the development provided by WCS Policies WCS3 and WCS8 is conditional upon the operation of the site resulting in no unacceptable environmental and amenity impacts. These impacts are considered below.
94. Of relevance is WCS Policy WCS13 which supports extended waste treatment facilities where it can be demonstrated that there would be no unacceptable impact on any element of environmental quality or the quality of life of those living or working nearby and where this would not result in unacceptable environmental impacts.

Traffic, Access and Parking

95. WLP Policy W3.14 states that planning permission will not be granted for activities associated with a waste management facility where the vehicular movements likely to be generated cannot be satisfactorily accommodated by the local highway network or would cause unacceptable disturbance to local communities. WLP Policy W3.15 encourages the imposition of planning conditions to regulate the routing of lorries associated with the operation of waste transfer facilities. NPPF paragraph 109 states that development should only be prevented or refused on highways grounds where there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
96. Bunny Parish Council and local residents have raised objections that the development would increase traffic through Bunny Village, with the Parish Council putting a figure of 15 extra lorries forward. Concerns over safety have also been raised.

97. The County Council does not recognise the figure of an extra 15 lorries, and currently has no evidence to support an alleged increase in lorry movements. The applicant has recently provided two-way lorry movements for the months of August, September and October 2020 and these have all been compliant with the controls set out in extant planning condition 34. The extra IBAA being imported into the site from other incinerator operators remains within the permitted threshold of 100,000 tonnes per annum, and the applicant is committed to working to this.
98. This planning application does not alter the level of traffic associated with the operation of the site from the levels previously agreed in 2013. At that time, the County Council's Highways Authority was able to support proposals to use land adjacent to the authorised site for temporary storage of reclaimed aggregates (Plg. Ref. 8/13/01494/CMA) on an understanding that total lorry movements were limited to 100 two-way movements per day over a five day working week. It was considered reasonable to control lorry movements in line with the actual recorded figures, which reflected the levels at which the MRF had historically worked. Extant planning condition 34 was attached placing controls over the number of HGVs entering or leaving the site for the purposes of depositing or collecting waste material and/or reclaimed aggregates to an average of 100 such movements per day, subject to a maximum of 550 such vehicle movements in any week.
99. It was considered that this would be a reasonable compromise given that it did not exceed the then current peak but did allow for some growth when compared to the average over the previous year. Based on the figures supplied by the applicant of HGV records over the year preceding the 2013 planning application, there was an average figure of around 69 movements per day with a current daily peak of 98 movements recorded in September 2013.
100. It is considered that provided these levels of traffic movements are adhered to, there are no highways implications, and the proposals being dealt with under this retrospective application do not include any increase in lorry movements.
101. Subject to the re-imposition of extant planning condition 34, the development accords with WLP Saved Policy W3.14, given that there would be no extra lorry movements, above and beyond those already permitted.
102. The legal agreement placing restrictions on early morning lorry routing along Gotham Lane would remain in place, prohibiting HGVs from travelling along Gotham Lane before 7:30am; and under these proposals, the designated lorry parking for early morning dispatch of HGVs before 7:30am would continue to operate, with the exception of a minor adjustment to its location (see Plan 2 and Plan 3).
103. Overall, the material impact of the proposal in terms of traffic impacts is neutral. The development therefore complies with WLP Policies W3.14 and W3.15, the NPPF paragraph 109 and the objectives of Policy WCS13 of the WCS.

Noise

104. WLP Policy W3.9 seeks to ensure that when planning permission is granted for waste management facilities conditions should be imposed to reduce potential noise impacts. Such conditions may include the enclosure of noise generating uses; stand-off distances between operations and noise sensitive locations; restrictions over operating hours; using alternatives to reversing beepers and setting maximum noise levels.
105. A representation has been received from Bunny Parish Council highlighting the fact that complaints have been received from residents regarding noise and that existing concerns are still outstanding including waiting on a report regarding noise and dust due before the current planning application was submitted. As detailed earlier in this report, the County Council's Monitoring and Enforcement Officer has not been able to verify or uphold complaints regarding noise. On recent visits to the site, noise was noted to be minimal, although it is noted that parts of the primary plant and processing equipment was not operational at the time, which is a general reflection of site operations. Also, despite enquiries being made, the case officer for this application has not been able to make any headway in tracking down the outstanding report and none of the parties involved are able to shed any further light on this matter.
106. The previous original planning applications covering all site operations including IBA processing; extended IBAA storage when carried out to the north of the MRF's authorised site for two temporary periods of time; and a relaxation of early operating hours to allow 12 HGVs to leave the site early have all been informed by a noise assessment including background noise modelling, which took into account a worst-case scenario in the case of the nearest sensitive receptors to the recycling facility, at Greenwood Lodge Care Home, Hillside Farm Care Home and Woodside Farm. Calculations were carried out to determine the highest likely noise contribution from the waste processing and associated activities at the nearest façade or elevation to the identified sensitive properties. This consistently demonstrated that subject to the extant planning conditions at no times would operations exceed the County Council's criterion of 10dB above background levels for this type of facility, in line with BS4142 assessment. The noise readings were well within acceptable limits and the likelihood of complaints has consistently been considered to be of no higher than of 'marginal significance' (and probably significantly lower).
107. With regards to this proposal which seeks to regularise incremental changes to the site layout, including an extended storage area on the eastern part of the operational site, the County Council's Monitoring and Enforcement Officer is satisfied that there are no fundamental changes to site operations, since stockpiling of recycled aggregates, particularly in more recent times IBA aggregates, is an established part of the waste management activities. There is no increased throughput of IBA material, with this remaining within its established limit of 100,000 tonnes per annum, nor is there any evidence to support the alleged increase in lorry movements. No plant would be operating on the wider site, and waste activities on the eastern part of the site would only involve IBAA storage with no additional significant noise implications.

108. Historically there has always been flexible storage in this area, including storage skips. The extended area is in the existing operational site, which is covered by both waste planning controls and an environmental permit, with a range of pollution control measures including controls over noise. Therefore, it is considered that there are no additional substantive noise implications, and there has been no requirement placed on the operator to provide further assessments for noise in support of what is a retrospective planning application. The Pollution Control authorities (RBC's EHO and the EA) have not raised any concerns to this effect or made any representations to this approach.
109. The noise levels generated by the activities associated with the outdoor storage of aggregates on the extended storage area would be similar to those generated by existing operational activities. This Authority is satisfied that the development would not give rise to any unacceptable change to levels of operational noise, to the nearest sensitive residential receptors.
110. The extension to the HGV parking area would not result in any additional noise impact. Having reviewed the revised parking arrangement, the County Council's Noise Consultant has confirmed that the amendment to the extent of the parking area is less than significant. As such, it would not make any material difference to noise levels, especially as the extended parking area is situated adjacent to the traffic route out of the site, and HGVs leaving the existing parking area would all travel past the area as they leave the site. No additional HGVs would be allowed to leave the site between 6am and 7:30am Mondays to Saturdays, above and beyond the currently permitted 12 lorries. This control continues to be secured under extant planning conditions 1 and 10, which would be re-imposed for the purposes of any new planning consent, if the current application is approved.
111. The increased activities would be covered by extant planning conditions and Condition 3.4.1 of the waste permit, and it is considered that these controls are sufficient to ensure that noise, and vibration in the case of the permit, are acceptably controlled at appropriate levels. Indeed, this suite of provisions set out under these particular conditions seek to ensure that activities are free from noise and vibration at levels likely to cause residual impact to the surrounding area and nearest residential properties. Should any pollution nuisance arise, both authorities have the capability through these conditions to require the applicant to implement an approved noise management plan, and in the case of the EA, a vibration management plan, to redress the situation.
112. Subject to the re-imposition of extant planning conditions, it is concluded that noise from the operation of the site would be satisfactorily controlled to ensure it is not intrusive at the nearest sensitive receptors, in accordance with the objectives of WLP Saved Policy W3.9 and in compliance with WCS Policy WCS13.

Air Quality/Dust

113. Waste operations have the potential to cause a dust nuisance to any sensitive receptors to the site. Saved WLP Policy W3.10 identifies that dust emissions from waste processing facilities are capable of being managed and reduced by implementing appropriate dust mitigation practices. Measures include the siting of facilities remote from sensitive receptors, the enclosure of dust generating operations within buildings and enclosed areas, and the use of water to dampen down stockpiles, and processing plant.
114. Concerns relating to dust emissions and the deterioration in air quality in relation to dust pollution is a major issue of concern raised in representations received from the Parish Council and a number of local residents. As detailed earlier in the report, the County Council's Monitoring and Enforcement Officer has not been able to corroborate this during routine monitoring of the site. On the contrary, dust control measures have been seen to be in operation whenever the site has been inspected, which have proven to be generally effective, and no significant dust issues have been identified by the County Council. Notwithstanding this, it is recognised that any change in waste operations has the potential to cause a residual dust nuisance to any identified sensitive receptors to the site. It is also recognised that local microclimatic conditions can give rise to localised, albeit usually limited dust emissions, as witnessed during the site inspection when limited amounts of dust were visible at the open working face of the IBA heaps, and also being blown from the mobile screening plant, under what were identified as being warm, dry working conditions.
115. The proposed changes in working practices, which have involved increasing rates of secondary processing of IBA aggregates with extended storage of stockpiled IBA aggregates on the eastern part of the operational site, has the potential to be a source of dust, particularly under dry and windy conditions, and local concerns have been raised over the potential for fugitive dust leaving the site from increased operations. This is set against a background of alleged problems with dust from existing IBA recycling operations, to various residential properties within the vicinity.
116. The changes to the site operations have intensified the use of the western part of the operational site as previously this part of the site was used for the processing of construction and demolition waste only, and as the site has concentrated on IBA recycling operations over the past 8 years, this part of the site was previously underutilised. Under these proposals, the central and western part of the site would be used flexibly and more intensively for the storage, screening, and mixing of IBA aggregates. Non-IBA aggregates, from the crushing and screening of construction and demolition waste materials, could potentially come into the mix of waste streams again, depending on customer requirements. There would be no changes to the arrangements for receipt and storage of raw IBA material which would continue to be stored in the concrete storage bay. The lorry parking area would be extended further some 25 metres northwards, but would not involve any increase in HGV numbers leaving the site between 6am and 7.30am, which would remain fixed at a maximum of twelve vehicles.

117. The approved Dust Management Plan (DMP) has been reviewed (September 2020) by the operator in light of these operational changes. It is identified that without a range of control measures the site has the potential for dust and particulates to be generated. It is considered that the predominant source of dust is from the tracking of vehicles over haul and internal roads. The potential for dust to be generated from the storage of the IBA is minimal whilst the material is stored but the potential for dust generation exists when the material is disturbed, including agitating the aggregates during operations and aggregate infeed operations. A combination of measures has been identified as being effective, including using grey water dust suppression, full sheeting of all loaded vehicles arriving and leaving the site (all vehicles would go through a wheel-wash); and dust extraction systems incorporating filter bags which would be deployed to minimise emissions from potential sources prior to deposition. If dust is experienced at any time during the loading process, the operation would be suspended whilst the feed-pile is dampened down. Loading would then be closely monitored to ensure adequate dampening has been applied. If not, then the process would be repeated.
118. The stockpiled IBA and IBA Aggregates may create dust when the material is being loaded and transferred within the site during processing. The potential for air emissions from IBA and IBA aggregate storage and processing is mitigated using water-based control methods, and no other dedicated abatement systems are considered necessary. In summary, it is stated that the IBA material is unlikely to generate dust other than during the loading procedure prior to transfer and during the transfer process, the water-based dust suppression systems are in place, including dust dampening which takes place at the dust source and not at the site boundary. The water system uses harvested rainwater and mains water.
119. During drier weather a bowser fitted with a spray nozzle system would be in operation to dampen the incoming IBA, the existing yard, the stockpiles, the haul roads and hard-standing surfaces as and when required. The processing building infrastructure is designed to prevent dust and particulate emissions, and water-based dust suppression systems are in place including dust dampening down which takes place at source. A speed limit of 10 kilometres per hour is enforced where vehicles are operating around the site. All sealed road surfaces outside the site are swept as and when required. The storage area is managed so that potentially dusty materials would not be handled on days where wind may cause issues, with wind direction, strength and gusts all being considered before disturbing IBA or IBA aggregates.
120. Minimisation of waste storage heights and volumes of material on site are considered critical. It is stated that the aim is to minimise the height at which waste is handled to reduce the distance over which debris, dust and particulates could be blown and dispersed by winds, also reducing storage volumes which should reduce the surface area over which particulates can be mobilised. Storage volumes are monitored and recorded, with pile size being limited to an absolute maximum of 10,000 tonnes. Drop heights are also minimised. Reducing the amount of activity on site, including no tipping or screening of higher risk loads during windy weather as well as associated traffic movements

should result in reduced emissions and re-suspension of dust and particulates from site. Operations would be suspended when extreme weather conditions dictate. Mobilisation of potential dust and particulates is likely to be greater during periods of strong winds and hence ceasing operation at these times may reduce the potential for any 'peak' pollution events.

121. The revised DMP seeks to demonstrate that an appropriate dust attenuation scheme is capable of being implemented throughout all the working areas on site, including on the extended storage area. Rushcliffe Borough Council's EHO has been reconsulted on the revised DMP and has confirmed that this document covers all the proposed operations on the site and that the dust management is considered to be both acceptable and achievable.
122. The operation of the facility is regulated by the EA through an environmental permit, and taking into account national waste policy advice contained in the NPPF, the WPA must assume that the pollution control regime would continue to operate effectively including placing controls over activities, to ensure the release of dust is kept to the lowest practicable level, to meet standards that guard against impacts to the environment and human health, and minimise the potential for dust pollution, and nuisance to the nearest sensitive receptors.
123. Investigations by the County Council's Monitoring and Enforcement Officer into the complaints received around dust in relation to both this planning application and historically has indicated that there are suitable controls in place, provided that the dust mitigation measures are both adequately used and correctly implemented; and also kept under review, and added to where necessary. As part of these measures, it is important that stockpile heights are controlled and are brought back to the maximum limits as soon as is practicable, these being seven metres in height above ground level for unprocessed material, and six metres for recycled materials. On balance, and subject to the re-imposition of extant planning conditions 21, 22 and 27, it is considered that the extended operations are capable of being adequately controlled to prevent residual dust effects off site, in compliance with the objectives of WLP Saved Policy W3.10. As such, it is considered that the proposal would not cause any cumulative impact to the nearest sensitive receptors to the site. Finally, given that the MRF is operated under an environmental permit, the WPA can be satisfied that, in this instance, its operation would be appropriately regulated to ensure that it meets air quality, dust pollution and health controls.

Odour

124. WLP Saved Policy W3.7 seeks to minimise odour emissions from waste management facilities by imposing controls over operations, including sheeting of lorries, restrictions on temporary storage of waste, enclosure of waste reception and storage areas, and the use of contingency measures such as odour masking agents, or removal of malodorous material.
125. The site has the benefit of extant planning permission as a waste management facility, and the proposed modifications to the operation of the site being sought

by this retrospective planning application would not alter the operational characteristics of the MRF in terms of the inert waste streams currently being managed by the facility or the existing odour management controls, which are regulated and enforced by the EA through the waste permit.

126. Odour has been raised as an issue in the neighbour representations, with concerns that the proposal would add cumulatively to the odour impacts already being experienced by local residents. There is clearly a concern that increased storage of IBA aggregate material at this location would further increase the risk of residual odours emanating from the site towards sensitive receptors.
127. Any increase in waste management activities associated with this proposal must ensure that any potential odour continues to be controlled at acceptable levels. Essentially this means that waste operations involving the stockpiling of IBA aggregates on the eastern part of the MRF site and any limited processing associated with this activity, must be kept free from odour at levels which are likely to cause residual odour pollution outside the site. Relevant controls are in place through the EA's permitting regime and, in the event that odour incidents are identified, the Agency can require the operator to implement an approved odour management plan with any identified measures considered necessary to mitigate any effects off site. Any such measures would seek to prevent, or where that is not practicable, to minimise odour. It is therefore considered that there are adequate measures in place to ensure that any increase in aggregate storage and limited secondary processing to extract residual metals, is capable of being suitably controlled, in accordance with WLP Saved Policy W3.7.
128. The odour has been identified as a cement type of smell which comes off the IBA, and has been detected on occasion during the County Council's monitoring of the site. It is acknowledged that when stood adjacent to the IBA stockpiles there is a detectable odour, although this is not strong. In the past, when odour has been detected outside the site, it has been intermittent and directly attributable to the volume of unprocessed IBA on the site, and the excessive stockpile heights. Extant planning conditions controlling stockpile heights would be re-imposed on any new permission. Also, in terms of the amended site layout plan, the County Council would continue to impose controls on the unprocessed IBA waste as it comes into the site, as it is potentially malodourous at this stage. Whilst extant planning condition 8 (Plg. Ref. 8/16/00059/CMA) seeks to be varied to reflect the amended site layout plan, the County Council will seek to ensure that any updated planning condition controls the receipt and storage of the primary raw material, with its continued outdoor placement in the existing concrete storage bays only.
129. Whilst odours are limited, it is acknowledged that there is potential for residual odour emissions to migrate from the site under certain climatic conditions, and it is important that the applicant follows the County Council's Monitoring and Enforcement Officer's advice to keep the IBA's exposed working faces to an absolute minimum, and to rigorously implement the permitting regime's control measures relating to odour.

130. With regards to the extended stocking area, it is not anticipated that the storage of reclaimed aggregate, (IBAA and potentially construction and demolition waste) would be particularly malodorous, being an inert, relatively stable product at this stage. It is considered that this is the least odorous element of the operational development. However, in terms of cumulative impacts, any increase in IBA processing activities could potentially generate odour. However, this has to be balanced against the controls that are in place across the site under the permitting regime.
131. It is noted that the pollution and nuisance control authorities and agencies (RBC's EHO and the EA) raise no objections over potential odour emissions.
132. It is considered to date that any odours associated with IBA processing are not sufficient to cause an odour nuisance. However, should the County Council determine that there is an identifiable problem, any findings would be brought to the EA's attention, with a request that the Agency takes appropriate action.
133. On balance, there are sufficiently robust controls in place covering waste operations put in place by an appropriate pollution control authority. It would appear reasonable to assume that any odour emissions associated with the proposal would be occasional and intermittent, but in the event that an odour nuisance is detected there is appropriate mitigation in place to ensure that it can be suitably controlled.
134. Attention is drawn to the fact that a waste permit covering on-site waste operations would be the primary regulator with regards to odour management control.
135. Both the NPPF at paragraph 183 and the NPPW reference the fact that it is the pollution control organisation's responsibility to control processes or emissions, and that local planning authorities should assume that these regimes would operate effectively. There is clear direction that these controls should not be duplicated by the planning authority. In line with this, controls over site operations including odour control would continue to be imposed and monitored by the EA through the permitting regime, to ensure local amenity is protected. The intention of the WPA is not to duplicate these controls.
136. Overall, it is concluded that odour emissions from the waste management operations would not be significant and subject to the re-imposition of appropriate conditions, would not cause nuisance to surrounding residents thus satisfying the requirements of WLP Saved Policy W3.7.

Ground and Surface Water/Flood Risk

137. WLP Policies W3.5 and W3.6 seek to avoid pollution of ground and surface water through implementing engineered solutions including impermeable surfacing to operational areas, use of appropriate drainage systems and control over waste types.

138. Bunny Parish Council has raised concerns regarding environmental issues and concerns that the dampening down of the waste could lead to run-off down Bunny Hill into the populated parts of the village.
139. Both Policy WCS13 of the WCS and WLP Policy W3.5 seek to protect the environment and local communities from pollution and other impacts associated with surface water. The proposed extended storage area, along with the wider site, is permitted by the EA, and is understood to benefit from an impermeable base, with drainage being managed as part of the wider site surface water management scheme. It is stated in the supporting information that alterations to the surfacing have been approved through the permitting process and in this case any necessary changes to the drainage would be approved by the EA under the permitting regime. Run-off from the extended storage area is therefore not anticipated.
140. The development is therefore considered to be compliant with WLP Policies W3.5 and W3.6 since the design of the site satisfactorily safeguards against water pollution; and in accordance with the objectives of Policy WCS13 of the WCS.

Landscape and Visual Impact

141. Saved WLP Policies W3.3 and W3.4 seek to limit the visual appearance of waste management facilities and associated activities. All plant, buildings and storage areas should be located so to minimise impact to adjacent land and kept as low as practicable. Screening and landscaping should retain, enhance, protect and manage existing screening features.
142. The proposal seeks to utilise part of the materials recycling area within the Bunny MRF. This is a relatively extensive area of open ground with impermeable hardcore surfacing (including that previously used for lorry parking) that is screened by surrounding mature vegetation, bunding and the topography of the land. There are no open views into the site from any public vantage points or residential property, which are relatively distant to the MRF site. The submitted plan shows a more flexible site layout to better reflect the current waste management processes and extended aggregate storage area. The aggregate stockpiles on the newly extended area would be screened within the established waste management/recycling site. The alterations to the approved site layout would remain entirely in character with the use of the land as an established recycling waste facility for inert IBA and/or inert construction and demolition waste streams. Subject to extant planning conditions which would be re-imposed to ensure that the stockpiles remain at acceptable heights, the proposal would continue to meet the objectives of WLP Policies W3.3 and W3.4.

Ecological Impact

143. Significant ecological impacts are not anticipated as a result of this development, given that the operational development would take place within the approved operational area and there is no associated increase in the amount of IBA being processed at the site. The MRF site itself is not designated for its nature conservation interest. It is generally hard-surfaced with limited vegetation offering negligible habitat for notable or protected species.

Health impacts

144. Whilst the neighbour representations have raised issues regarding health impacts associated with operations at the Bunny MRF, there is nothing to indicate that there are any health impacts associated with the treatment of IBA. It is a non-hazardous, inert waste stream, and the site is subject to the EA's waste permitting regime, placing pollution controls over the site. The proposals involve the extended storage of IBA aggregates, which is a very stable manufactured end-product. The pollution control authorities (in this case, RBC Environmental Health Team and the EA) have not raised any concerns relating to impacts on public health associated with these waste operations. The indications are that the proposed development would have a neutral impact on the health of the local population.

Economic benefits

145. Paragraph 80 of the NPPF places a requirement on the planning system to create the conditions in which businesses can 'invest, expand and adapt'. It states that significant weight should be placed on the need to support economic growth and productivity. In this context, the economic and business arguments put forward by the applicant in support of this retrospective planning application are therefore a material consideration in support of the proposal. However, this does need to be balanced against the other material considerations relating to environmental and amenity impacts set out in this report.

Green Belt considerations

146. In terms of location, the Rushcliffe Local Plan Adopted Policies Map (2019) identifies the existing site as being within the Green Belt. Policy 21 of Part 2 of the Rushcliffe Local Plan states that applications for development in the Green Belt will be determined in accordance with the NPPF (Policy 13 (Protecting Green Belt Land)). The fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belt being their openness and their permanence (Paragraph 133).
147. There is a general presumption against inappropriate development within the Green Belt and in this respect 'very special circumstances' would need to be demonstrated to justify the granting of planning permission.

148. 'Inappropriate development' is deemed by definition as being harmful to the Green Belt. The NPPW indicates that waste development in the Green Belt in most cases is 'inappropriate development' and should be assessed on this basis.
149. Where waste management development proposals in the Green Belt would result in 'inappropriate development' in terms of the NPPF, any wider benefits of the scheme may contribute to the 'very special circumstances' required by the Framework for the proposal to be granted planning permission. Therefore, it is necessary to determine whether or not this consideration provides Green Belt policy support for this proposal.
150. Under the NPPF's definition of inappropriate development in the Green Belt (Paragraphs 145 and 146), it is silent in relation to operational development such as that contained in the current planning application. The proposals are therefore considered to be inappropriate development in the Green Belt and so the proposed development needs to meet the 'very special circumstances' test set out in Paragraph 144 of the NPPF, such that:
- "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."*
151. In this respect, the proposed development needs to be considered in a proportionate manner given the nature of what is being proposed. The proposals relate to minor material changes to operational development which is ancillary to an established waste management facility. The use of the site has already been established in principle, and the proposal does not involve extending the site, changing its use or constructing any new buildings. This application seeks permission for a revised layout within the boundary of an existing and EA permitted waste management site, which has involved extending the storage capacity for IBA within the authorised site. To this end, the various environmental impacts detailed above, such as noise, dust, landscape and visual impacts, and traffic impacts, are all considered to result in levels of impact which would not cause adverse impacts to the environment or amenity. This is an important matter in light of the NPPF's requirement to consider 'any other harm resulting from the proposal' when balancing impacts on the Green Belt.
152. It is recognised that there are currently certain economic and business constraints on the site's waste recycling operations that have necessitated the need for extra storage-space, as manufactured product has increasingly been held up on site with delays in the market supply side of the business as a result of the pandemic. It is recognised that operating conditions are presenting the applicant with challenges in terms of running the IBA recycling operations at the present time. Using more of the land within the authorised site for open storage and stockpiling of recycled IBA aggregates is in keeping with the established

use on the site and ancillary to the waste recycling operations; and the revised layout of the site is beneficial in terms of supporting the MRF's current IBA recycling operations. In this respect, and as stated previously, the proposal would be compliant with the NPPF at paragraph 80, in terms of meeting the economic objectives of the NPPF and also accords with WCS Policy WCS3 and the NPPW by maximising the recycling rates of an inert waste stream and assisting in the process of driving waste up the waste hierarchy. There are therefore on balance a number of criteria that officers consider meet the 'very special circumstances' test.

153. As already stated above, Paragraph 133 of the NPPF confirms that 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'. A consideration of the impacts of the proposals on the openness of the Green Belt is therefore appropriate in terms of assessing the application against Green Belt policy.
154. The application seeks to vary the approved layout to reflect relatively substantial changes in the quantities of IBAA material currently stockpiled on site. As previously described, the proposal site is relatively well screened and already forms part of the recycling facility, with the proposed storage area being viewed against the existing activity on site.
155. The extended storage area is part of an established materials recycling facility and land is set back from the public highway (A60 Loughborough Road), at a relative distance from the nearest residential development. Any attendant visual impacts would mainly be confined to more distant users of the surrounding land, most notably those using Bunny Old Wood. However, views towards the site from any public vantage points would be substantially mitigated by existing vegetation, the topography of the land, and the industrial character of the wider recycling operations.
156. The development's proximity to existing recycling operations, including a large waste transfer building and associated ancillary development, including mobile/fixed plant, means that the additional stockpiles of reclaimed IBA aggregates would be viewed in the context of being part of an existing operational site. It would appear visually integrated into its setting, when viewed against the backdrop of the existing MRF. It is noted that the stockpiles of reclaimed aggregates would comprise relatively low-level development when compared to the waste transfer building, thereby minimising visual impact.
157. The proposal would not constitute built development as it is for temporary stockpiling of material and does not involve any additional hard-standing or built structures. The temporary nature of the stockpiles and absence of any built development means that there is unlikely to be any additional impact upon the openness of the Green Belt.
158. The proposed reclaimed aggregate stockpiles would be no higher than existing landscape features, which predominantly consist of mature hedgerows and hedgerow trees, and blocks of woodland. It is considered that, subject to

restrictions on the height of the stockpiles, and given the adequate screening from bunding and existing vegetation, and the industrial backdrop, the development would not add any additional harm to the open character of the Green Belt. The re-imposition of extant planning conditions would ensure that storage heights are limited to 6m in height, thus ensuring that these activities do not become visually intrusive.

159. Overall, when set in the context of the existing works, associated plant and storage mounds, and filtered by vegetation, any views from medium and longer distances would not be significantly impacted upon. The development would therefore have a neutral impact on the openness of the Green Belt, given the transient nature of the proposals, the limited impact on the landscape and the absence of any built development.
160. It is also considered appropriate to consider the proposed development in the context of the purposes of including land in the Green Belt, as set out in Paragraph 134, namely:
- *to check the unrestricted sprawl of large built-up areas;*
 - *to prevent neighbouring towns merging into one another;*
 - *to assist in safeguarding the countryside from encroachment;*
 - *to preserve the setting and special character of historic towns; and*
 - *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
161. As the proposed changes to the site layout would remain within the existing planning unit, it is considered that they would not result in any unrestricted sprawl, nor any merging of neighbouring towns, or any encroachment into the countryside. Although the Bunny Conservation Area, along with a number of designated and non-designated heritage assets, are located to the north of the site, these are sufficiently distant (around 470 metres to the southern edge of the conservation area) so as not to be impacted by the proposed development. Finally, the continued operation of the site would help ensure the continued use of land associated with the former landfill site.
162. In conclusion, it is considered that there are 'very special circumstances' which support the application: namely the support the proposals would provide to the economic growth and productivity of the business, to which the NPPF attaches significant weight, in addition to the benefits the site provides in terms of driving waste up the waste hierarchy. It is considered that these benefits clearly outweigh the limited harm to the Green Belt and any other harms, which have all been assessed and are not considered to be adverse. The proposed development therefore accords with Green Belt policy.

Other Material Considerations

163. Substantive environmental controls covering the waste management operations would continue to be dealt with under a bespoke environmental permit authorised by the EA and enforced by them. Whilst the planning process is concerned about the acceptable use of the land, the permit would deal with any pollution impacts in addition to impacts on human health, as raised in representations on the application. In relation to this planning application, the EA has advised that the permit for the site may need to be varied which would allow them to review any pollution and health impacts relating to the site. An informative to this effect would be attached to any planning permission.

Legal Agreement

164. The extant planning permission (Ref. 8/16/01028/CMA) was issued on 12th July 2017 subject to a Section 106 legal agreement. The agreement relates only to the routing of early morning lorries ensuring that articulated lorries and/or heavy goods vehicles, owned or controlled by the operator, do not travel along Gotham Lane between 6am and 7:30am but follow a prescribed route out of Bunny Village, via the A60 Loughborough Road.
165. The agreement has been drafted so that it applies to all variations of the planning permission going forward. As such, no change to the agreement is required should planning permission be granted for this application.

Other Issues

166. The issue of speeding traffic is not a material planning consideration.
167. Whilst this issue has been raised by local residents during the consultation process, the County Council has no evidence to support these claims and it is noted that this would be a matter for the police under the Road Traffic Act. However, notwithstanding this, the applicant has been informed of the complaint and is advised to review this matter with its drivers. It is understood that as part of their contract, all drivers employed at the Bunny MRF should adhere to the speed limits in the area.

Other Options Considered

168. The report relates to the determination of a planning application. The County Council is under a duty to consider the planning application as submitted. Accordingly, no other options have been considered.

Statutory and Policy Implications

169. 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

170. The existing MRF site including the increased storage area benefits from perimeter security fencing to restrict unauthorised access. Furthermore, existing bunding and mature vegetation offers a degree of protection to the MRF site, effectively screening the site from the A60 Loughborough Road.

Data Protection and Information Governance

171. Any member of the public who has made representations on this application has been informed that a copy of their representation, including their name and address, is publicly available and is retained for the period of the application and for a relevant period thereafter.

Human Rights Implications

172. 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 6.1 (Right to a Fair Trial) are those to be considered and may be affected. The proposals have the potential to introduce impacts such as noise and dust impacts arising from increased stockpiling of IBA aggregates including IBAA being brought into the Bunny MRF from other incineration sites upon the residential amenity of the nearest residential occupiers. However, these potential impacts need to be balanced against the wider benefits the proposals would provide such as supporting the economic viability of the recyclable waste operations at the Bunny MRF and facilitating the enhanced processing of the IBA aggregate in accordance with the waste hierarchy. Members need to consider whether the benefits outweigh the potential impacts and reference should be made to the Observations section above in this consideration.

Public Sector Equality Duty Implications

173. The report and its consideration of the planning application has been undertaken in compliance with the Public Sector Equality duty. Potential direct, indirect and cumulative impacts from the proposal have been considered equally to all nearby receptors and resulting from this there are no identified impacts to persons with a protected characteristic.

Implications for Sustainability and the Environment

174. These have been considered in the Observations section above, including the merits of improving site operations to enhance the recycling of IBA in accordance with the waste hierarchy. The waste operations would continue to operate in accordance with a bespoke Environmental Permit covering pollution control measures.
175. There are no financial, human resource, or children/adults at risk safeguarding implications. There are no implications for County Council service users.

Statement of Positive and Proactive Engagement

176. 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

177. 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.

ADRIAN SMITH

Corporate Director – Place

Constitutional Comments [RHC 11/11/2020]

Planning & Licensing Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments [SES 11/11/2020]

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.

Electoral Division(s) and Member(s) Affected

Leake & Ruddington

Councillor Reg Adair, Councillor Andrew Brown

Report Author/Case Officer

Deborah Wragg

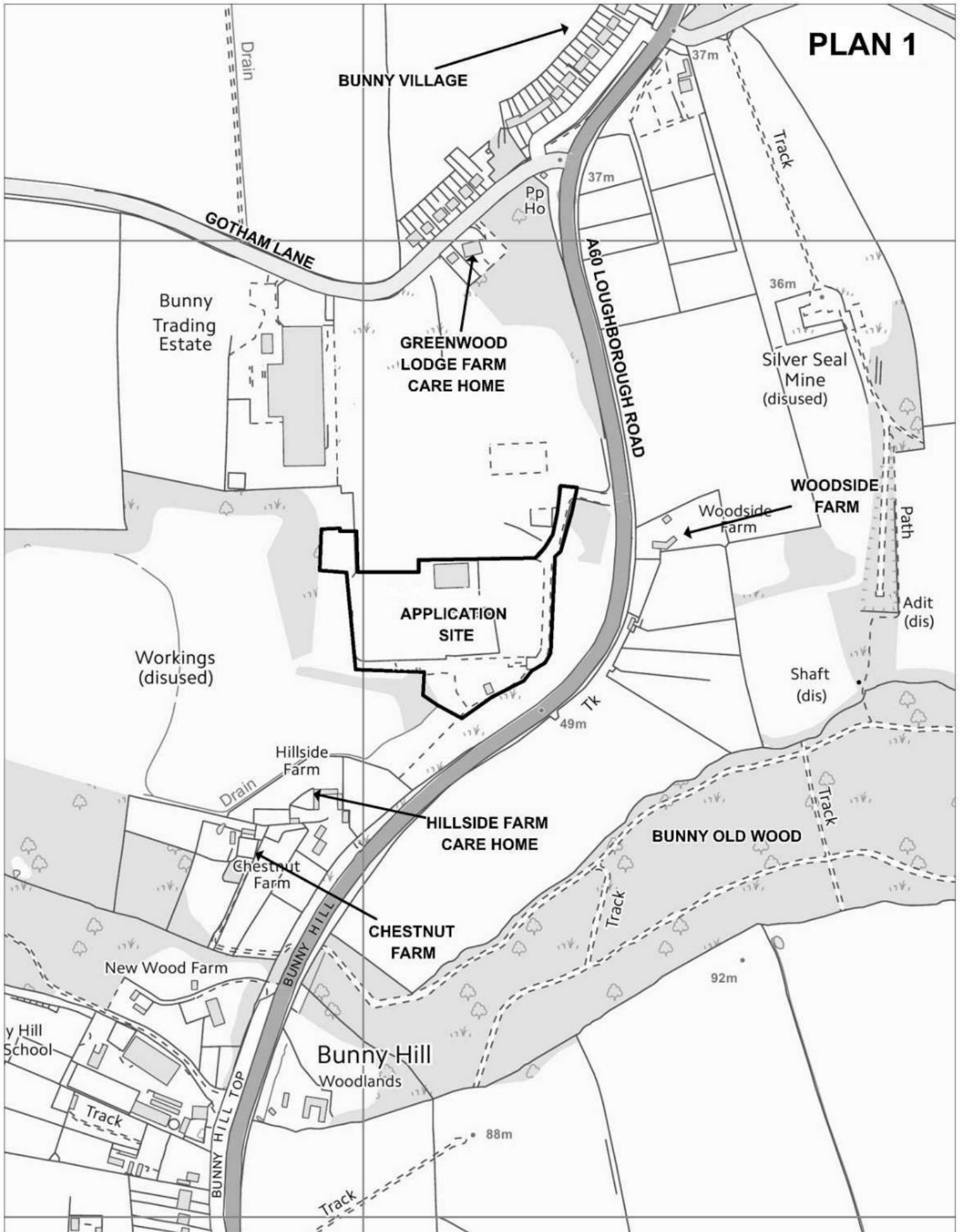
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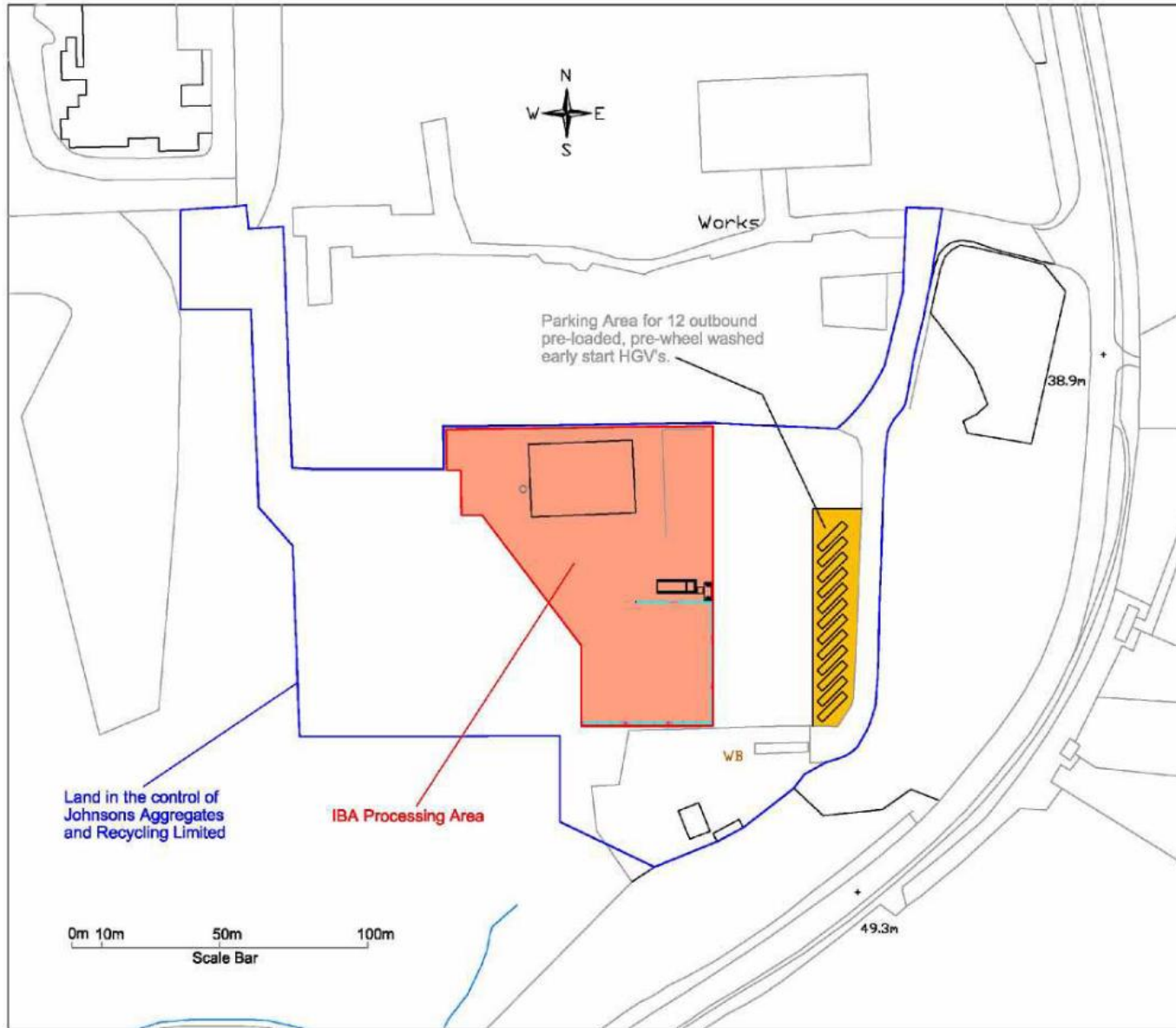
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PLAN 1





GENERAL NOTES

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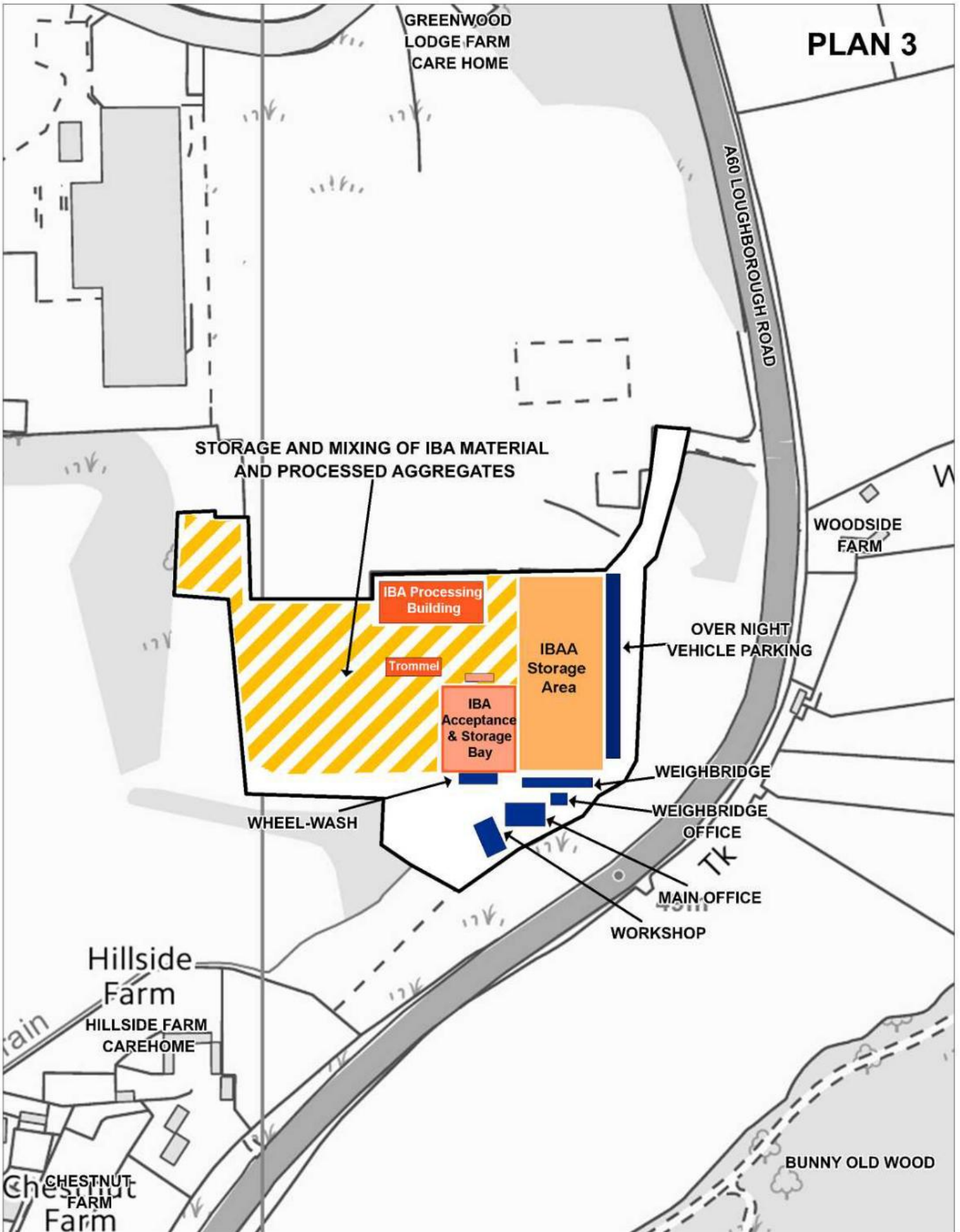
ISSUE	DATE	DESCRIPTION

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Johnsons Aggregates
IBA Processing and Early Start HGV Parking Areas

Date	Scale	Auth	Ref. No.
10/02/16	1 : 1250 at A3 or Scale Bar	MB	MS231-32





RECOMMENDED PLANNING CONDITIONS

Scope of Planning Permission

1. The development hereby permitted is for the retention of the current operating hours with a start time of 06:00 hours Mondays to Saturdays to allow 12 pre-loaded, sheeted and pre-wheel washed outbound heavy goods vehicles (HGVs) to leave the site daily between the hours of 06:00 hours to 07:30 hours; the retention of existing Incinerator Bottom Ash, aggregate and soil recycling operations and changes to the mix of activities (storage, screening and mixing using mobile plant) across the site including the use of the eastern part of the authorised site for IBA Aggregate (IBAA) storage as shown on Site Plan titled 'IBA & IBAA Acceptance, Storage and Processing' received by the Waste Planning Authority (WPA) on 17th June 2020. For purposes of clarity, the pre-loaded, sheeted and pre-wheel washed outbound HGVs shall be parked overnight in a designated parking area shown marked in block blue on the Site Plan received by the WPA on 17th June 2020.

Reason: To define the development hereby approved and for the avoidance of doubt.

2. The WPA shall be notified in writing of the date of commencement of this permission at least 7 days, but not more than 14 days, of its occurrence.

Reason: For the avoidance of doubt.

3. The development hereby permitted shall only be carried out in accordance with the submitted application, and in the documents and plans identified below, other than where amendments are made in compliance with other conditions of the permission:

- (a) Location Plan identified as land outlined in red on the site plan entitled 'Bunny Recycling Site' Scale: 1:1500@A4 in Appendix 1 of the Section 106 legal agreement, dated 11th July 2017, to accompany planning permission 8/16/00059/CMA;
- (b) Site Plan titled 'IBA & IBAA Acceptance, Storage and Processing' received by the Waste Planning Authority (WPA) on 17th June 2020
- (c) Planning application form, Design and Access Statement and Planning Supporting Statement received by the WPA on 21st May 2012;
- (d) Drawing titled 'Water Collection Channel for IBA Storage Bays' Drawing No. MS231-9 received by the WPA on 26th November 2012;

- (e) Drawing titled 'Water Collection System' Drawing No. MS231-8A received by the WPA on 26th November 2012;
- (f) Drawing titled 'IBA Storage Bays' Drawing No. MS231-4A received by the WPA on 26th November 2012;
- (g) IBA Storage Bay Drainage Scheme titled 'IBA Storage Bay Drainage Scheme' dated March 2013 by Johnsons Aggregates & Recycling Limited, received by the WPA on 3rd September 2013;
- (h) Addendum to Noise Assessment Report, by Acute Acoustics Ltd. Reference 1524 Johnsons – Bunny NIA, dated 7th October 2015 [Rev C] and the original report by Acute Acoustics Ltd, dated 14th October 2013, received by the WPA on 5th November 2015;
- (i) Planning Application Supporting Statement received by the WPA on 5th November 2015;
- (j) Planning application form with new description as amended 13/11/2015 received by the WPA on 13th November 2015;
- (k) New description as amended: 22/4/2016 received by the WPA on 25th April 2016;
- (l) Letter dated 26th August 2016 from Bond Planning Consultancy received by the WPA on 26th August 2016;
- (m) Document titled 'HR200 v0.1 Transport and Logistics Policy' by Johnsons Aggregates and Recycling Limited received by the WPA on 26th August 2016;
- (n) Planning application form and certificates received by the WPA on 4th May 2020, except for the description of the development which was agreed in an email letter dated 20th May 2020;
- (o) Supporting Statement received by the WPA on 4th May 2020;
- (p) Dust mitigation scheme titled 'Bunny Dust Management Plan' by Johnsons Aggregates & Recycling, dated 29/09/2020 Reviewed September 2020, Document Ref: DMP, Issue 02, received by the WPA on 28th October 2020.

Reason: To define the permission for the avoidance of doubt.

4. The location of the crushing and screening plant for inert construction and demolition waste shall be restricted to that hatched yellow on Site Plan titled 'IBA & IBAA Acceptance, Storage & Processing' received by the WPA on 17th June 2020.

Reason: To define the permission for the avoidance of doubt.

5. The reclamation, recycling and transfer of materials from industrial and commercial wastes shall only be carried out within the building identified as 'IBA Processing Building' as shown on Site Plan titled 'IBA & IBAA Acceptance, Storage & Processing' received by the WPA on 17th June 2020.

Reason: To define the permission for the avoidance of doubt.

6. The recycling of inert construction and demolition wastes and soils shall only be carried out on the permitted area hatched yellow on Site Plan titled 'IBA & IBAA Acceptance, Storage & Processing' received by the WPA on 17th June 2020.

Reason: To define the permission for the avoidance of doubt.

7. The receipt, storage and processing of 'raw' unprocessed Incinerator Bottom Ash (IBA) shall only be carried out in a storage bay situated in the south-eastern part of the Materials Recycling Facility (MRF) on part of the waste transfer area permitted to accommodate the storage bay and its associated operations, as shown in block orange, marked up as 'IBA Acceptance & Storage Bay' on Site Plan titled 'IBA & IBAA Acceptance, Storage & Processing' received by the WPA on 17th June 2020 and within the IBA Processing Building.

Reason: To define the permission for the avoidance of doubt.

8. Only materials which are inert, solid, dry, non-oily, non-hazardous and non-putrescible shall be processed and stored on the site; and stockpiled on site outside the building.

Reason: To define the permission for the avoidance of doubt.

Hours of operation

9. Except in emergencies to maintain safety of the site (which shall be notified to the WPA in writing within 48 hours of their occurrence), the site shall only operate between the following hours:

Operation	Monday to Friday (hours)	Saturday (hours)	Sundays, Public & Bank Holidays (hours)
Operation of crushing and screening plant	08:00 to 17:00	08:30 to 12:30	Not at all
Waste deliveries, including acceptance of IBA waste and export of processed material; operation of any	07:30 to 18:00	07:30 to 13:00	Not at all

plant or machinery, and operations which involve the movement of materials			
IBA processing involving the internal use of the IBA processing building (excluding use of the dryer), and the use of 1 Front Loading Shovel and 1 Telehandler for IBA materials handling	08:00 to 17:00	08:30 to 12:30	Not at all
12 pre-loaded, sheeted and pre-wheel washed HGV movements outbound from the site (for purposes of clarification there shall be no loading, sheeting or wheel-washing of vehicles between 06:00 hours to 07:30 hours)	06:00 to 07:30	06:00 to 07:30	Not at all

For the avoidance of doubt, no other HGVs shall enter or leave the site except within the permitted hours detailed above.

Reason: To safeguard the amenities of local residents in accordance with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Access and wheel cleaning

10. All heavy goods vehicles leaving the site shall use the existing wheelwash facility. No vehicles shall leave the site in a condition whereby mud, clay or other deleterious materials are carried onto the highway. In the case of the 12 pre-loaded outbound HGVs anticipated to leave the site between 06:00 hours and 07:30 hours Monday to Saturdays these vehicles shall be pre-wheel-washed the day before and at no time shall any vehicles be wheel-washed between the hours of 06:00 hours and 07:30 hours.

Reason: In the interests of highway safety and to accord with Saved Policy W3.11 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

11. A visibility splay from the access road along the A60, shall be maintained in accordance with the details approved in writing by the WPA on 23rd November

1994. A suitable visibility splay shall be maintained to the satisfaction of the WPA at all times.

Reason: In the interests of highway safety.

12. Lorry departures between 6am and 7:30am shall be undertaken on a staggered basis timed a minimum of five minutes between each movement

Reason: To avoid potential convoys of lorry movements on the public highway with resultant impacts on residential

Environmental controls

13. All vehicles to be used on site in the processing and movement of materials shall be fitted with effective silencers.

Reason: To safeguard the amenities of nearby residents and to accord with Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (Adopted December 2006).

14. The site shall be kept clean and tidy and steps shall be provided to prevent any litter from the site being deposited on adjacent land.

Reason: To safeguard the amenities of nearby residents and to accord with Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (Adopted December 2006).

Noise

15. Noise levels associated with site operations, when measured at the northern boundary of Hillside Farm, Loughborough Road, shall not exceed 56dB(A) LA eq 1 hour at any time.

Reason: To safeguard the amenities of nearby residents and to accord with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

16. In the event that a complaint is received regarding noise associated with the operations on site, which the WPA considers may be justified, the operator shall, within one month of a written request from the WPA, undertake and submit to the WPA for its written approval, a BS4142:1997 noise survey, to assess whether noise arising from the development exceeds the daytime criterion of 5db(A) above the existing background noise level, after the addition of the 5db(A) penalty to reflect tonal, discrete or impact noise as advised in BS4142:1997 at the nearest residential receptor (if applicable). The submitted survey shall include further measures to mitigate the noise impact so as to ensure compliance with the noise criteria. The noise mitigation measures shall

thereafter be implemented in accordance with the approved details, and the mitigation measures maintained throughout the operational life of the site.

Reason: To safeguard the amenity of users of nearby land and the nearest residential occupiers in accordance with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

17. All mobile plant used on site shall be fitted with broadband noise reverse alarms.

Reason: To safeguard the amenity of users of nearby land and the nearest residential occupiers in accordance with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

18. HGVs which depart the site between 06:00hrs-07:30hrs Mondays to Saturdays shall be preloaded, sheeted and pre-wheel-washed the day before, and parked overnight in the parking area shown in block blue on Site Plan titled 'IBA & IBAA Acceptance, Storage & Processing' received by the WPA on 17th June 2020, in a position which enables them to drive in a forwards motion out of the yard without the need for reversing or manoeuvring.

Reason: To safeguard the amenity of the nearest residential occupiers in accordance with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Dust

19. Dust emissions from all waste operations shall be kept to a minimum and contained within the site. The operator shall take the following actions to ensure that dust emissions are minimised:

- (a) the use as appropriate of a dust suppression system throughout all working areas, particularly during periods of unloading/loading, crushing, storage and transfer of waste products. A suitable and sufficient water supply shall be provided to the operations at all times to enable the suppression of dust by water spray as required;
- (b) the use as appropriate of water bowsers and/or spray systems to dampen stockpiles, the site area, access roads, haul road, vehicle circulation and manoeuvring areas;
- (c) regular cleaning of all hard-surfaced areas of the site area, haul road and access onto the A60 Loughborough Road;
- (d) the temporary cessation of operations (waste importation, recycling operations and loading of recycled materials for export) in dry, windy conditions.

Reason: To safeguard the amenities of nearby residents and to minimise dust disturbance at the site and to ensure compliance with Saved Policy W3.10 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

20. The measures detailed in the approved dust mitigation scheme titled 'Bunny Dust Management Plan' by Johnsons Aggregates & Recycling, dated 29/09/2020 Reviewed September 2020, Document Ref: DMP, Issue 02, received by the WPA on 28th October 2020, shall be employed to ensure that dust emissions from the site are controlled and fugitive dust prevented from leaving the site, with the exception of stockpile heights which shall be maintained in accordance with the details in Conditions 25 and 26. The mitigation scheme shall thereafter be maintained throughout the operational life of the waste operations. Notwithstanding this, in the event that it is considered necessary and upon the request of the WPA, there shall be a temporary cessation of material importation, screening and crushing operations, and the movement of materials during periods of excessively dry and windy weather.

Reason: To safeguard the amenities of nearby residents and to minimise dust disturbance at the site including the containment of IBA emissions within the site and to ensure compliance with Saved Policy W3.10 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Drainage

21. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the compound capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund. There must be no drain through the bund floor or walls.

Reason: To avoid pollution of the land and any watercourse.

22. There shall be no discharge of foul or contaminated drainage from the site, into either the groundwater system or any surface waters, whether direct or via soakaways.

Reason: To avoid pollution of the land and any watercourse and to accord with Saved Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

23. All foul drainage shall be contained within a sealed and watertight tank, fitted with a level warning device to indicate when the tank needs emptying.

Reason: To avoid pollution of the land and any watercourse and to accord with Saved Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

24. Drainage for the IBA Storage Bay shall be maintained in accordance with the approved drainage details titled 'IBA Storage Bay Drainage Scheme' dated March 2013 by Johnsons Aggregates & Recycling Limited, received by the WPA on 3rd September 2013, and approved by the WPA in writing on 20th November 2013.

Reason: To ensure that the development is provided with a satisfactory means of drainage and to minimise the risk of pollution in accordance with Saved Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Operational matters

25. Within the Materials Recycling Facility site, except for within the IBA storage bay as shown on Drawing titled 'IBA Storage Bays' Drawing No. MS231-4A received by the WPA on 26th November 2012, stockpiles of raw materials shall not exceed 7 metres in height above ground level; and stockpiles of recycled materials shall not exceed 6 metres in height above ground level.

Reason: To safeguard the amenities of nearby residents and to accord with Saved Policies W3.3 and W3.4 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

26. The maximum storage height of IBA (un-processed and processed) stored in the storage bay shall be 4.5metres. At no time shall stockpile heights exceed the height of the storage bay, as shown on Drawing titled 'IBA Storage Bays' Drawing No. MS231-4A received by the WPA on 26th November 2012.

Reason: In the interests of visual amenity and to control dust to ensure compliance with Saved Policies W3.3 and W3.10 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

27. The internal lining of the Waste Transfer Building in concrete blocks on the northern, eastern and western elevations, shall be maintained in accordance with the details shown on Drawing No. SSW/CS15596/003 Revision B, received by the WPA on 8th July 1996.

Reason: To safeguard the amenities of nearby residents and to accord with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

28. All external lighting required in connection with the operations hereby permitted shall be angled downwards into the site and suitably shielded so as to minimise light pollution.

Reason: To prevent light pollution and to safeguard the amenities of the area in accordance with Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (adopted December 2006).

Boundary Treatment

29. The approved boundary treatment, including the means of materials containment within the site, shall be maintained at all times in accordance with the approved details as shown on Plan Drawing No. SSW/CS15596/04 Rev. A, received by the WPA on 26th June 1997, as approved in writing by the WPA on 21st November 1997.

Reason: To safeguard the amenities of the area and to ensure the satisfactory working of the site and to accord with Saved Policy W3.4 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

30. The existing hedge screen that runs along part of the northern boundary shall be retained and protected from any damage to the satisfaction of the WPA.

Reason: To safeguard the amenities of the area and to ensure the satisfactory working of the site and to accord with Saved Policy W3.4 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Traffic movements

31. The number of HGVs entering or leaving the site for the purposes of depositing or collecting waste material/reclaimed aggregates shall not exceed an average of 100 movements per day measured over any week period and subject to a maximum of 550 such vehicle movements in any week. A record of all daily vehicle movements shall be kept at the site, which shall be made available to the WPA in writing within one week of a written request.

Reason: In the interests of highway safety and to protect surrounding residential amenity and to accord with Saved Policy W3.14 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Annual throughput

32. The total throughput of all waste (inert construction and demolition waste, and non-hazardous commercial and industrial waste, including IBA waste) materials into the site shall not exceed 100,000 tonnes per annum. A written record of the tonnages of the waste materials shall be maintained by the developer. Records of the tonnages recorded shall be made available to the WPA in writing within two weeks of a written request from the WPA.

Reason: To safeguard the amenity of users of nearby land and the nearest residential occupiers in accordance with Saved Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Buildings, fixed plant and machinery

33. No buildings, fixed plant or machinery, other than that approved by this permission and any other relevant planning permissions, shall be erected or placed on the site in association with the outdoor storage and processing of waste.

Reason: To enable the WPA to control the development and to minimise its impact on the Green Belt and amenity of the local area, in accordance with Saved Policy W3.3 of the Nottinghamshire and Nottingham Waste Local Plan (Adopted January 2002).

Informatives/Notes to applicant

1. The applicant's attention is drawn to the Environment Agency's advice dated 29th October 2020, which states that the permit for the site may need to be varied, and the relevant permitting contact should be contacted to discuss this further.
2. The Section 106 legal agreement dated 11th July 2017 to accompany planning permission 8/16/00059/CMA to impose controls over early morning lorry routing, shall be rolled forward as a variation to the original permission.

24th November 2020

Agenda Item: 6

REPORT OF CORPORATE DIRECTOR - PLACE

LOCAL ENFORCEMENT PLAN UPDATE

Purpose of the Report

1. To advise Members of the proposed updated Local Enforcement Plan and seek their endorsement of the Plan and to recommend to Policy Committee that it be adopted as County Council policy as a formal replacement to the existing Local Enforcement Plan.

Information and Advice

2. The Council's Local Enforcement Plan was adopted in May 2015 and therefore its review and update are considered timely. The version appended to this report (Appendix 1) represents the proposed update and, if approved by Members of this and Policy Committee, will be adopted as Council policy and will replace the existing document. The Local Enforcement Plan sets out what site monitoring and enforcement service businesses and the public can expect from Nottinghamshire County Council as a Local Planning Authority. The Plan also sets out the Council's approach to dealing with alleged breaches of planning control and its proactive role in periodic inspection of minerals and waste sites within the County. The Local Enforcement Plan is published on the Council's website and so the new version will replace the existing one if approved by Members.
3. The Plan has been published in response to the National Planning Policy Framework (NPPF) which states that "*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate.*"
4. Additionally, the national Planning Practice Guidance states that "*the preparation and adoption of a local enforcement plan is important because it:*
 - *allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*

- *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *provides greater certainty for all parties engaged in the development process.”*

Key changes and updates

5. The main changes to be incorporated within the updated Local Enforcement Plan are as follows:

- Revised text from the National Planning Policy Framework (latest version 2019) and the Planning Practice Guidance have been incorporated into the proposed Plan.
- Wording amended to clarify maximum fines payable in relation to Enforcement Notices, Stop Notices and Temporary Stop Notices. This now states, “*A person found guilty on summary conviction or conviction on indictment shall be liable to a fine, the amount of which is determined by the Court and shall have, among other matters, regard to any financial benefits which have accrued or are likely to have accrued as a consequence of the offence*”. The revised Plan also confirms the provisions under the Proceeds of Crime Act which may be used in planning enforcement cases to deal with those who flout valid enforcement notices for financial gain.
- The revised Plan introduces the possibility of the County Council using drones in connection with its monitoring and enforcement functions. This may include inspecting and monitoring sites to ensure compliance with planning permissions, including conditions, and to gather evidence in relation to possible breaches of planning control. The Plan confirms that the County Council will ensure that it fully complies with relevant regulations, including registration with the Civil Aviation Authority, notifying landowners and properties it is intending to fly over and compliance with the Data Protection Act and any other statutory requirements.
- The revised Plan provides further information about how to report a potential breach of planning control, what information will need to be provided by the complainant and confirmation that personal information will not be shared and will be treated in accordance with the Council’s Development Management Privacy Notice.
- The revised Plan makes reference to the resourcing of monitoring and enforcement work and confirms that officers undertake a wide variety of work from site inspections, complaint investigation and formal enforcement action. The Plan confirms that the staff and financial resources allocated to the monitoring and enforcement work is constantly under review to ensure that the resources are commensurate with the duties undertaken. A number of officers in the Development Management Team split their workloads between monitoring and enforcement and planning application work based on the needs of the team at any particular time.
- In terms of monitoring minerals and waste sites the Plan contains details of the current level of monitoring fees which are £397 for active/partially active sites and £132 for dormant sites. These fees are nationally set and have increased from £331 and £110 respectively.

- The schedule of the monitoring and enforcement legislative and policy framework in the Plan has been updated.
- The revised Plan confirms that a report will be brought to Planning and Licensing Committee every twelve months which will provide Members with the detail of all monitoring and enforcement work undertaken in the preceding 12 months.

Other Options Considered

7. The alternative to not adopting this Local Enforcement Plan is that the County Council's existing protocol would not be updated in line with the NPPF recommendation and not reflect the latest changes to the enforcement regime.

Reason for Recommendation

8. To inform Members of the need to update the current Local Enforcement Plan in the light of changes that have come into effect since it was published and to seek Members' approval of the updated Local Enforcement Plan to enable it to become Council policy.

Statutory and Policy Implications

9. 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. There are no crime and disorder, financial, human resources, public sector, safeguarding of children and adults at risk, smarter working implications or implications for sustainability and the environment.

Data Protection Implications

10. The County Council has comprehensive procedures in place, including redacting personal data or sensitive information which accompanies any enforcement complaints, such as details of complainants, to ensure that information is kept securely and confidentially.

Financial Implications

11. There are no direct financial implications arising from the publication of the Local Enforcement Plan. However, to properly carry out the monitoring and enforcement service set out in the Plan requires the retention Monitoring and Enforcement officers in the Development Management Team and the provision of appropriate training and development.

Human Rights Implications

12. The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of property), Article 6 (Right to a fair trial), Article 8 (Right to a private and family life) and Article 14 (Prohibition of discrimination) are relevant when considering enforcement action. Planning Practice Guidance advises that there is clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether to take enforcement action Nottinghamshire County Council will, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

Implications for Service Users

13. It is considered that the proposed updated document will assist users by containing more current and accurate information.

RECOMMENDATION

It is RECOMMENDED that Committee endorses the changes to the Local Enforcement Plan as set out in Appendix 1 of this report and recommends the new Plan to Policy Committee for adoption as County Council policy.

ADRIAN SMITH

Corporate Director - Place

Constitutional Comments [SG 22/10/2020]

I confirm that the recommendation falls within the remit of the Planning and Licensing Committee by virtue of its terms of reference. Responsibility for the regulatory functions of the Council in relation to planning, monitoring.

Financial Comments [RWK 21/10/2020]

There are no specific financial implications arising directly from the report.

Background Papers and Published Documents

None

Electoral Division(s) and Member(s) Affected

All

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LOCAL ENFORCEMENT PLAN

Nottinghamshire County Council's Guide to
Monitoring and Enforcement

Adopted May 2015- updated 2020

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CHAPTER ONE - INTRODUCTION

- 1.1. Nottinghamshire County Council is firmly committed to delivering an effective and proportionate development management service which is fair and transparent to applicants and the wider community alike. This Local Enforcement Plan has been prepared in accordance with the guidance set out in the National Planning Policy Framework (February 2019) which states:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate.”

- 1.2. This Local Enforcement Plan has been prepared to meet the recommendation of the National Planning Policy Framework and the associated Planning Practice Guidance and replaces the County Council’s previous Local Enforcement Plan which was adopted in May 2015.
- 1.3. The Local Enforcement Plan sets out what enforcement and site monitoring service that businesses and the public can expect from Nottinghamshire County Council as Local Planning Authority. The Plan sets out the Council’s approach to dealing with alleged breaches of planning control and secondly, its proactive role in periodic inspection of minerals and waste sites within the County. The Plan is an electronic document which may be viewed and downloaded from the County Council’s website by following the link below:

<http://www.nottinghamshire.gov.uk/thecouncil/democracy/planning/monitoringand enforcement/>

CHAPTER TWO - OVERVIEW

Key points on planning enforcement

2.1 Monitoring and enforcement are key elements of County Council development management. The long-term and potentially intrusive nature of minerals and waste development requires specialist monitoring and control. The County Council has a statutory responsibility for enforcing planning control in the public interest, in order to protect public amenity, and to ensure protection of the environment. There are some key factors relating to enforcement work which are set out below:

- enforcement action is a discretionary power available to the Council and the decision to take formal action must always be well founded. Enforcement powers are only used by the County Council where it is expedient and in the public interest to do so, having regard to the development plan and other material considerations.
- any action taken will be proportionate to the scale of the breach of planning control. The approach will be based upon the specific circumstances of the individual case, taking into account damage or potential damage to the natural or built environment, public amenity and safety.
- enforcement is one of the most complex areas of the planning system and often breaches of planning control can take many months, or even years, to fully resolve.
- notwithstanding regular monitoring by the Council, the public including local groups have a vital role to play in reporting potential problems to us to be investigated further.

Breaches of planning control are not a criminal offence unless the breach relates to works to a listed building, a protected species or involves the failure to comply with a statutory notice.

Human Rights implications of enforcement action

2.2 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of property), Article 6 (Right to a fair trial), Article 8 (Right to a private and family life) and Article 14 (Prohibition of discrimination) are relevant when considering enforcement action. Planning Practice Guidance advises that there is clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether to take enforcement action Nottinghamshire County Council will, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a

breach of planning control.

Possible breaches of planning control

2.3 Planning permission is required for most types of development with certain exceptions. Sometimes work commences without planning permission or is not carried out in accordance with the conditions of a planning permission. The County Council will investigate all complaints concerning potential breaches of planning control regarding minerals and waste development and those relating to its own developments. Breaches of planning control include the following:

- work undertaken without planning permission,
- an unauthorised change of use of a building or piece of land,
- non-compliance with plans approved by a planning permission,
- non-compliance with conditions attached to a planning permission.

2.4 If a breach of planning control is confirmed, the County Council will initially try to resolve the issue by negotiation and informal action with the land owner, developer or other relevant party. Where appropriate, this may include inviting a retrospective planning application. Where a satisfactory outcome cannot be reached through negotiation formal action may be pursued. Paragraphs 2.6 – 2.16 below set out the various enforcement tools available to the Council.

Time limits for taking enforcement action

2.5 In certain instances, the Council is unable to take any action when too much time has elapsed since the unauthorised work or change of use was carried out. There are two time limits laid down in Section 171B of the Town and Country Planning Act, 1990. These are as follows:

- a four-year limit applies to “unauthorised operational development” which includes building works, engineering, mining or other operations and
- a ten-year limit applies to all other development, such as a change of use or a breach of condition.

If it can be shown that a breach has continued for the above time period, and no enforcement action has been taken within that time, then the development will be immune from enforcement action. However, in cases relating to “concealment” the Council is able to take action even after the above time limits have expired under provisions which were introduced in 2012 under Section 124 of the Localism Act. Paragraph 2.16 below sets out this provision in more detail.

Enforcement powers

- 2.6 There are a variety of enforcement and regularising powers available to the Council to deal with breaches of planning control under the Town and Country Planning Act 1990. In all instances the most appropriate action will be chosen based upon the specific circumstances of the breach. Enforcement action will be proportionate to the breach of planning control and will only be taken when it is expedient to do so. Where relevant this will involve prior liaison with the Council's legal advisers. A summary of the main powers is listed below, which are, with the exception of retrospective planning applications, only applicable to minerals and waste activity. For breaches of planning control in respect of the Council's own development, appropriate action will be taken through internal Council procedures.
- 2.7 **Retrospective Planning Applications** - Unauthorised development can sometimes be made acceptable by the granting of planning permission, usually involving the imposition of planning conditions, where the unauthorised development is in line with the development plan. Where appropriate, the Council may invite a retrospective planning application to regularise the unauthorised work (made under Section 73 A of the Town and Country Planning Act, 1990). The planning process follows the same procedures as a normal planning application and the development is publicised and consulted upon in the standard way. However no prior guarantee can be given that planning permission will be forthcoming. An Enforcement Notice may also be issued in relation to elements of the development. The Localism Act 2011 brought in a reduction in the options available to anyone who has undertaken unauthorised development. Regularising unauthorised development can either be by the submission of a retrospective planning application OR by means of an appeal against an enforcement notice on the grounds that planning permission ought to have been granted or the condition or limitation concerned ought to be discharged (known as a ground (a) appeal). Under the new provisions the Council now has the power to decline to determine a retrospective application if an enforcement notice has been issued for the same development. Subsection (4) limits the right of appeal against an enforcement notice after a retrospective application has been submitted, but before the time for making a decision has expired.
- 2.8 **Certificates of Lawfulness of Existing Use or Development** - Where development has taken place without planning permission Section 191 of the Town and Country Planning Act, 1990 allows for the issuing of a Lawful Development Certificate if certain conditions can be met. This enables the owner to obtain a statutory document confirming that the use, activity or other development is lawful for planning control purposes at that particular time. The issue of the certificate depends entirely on factual evidence about the activities which have taken place on the land, the planning status of the site and on the interpretation of relevant planning law. Whether the use is

acceptable in planning terms is irrelevant - what is important is the factual evidence. There are factors which must be satisfied for such certificates to be issued in terms of the length of time a use or development has existed uninterrupted. The onus is on the applicant to provide evidence to support any application.

- 2.9 **Planning Contravention Notice (PCN)** - Service of this notice under Section 171C of the Town and Country Planning Act 1990 does not constitute formal enforcement action but is used where the Council suspects that a breach of planning control may have occurred. This notice enables the Council to obtain relevant information relating to any use of, or activities being carried out on, land and other relevant facts to ascertain whether a breach of planning control has occurred, and if so, whether enforcement action is appropriate. Failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice.
- 2.10 **Breach of Condition Notice (BCN)** – A breach of condition notice served under Section 187A of the Town and Country Planning Act 1990 requires compliance with the terms of one or more planning conditions attached to a planning permission as specified by the notice. It can be served on any party carrying out the development on the land and/or any person having control of the land. The BCN will set out the necessary steps to ensure compliance with the condition(s) being breached with a minimum of 28 days for compliance. Following the end of the period for compliance a “person responsible” who has not ensured full compliance with the conditions will be in breach of the notice and guilty of an offence under S187A (8) and (9) of the Town and Country Planning Act 1990. Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice. This can result in a fine of up to £2500. There is no right of appeal to the Secretary of State against a BCN, although it can be challenged by applying to the High Court for a judicial review.
- 2.11 **Enforcement Notice** - Under Section 172 of the Town and Country Planning Act 1990, the County Council has the discretionary power to issue an Enforcement Notice where it appears to the Council:
- that there **has** been a breach of planning control **and**,
 - that it is **expedient** to issue the notice having regard to the development plan and other material considerations.

The notice is served on the owner(s) and occupier(s) of the land to which it relates and any other party with an interest in the land which is materially affected by the notice. The notice must specify exactly what, in the Council’s view, constitutes the breach of planning control; and secondly what steps are necessary to remedy the breach of planning control. This may require activities to cease and the land to be restored to its condition before the breach took place. There is a right of appeal to the Secretary of State against an Enforcement Notice. The appellant must submit their appeal to the Planning Inspectorate before the effective date specified in the enforcement notice. If an appeal is lodged the terms of the notice are suspended until the appeal is

determined. If no appeal is made, then the notice takes effect and all the requirements of the notice must be met. It is an offence not to comply with an Enforcement Notice, once the period for compliance has elapsed, and there is no outstanding appeal. A person found guilty on summary conviction or conviction on indictment shall be liable to a fine, the amount of which is determined by the Court and shall have, amongst other matters, regard to any financial benefits which have accrued or are likely to have accrued as a consequence of the offence. The Council has the powers under Section 178 of the Town and Country Planning Act 1990 to enter enforcement notice land and carry out the requirements of the notice itself (known as Direct Action). It is an offence to willfully obstruct anyone who is exercising those powers on the Council's behalf. The Council is able to recover from the owner of the land any expenses reasonably incurred by them in undertaking this work (Regulation 14 Town and Country Planning General Regulations 1992). The Council will consider such action in appropriate cases. The enforcement notice is registered as a local land charge and will therefore be made known to any potential purchaser of the land. Where appropriate, the provisions under the Proceeds of Crime Act 2002 (POCA) will be used for non-compliance with Enforcement Notices and other relevant breaches. Provisions under POCA may be used in planning enforcement cases to deal with those who flout validly served enforcement notices for financial gain.

- 2.12 **Stop Notice** - These are used in the most urgent or serious cases in conjunction with Enforcement Notices where it is considered expedient that an activity must cease before the expiry of the period for compliance specified in the associated enforcement notice. The Council will specify in the Stop Notice when it is to take effect, this is normally no less than 3 days after the service unless special reasons exist for an earlier date. This is usually on grounds of public safety or to prevent serious irreversible harm to the environment. There is no right of appeal against a Stop Notice and it will take effect even if the accompanying Enforcement Notice is appealed. A person found guilty on summary conviction or conviction on indictment shall be liable to a fine, the amount of which is determined by the Court and shall have, amongst other matters, regard to any financial benefits which have accrued or are likely to have accrued as a consequence of the offence. An appeal can be made against the accompanying Enforcement Notice and where this is successful the Council may be liable to pay compensation in certain circumstances. Consequently, the use of stop notices will always be carefully assessed by the Council.
- 2.13 **Temporary Stop Notices (TSNs)** - This power available to local planning authorities was introduced by the Planning and Compulsory Purchase Act 2004 (inserting sections 171E to 171 H into the Town and Country Planning Act, 1990). These are similar to Stop Notices in that they require the immediate cessation of an activity or use but TSNs do not need to be served in conjunction with an enforcement notice. They take effect immediately they are displayed on a site and last for up to 28 days. This enables the Council to decide on whether further enforcement action is appropriate and also what form it should take. Temporary Stop Notices will prohibit only what is essential to

safeguard amenity or public safety or prevent serious or irreversible harm to the environment. Before serving the Notice, the Council, where practicable, may discuss whether there are alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way. It is an offence to contravene a TSN and a person found guilty on summary conviction or conviction on indictment shall be liable to a fine, the amount of which is determined by the Court and shall have, amongst other matters, regard to any financial benefits which have accrued or are likely to have accrued as a consequence of the offence. Any person affected by a TSN can make representations to the Council to challenge the notice however there is no right of appeal to the Secretary of State against the prohibitions in a TSN, although the validity of a decision can be judicially reviewed, and compensation be payable for financial loss if development is held lawful by granting a Certificate of Lawfulness.

- 2.14 **Injunctions** - Applications can be made by the Council to the High Court or County Court for an injunction to restrain an actual or apprehended breach of planning control where it is expedient to do so. Local Planning Authorities can apply for an injunction whether or not it has exercised any other powers to enforce planning control. However, injunctions are generally used as a last resort for the most serious cases where there have been persistent breaches of planning control over a long period and/or other enforcement options have been ineffective. Courts may grant an injunction against a person whose identity is unknown. Failure to comply can lead to unlimited fine or imprisonment. Councils will be required to provide evidence of their inability to ascertain the identity of the person and the steps taken in attempting to do so.
- 2.15 **Prosecution** – The option of pursuing prosecution is open to the Council if a formal notice has not been complied with within a specified period. This involves an evidential test and would need to satisfy a public interest test.
- 2.16 **Planning Enforcement Orders** - The Localism Act 2011 introduced planning enforcement orders (PEOs) to tackle breaches of planning control, both unauthorised uses and development that are deliberately concealed. Planning enforcement orders enable Councils to take enforcement action after the usual time limits for taking enforcement action (as referred to in paragraph 2.5 above) have expired. Councils must have sufficient evidence of the apparent breach to justify applying for a PEO which must be made within 6 months of becoming aware of the breach. The application for a PEO must be made to a Magistrates' Court and a copy served on the owner and occupier of the land and anyone with an interest who would be materially affected by the enforcement action. The applicant and those affected have the right to appear before and be heard by the court. The effect of the PEO is that the Council can take enforcement action during the "enforcement year" which does not begin until the end of 22 days starting with the day of the Court's decision to make the Order or when an appeal against the order has been dismissed. Planning Enforcement Orders will focus on the worst cases of concealment and can only be made where the developer has deliberately concealed the unauthorised development rather than merely refraining from informing the Council about it.

Monitoring and Enforcement Officers

- 2.17 The Monitoring and Enforcement Team form part of the Development Management Team within the Planning Group. Currently the Team comprises the Senior Practitioner - Monitoring and Enforcement, a Senior Enforcement Officer together with three Monitoring and Enforcement Officers whose work is split with planning application work. Their work involves regular liaison with internal and external legal advisers. The staff and financial resources allocated to the monitoring and enforcement work of the County Council is periodically reviewed to ensure that the resources are commensurate with the duties undertaken.
- 2.18 Monitoring and Enforcement Officers form part of the Development Management Team within the Planning Group. These officers undertake a wide variety of work from site inspections, complaint investigation and formal enforcement action. Their work involves regular liaison with internal and external legal advisers. The staff and financial resources allocated to the monitoring and enforcement work of the County Council is constantly under review to ensure that the resources are commensurate with the duties undertaken and a number of officers split their workloads between monitoring and enforcement and planning application work based on the needs at any particular time.

Use of drones

- 2.19 In future the County Council may use drones (unmanned aerial vehicles UAVs) in connection with its monitoring and enforcement functions. This may include inspecting and monitoring sites to ensure compliance with planning permissions, including conditions, and to gather evidence in relation to possible breaches of planning control. In the event that a drone is used the County Council will ensure that such use complies with relevant Council policies and procedures, legislation and regulatory requirements, which may include registration with the Civil Aviation Authority [and where appropriate, notification regarding land and property it is intending to flyover]. Any personal data collected will be stored and retained and disposed of in accordance with the Council's Data Protection policies/ Retention schedule and this is referenced in the Planning Service Privacy Notice which can be found here <https://www.nottinghamshire.gov.uk/planning-and-environment/planning-applications/development-management-privacy-notice>

CHAPTER THREE - MONITORING

- 3.1 The County Council has responsibility for monitoring minerals and waste sites and the County's own developments. Monitoring is undertaken for two reasons firstly, to ensure compliance with the terms of planning permissions including conditions and legal agreements and secondly, to ensure that unauthorised developments are regularised or removed.
- 3.2 Regular monitoring is an essential tool for controlling development and activity. This proactive approach enables the Council to anticipate and resolve breaches of planning control often before they occur. It is through effective monitoring that the public's perception of the quality of development is often established.
- 3.3 Planning permissions for minerals and waste sites and for some of the larger County Council developments are often complex, sometimes with many conditions and legal agreements attached. These may require the submission of further details, e.g. schemes to be agreed, phasing details, landscaping schemes or compliance with time limits or other requirements. The responsibility for submitting details and complying with time limits required by the permission lies with the applicant and / or the site operator. However, the County Council will, wherever possible, remind applicants of the need to submit details required by a planning permission or the need to renew a temporary permission. For the larger minerals and waste sites, which are often subject to several separate planning permissions, this can be achieved by Site Audits where the terms of relevant planning permissions and associated legal agreements are regularly reviewed with the applicant/operator.

Liaison

- 3.4 Where appropriate, liaison with other bodies such as District Councils or the Environment Agency will take place to co-ordinate monitoring arrangements and share data where appropriate.

Monitoring Programme

- 3.5 Once planning permission has been granted systems are put in place to ensure adequate monitoring of the decision. The nature of minerals and waste development requires specialist monitoring often over a considerable period of time. However, these sites operate at a high level of activity at certain times; whilst at other times are active only intermittently.
- 3.6 The monitoring programmes need to be based upon a number of factors including the level of activity, the stage the development has reached, and the nature of the operations involved. All new sites are entered into a database with appropriate

monitoring files established.

Fee Regime

- 3.7 Since April 2006 Minerals and Waste Planning Authorities (MWPA) have been able to recover costs incurred in the routine monitoring of minerals and landfill sites under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013. This does not apply to other forms of waste management such as recycling plants or composting sites. The liability to pay the fee is the responsibility of the primary operator (or split on joint / multi operator sites); in default this would rest with the freehold landowner.
- 3.8 The period over which the fees must be paid covers the full duration of the planning permission from implementation through to final completion of aftercare. At present the national fee set by Government is £397.00 per inspection for active/partially active sites and £132.00 for dormant sites.
- 3.9 The County Council will continue to monitor all relevant sites, irrespective of whether they are able to recover the cost of monitoring, to ensure compliance with the terms of planning permissions and encourage good practice.

Frequency of inspection

- 3.10 The decision on the appropriate number of inspections for each site rests with the MWPA, although Government guidance restricts inspections to a maximum of eight in any charging year and suggests an average of four per year for an active site.
- 3.11 Visits made in response to a complaint are outside the agreed number of visits and are not chargeable, even if the complaint is substantiated. However, in these circumstances it is likely that an increased frequency of monitoring will be needed in the subsequent year to more closely review the problem area(s).
- 3.12 The mechanism for overcoming a disagreement between the Council and the operator regarding visit frequency is through the Council's complaint procedure and ultimately the Local Government Ombudsman.

Criteria for determining frequency of monitoring visits

- 3.13 The County Council decides the monitoring site visit frequency on a site-specific basis, taking into account the following factors: type of site, size, number and complexity of conditions, number of conditions requiring monitoring, stage of development, progressive nature of working, breaches of planning control observed, complaints received and previous history.
- 3.14 A generic set of criteria has been adopted by the Council to determine the site visit frequency. This is set out in Appendix 2. The criteria have been established to reflect guidance that on average a site should expect four chargeable visits per year, with

scope to revise this figure in the light of improved / worsened performance and changes in the circumstances regarding the site type or phase of the development.

- 3.15 Provision is also made for unannounced inspections within these in order to retain scope for unscheduled reviews of operations thereby addressing a concern sometimes raised that operations observed on scheduled visits are unrepresentative of routine day to day operations.

Rights of entry

- 3.16 Generally, access to sites will be part of the established monitoring routine. Monitoring staff will have regard to health and safety requirements, and operators are encouraged to nominate a representative who can act as the main point of contact. However, because of the nature of enforcement work it will often not be prudent or possible to give advance notice of the intention to visit a site.
- 3.17 Authorised officers have a statutory right of entry for enforcement purposes¹. This right is limited to what is regarded as reasonable, in the particular circumstances for effective enforcement of planning control. The legislation specifies the purposes for which entry to land maybe authorised. They are:
- to ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;
 - to determine, whether any of the LPA's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised; and
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

(The inclusion of the words "any other land" means that, if necessary, neighbouring land can be entered, whether or not it is owned or occupied by the person whose land is being investigated).

Legal Requirements

- 3.18 Officers visiting sites will carry their identity cards with them at all times and, where relevant, will produce evidence of authorisation and state the purpose of the visit before entering the land.
- 3.19 When visiting sites for enforcement purposes, officers will seek the cooperation of the owner or occupier. If entry to a site is denied, subsequent visits may involve the assistance of the Police to accompany members of staff. Refusal to allow entry can be regarded as "wilful obstruction" and the owner/occupier could be prosecuted under

Section 196C of the Town and Country Planning Act 1990.

- 320 The County Council will follow relevant legislation in relation to gathering of evidence² and how investigations leading to potential prosecutions are structured³.

¹ Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 as amended.

² Police and Criminal Evidence Act, 1984 and Protection of Freedoms Act 2012. ³Criminal Procedure and Investigations Act, 1996 (subject to subsequent amendments).

CHAPTER FOUR - COMPLAINTS

- 4.1 Minerals and waste activity can be seen as harmful to amenity, destructive to the environment or as a nuisance. Both new and ongoing development can give rise to complaints. It is the responsibility of the County Council to deal with complaints relating to alleged breaches of planning control on minerals and waste sites and for those relating to the County's own developments.
- 4.2 Complaints may be reported directly to the County Council either by telephone, in writing or by email to planning.enforcement@nottscc.gov.uk . When a complaint is made as much information regarding the alleged breach should be supplied and should include the following: the address of the land or property where the breach occurred, details of the development or activity breaching planning control and the date the breach occurred or began. The complainant's contact details should be provided. Personal information will not be shared and will be treated in accordance with the Council's Development Management Privacy Notice which may viewed at <https://www.nottinghamshire.gov.uk/planning-and-environment/planning-applications/development-management-privacy-notice> .
- 4.3 Complaints are sometimes made to other agencies such as District Councils, Parish Councils and the Environment Agency. It is important that close liaison is maintained with such outside bodies to ensure that the correct organisation can follow up the complaint with the appropriate action.

Complaints Procedure

- 4.4 Complaints about alleged breaches of planning control referred to the Team will be dealt with in accordance with the following procedures:
- All complaints will be entered onto the Monitoring and Enforcement Team's Complaints Register.
 - The identity of complainants will be kept confidential (in the event of legal proceedings complainants may be asked to appear in court as witnesses).
 - All complaints will be acknowledged within 3 working days informing the complainant of the case officer dealing with the complaint.
 - The site operatives or owners (where known) will, where appropriate, be advised of the nature of the complaint within 3 working days of the complaint being received.
 - Where appropriate, an initial investigation will be undertaken within 3 working days of the complaint being received.
 - The complainant will receive a written response within 15 working days* of the complaint being made, confirming the outcome of the investigation and any

action the Council proposes to take. If no action is proposed, or investigations are ongoing the reasons will be explained.

- Where a breach of planning control is established the person responsible for the breach will be informed and notified what action should be taken to correct it. A time limit will be given and the consequences of not taking the appropriate action will be explained.
- Where there is no breach of planning control, but the complaint is nevertheless considered a problem, the Council will seek the co-operation of the operator in solving or mitigating the effect of the problem.
- Liaison with other agencies, e.g. Environment Agency, District Councils etc. will take place where the nature of the complaint may be relevant to them.

**This target is an internal performance indicator against which the Development Management Service is measured on a quarterly basis.*

Local Liaison Committees

45 For large sites or those operating over a long period of time, arrangements are often made for the establishment of a Local Liaison Committee which meet on a regular basis. The Liaison meetings aim to achieve an open, transparent and constructive relationship between operators and the local community. This practice is encouraged as it provides a forum where representatives of the County Council, Parish Council, site operatives, other regulatory bodies, elected members and members of the local community can discuss issues which concern them. Whilst some matters can be resolved through these Committees or by local people dealing directly with an on-site contractor, some complaints need to be referred to the Monitoring and Enforcement Team to investigate further.

Corporate Complaints

46 The County Council has a corporate complaints procedure. Anyone dissatisfied with the way in which the Council has handled any matters relating to monitoring or enforcement can pursue a complaint through this procedure. Complaints may be made on-line, by Freephone, in writing or in person. Further details can be found on the County Council website at www.nottinghamshire.gov.uk

5 CHAPTER FIVE - ENFORCEMENT PROCEDURES

- 5.1 Enforcement action will be taken in accordance with the following procedures.
- 5.2 Once sufficient information regarding an alleged or actual breach of planning control is available the site operator and land owner will be sent a letter setting out the County Council's concerns. The letter may contain a request to cease the unauthorised activity or remedy the breach by a particular deadline.

Planning Contravention Notices

- 5.3 The letter may be accompanied by the service of a Planning Contravention Notice⁴ which may only be served when it appears to the LPA that a breach of planning control may have occurred. The service of PCNs does not constitute formal enforcement action and are used to determine site ownership or other relevant information relating to the alleged breach of planning control⁵. Failure to comply with a PCN within 21 days or the supply of false information is a summary offence.
- 5.4 Details of the PCN are entered onto the Monitoring and Enforcement database and a copy of the notice entered onto the Planning Contravention Notice Register.
- 5.5 Where appropriate, a Land Registry search of the land and/or a Company search will be carried out in order to ascertain whether the site is registered land and to obtain ownership details.
- 5.6 Within 5 working days of the expiry of the deadline or upon receipt of a written explanation from the site operator or land owner, a decision will be made on the appropriate action to be taken. This decision may be taken following consultation with Legal Services.
- 5.7 If no further action is warranted a written note of explanation will be placed on the file, and the site operator and/or land owner notified in writing.

Referral to other bodies

- 5.8 If other authorities, such as the district council, or agencies such as the Environment Agency, are responsible for further action, the site operator and/or the land owner will be notified within ten working days of the deadline that the County Council has passed on all relevant information to the appropriate body.

⁴ PCN's are served under Sections 171C and 171D of the Town and Country Planning Act 1990, as amended. ⁵ Other legislation is also sometimes used to obtain information including Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976 as subsequently amended / extended and Section 330 of the Town and Country Planning Act, 1990.

Regularising planning applications

- 5.9 If it is considered appropriate for a planning application to be sought to regularise any breach the site operator / landowner will be informed within ten working days of the deadline.
- 5.10 If the breach continues and no satisfactory agreement can be reached with the site operator and landowner on an acceptable course of action, following consultation with Legal Services they will be notified in writing that formal proceedings are being instigated. Chapter 2 sets out the enforcement tools available to the County Council and the most appropriate course of action will be chosen based on the particular circumstances of the breach of planning control.

Service of notices

- 5.11 If it is considered expedient to do so an Enforcement Notice, Breach of Condition Notice or, in more serious cases, a Stop Notice (or Temporary Stop Notice) will be served on all relevant landowners, occupiers or any other parties having an interest in the land to remedy a breach of planning control. The appropriate notice will be served following consultation with Legal Services.
- 5.12 The notice will identify the land; specify the nature of the breach, the steps necessary to remedy the breach and the timescale for compliance. It is essential that all information on the notice is correct to ensure the notice is not a nullity and that it can be defended if appealed.
- 5.13 All notices will be signed by an appropriately authorised officer.

Member notification

- 5.14 Following the service of a notice the Chairman and Vice-Chairman of Planning and Licensing Committee and the Divisional Member(s) will be notified in writing within 3 working days of the service of the notices.

Planning Register

- 5.15 Within five working days of service a copy of the relevant notice will be sent to the relevant District Council with a request that the notice be entered on the Planning Register and Land Charges Register. District Councils have a statutory duty to place all notices on the Planning Register and declare such details in subsequent search enquiries.

Appeals

- 5.16 Anyone served with an Enforcement Notice can lodge an appeal before the notice takes effect to the Planning Inspectorate. (There is no right of appeal against Breach of Condition Notices, Stop Notices or Temporary Stop Notices). Parties served with Enforcement Notices are informed of their rights of appeal and advised of the procedures. In the event that an appeal is lodged, subsequent action will then follow the appeals process.

6 CHAPTER SIX - MEMBER INVOLVEMENT IN MONITORING AND ENFORCEMENT WORK

6.1 Under the Council Constitution all enforcement functions are delegated to the Corporate Director, PLACE and other authorised officers. Notwithstanding this delegation of power, Members will continue to be involved in monitoring and enforcement issues in a number of ways.

6.2 Firstly, reports will be presented to Planning and Licensing Committee every twelve months. The reports provide Members with the detail of all monitoring and enforcement work undertaken in the preceding 12 months. The following information will be contained within the reports:

- number of site inspections for both County matter and County Council development, including details of the amount of any fees generated by monitoring inspections.
- number of complaints received and investigated and the extent to which those investigations have met local performance indicators. A breakdown of complaints by District will be provided.
- number of notices served, and other action taken together with the reasons for their service.
- an update on the current status of all outstanding enforcement cases.

6.3 Secondly, outside the above report dates some individual cases will be reported to Committee including those which raise specific enforcement issues or involve breaches of planning control likely to have significant impact. These reports will include the following details:

- breach of control
- the steps necessary to remedy it
- the type of action recommended
- the period for compliance
- the reasons why it is expedient to take enforcement action
- request for authority for other appropriate action (e.g. legal action) so as to avoid repeated reports to Committee.

6.4 Member endorsement will also be sought for all enforcement action which may give rise to liability to pay compensation, such as the service of Temporary Stop Notices and Stop Notices. The agreement of the Chairman and Vice Chairman of Planning and Licensing Committee will be sought prior to the service of these notices.

CHAPTER SEVEN - INVOLVEMENT OF LEGAL SERVICES IN MONITORING AND ENFORCEMENT WORK

7.1 Involvement of legal services occurs in the following ways:

Legal advice

- Informal and formal requests for information or advice will be sought from Legal Services as required.

Notices

7.2 The advice of Legal Services will be sought prior to the service of all notices, except Planning Contravention Notices. Requests for advice will include the following information:

- planning history and investigations to date
- details of the alleged breach
- ownership details
- copies of draft enforcement notices and plans
- a summary of potential grounds of appeal
- an assessment of the Human Rights issues
- a cost benefit analysis (in the event a Stop Notice or Temporary Stop Notice is to be served)
- a review of the authority to serve.

7.3 Once drafted the notice will be signed by an appropriately authorised officer.

Injunctions

7.4 Within requests for advice concerning injunctions the above information will be sent to Legal Services together with necessary witness statements. In these cases, the Group Manager- Planning or in their absence the Team Manager of Development Management will sign the request.

7.5 Following receipt of the above information Legal Services will be responsible for advising on the suitability of an injunction and for the drafting and service of relevant documents to the courts and other parties. Legal Services will conduct proceedings in Court or be responsible for instructing an outside partner. Officers from the Monitoring and Enforcement Team will give evidence and be cross-examined as required. The Monitoring and Enforcement Team will be responsible for collecting evidence of compliance and advising Legal Services accordingly.

Prosecutions

7.6 In the event of a prosecution, this will be initiated by a memo to Legal Services signed by the Group Manager Planning or in their absence the Team Manager of Development Management. This will include details of the notices, the alleged offence, evidence collected and a review of the potential weaknesses/strengths of the case. Legal Services will then advise on any further evidence which may need to be collected and subsequently prepare the case, produce and serve the information and conduct the legal case.

Liaison Meetings

7.7 Regular liaison meetings will continue to take place between officers from planning and legal services.

CHAPTER EIGHT - THE MONITORING AND ENFORCEMENT LEGISLATIVE AND POLICY FRAMEWORK

Statutory Background:

Enforcement is a complex area of planning law. All enforcement and monitoring action will be undertaken in accordance with current legislation and guidance.

Enforcement policy guidance is contained within:

- National Planning Policy Framework 2019
- Planning Practice Guidance
- The Planning Inspectorate Guides - Procedural Guide - Enforcement Appeals - England - March 2016
- Procedural Guide - Certificate of Lawful use or development appeals – England - March 2016
- Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by an Inquiry – England - September 2019
- Local Government Ombudsman - Fact sheet 7 - Complaints about planning enforcement April 2019
- Planning Portal - Enforcement Appeals <https://www.planningportal.co.uk>

Local policies are contained within:

- Nottinghamshire Minerals Local Plan (to be replaced by the New Minerals Local Plan and other Minerals Development Documents)
- Nottinghamshire County Council and Nottingham City Council Waste Core Strategy adopted December 2013 and other waste site specific and development management policies (forming the second part of the replacement Waste Local Plan)
- Nottinghamshire and Nottingham Waste Local Plan (Saved Policies) – adopted 2002
- Statement of Community Involvement – adopted 2018
- Various Local Plans produced by District and Borough Councils in Nottinghamshire.

The above legislative and policy framework have been taken into account in preparing this Local Enforcement Plan and are relevant to the monitoring and enforcement work of the County Council.

CHAPTER NINE - MONITORING AND ENFORCEMENT POLICY STATEMENT

- 1 In dealing with the enforcement of planning control the County Council will have regard to the provisions of the Development Plan, current legislation, government guidance and any other material considerations.
- 2 The County Council, in carrying out its enforcement duties, will be professional, consistent, transparent and fair with all parties, including those who are alleged to be responsible for unauthorised activity and those who have reported any alleged breach of planning control.
- 3 Investigations and action undertaken as part of the enforcement responsibilities of the County Council will be publicly available in Planning and Licensing committee reports.
- 4 The details of all monitoring and enforcement work will be regularly reported to Members for information. Approval of the Chairman and Vice Chairman will be sought in enforcement cases where compensation issues may arise.
- 5 All monitoring and enforcement work will be undertaken in accordance with the Council's Corporate objectives and will aim to meet locally or nationally set performance indicators.
- 6 The County Council, in fulfilling its enforcement responsibilities, will liaise with other relevant parties (including the Environment Agency, District Councils and Environmental Health Officers) to resolve breaches of planning control. Appropriate contact with the general public and developers will be maintained.
- 7 The County Council will periodically review the resources that it makes available for enforcement and monitoring work to ensure staff and financial resources are sufficient to fulfil its responsibilities for the enforcement of planning control.
- 8 The County Council will undertake its monitoring and enforcement work in accordance with the Local Enforcement Plan. The Plan will be periodically reviewed and updated, as appropriate.

CHAPTER TEN - USEFUL CONTACTS**Monitoring and Enforcement Team and other useful contacts:**

Enforcement and Monitoring Team	0115 9932599	planning.enforcement@nottscc.gov.uk
Environment Agency	08708 506506	enquiries@environmentagency.gov.uk
Planning Portal		www.planningportal.gov.uk
Ashfield District Council	01623 450000	www.ashfield-dc.gov.uk
Bassetlaw District Council	01909 533533	www.bassetlaw.gov.uk
Broxtowe Borough Council	0115 9177777	www.broxtowe.gov.uk
Gedling Borough Council	0115 9013901	www.gedling.gov.uk
Mansfield District Council	01623 463463	www.mansfield.gov.uk
Newark and Sherwood District Council	01636 650000	www.newark-sherwooddc.gov.uk
Nottingham City Council	0115 9155555	www.nottinghamcity.gov.uk
Rushcliffe Borough Council	0115 9819911	www.rushcliffe.gov.uk

24 November 2020

Agenda Item: 7

REPORT OF CORPORATE DIRECTOR - PLACE

DEVELOPMENT MANAGEMENT PROGRESS REPORT

Purpose of the report

1. To report on planning applications received by the Development Management Team between 25th September 2020 and 6th November 2020, to confirm the decisions made on planning applications since the last report to Members on 13th October 2020, and to detail applications likely to come before Committee in the coming months.

Background

2. Appendix A highlights applications received since the last Committee meeting, and those determined in the same period. Appendix B sets out the Committee's work programme for forthcoming meetings of Planning and Licensing Committee.

Minerals Local Plan Update

3. The public examination on the Nottinghamshire Minerals Local Plan was undertaken by an independent Planning Inspector between Monday 26th to Thursday 29th October. As a result of this process, the Council has prepared a series of modifications for the inspector to consider. These modifications will be subject to a round of public consultation which is expected to start in late November/early December, and will run for an 8 week period to take account of the Christmas period.
4. Once the public consultation has finished, the modifications and any comments received from the public consultation will be sent to the inspector to help inform his final report. If the inspector's report is favourable, a report will be taken to Full Council to seek adoption of the Nottinghamshire Minerals Local Plan.

Statutory and Policy Implications

5. 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.

6. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol 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.

RECOMMENDATIONS

7. That Committee considers whether there are any actions they require in relation to the contents of the report.

ADRIAN SMITH

Corporate Director - Place

Constitutional Comments - [RHC 10/11/2020]

Planning and Licensing Committee is the appropriate body to consider the contents of this report.

Financial Comments [SES – 11/11/2020]

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

Background Papers Available for Inspection

None

Electoral Division(s) and Member(s) Affected

All

For any enquiries about this report please contact:

Report Author / Case Officer
Rebecca Kirkland
0115 9932584

Planning Applications Received and Determined
From 25th September to 6th November 2020

Division	Member	Received	Determined
BASSETLAW			
Worksop South	Cllr Kevin Greaves	Variation of conditions 3 (Amended layout in SMA B to include weighbridge) and 6 (hours of working), of planning permission 1/18/00791/CDM for the soil management areas at Tetron Welbeck LLP Soil Management Area; received 26/10/2020.	
Retford West	Cllr Mike Quigley	Prior Notification of Proposed Demolition of former elderly persons' home - single and two storey CLASP building at St Michael's View Elderly Persons' Home; received 09/10/2020.	
Retford West	Cllr Mike Quigley	Erection of 2.0m high Heras Pallas fencing and gates in green or black RAL 6005/9005 at St Michael's View Elderly Persons' Home; received 09/10/2020.	
Retford West	Cllr Mike Quigley		Prior Notification of Proposed Demolition of former elderly persons' home - single and two storey CLASP building at St Michael's View Elderly Persons' Home; GRANTED on 06/11/2020.

Division	Member	Received	Determined
Worksop West	Cllr Sybil Fielding		Erection of 2.4m high Heras fencing, dropped kerb with vehicular gate access at North of Harlequin Drive and West of Gatekeeper Way; GRANTED on 13/10/2020.
MANSFIELD - None			
NEWARK & SHERWOOD			
Muskham and Farnsfield	Cllr Bruce Laughton	Planning application for non-compliance with conditions 1, 20 and 22 of planning permission 3/15/00169/cmm at the egmanton oilfield, including the egmanton gathering centre, well pads 1, 3, 5, 7, 14, 27, 32, 35, 44, 52 and 64 at Egmanton Oil and Gas Field; received 15/10/2020.	
Ollerton	Cllr Mike Pringle		Planning application to retain existing modular classrooms (known as Building 2 and 3) access ramps/steps and associated landscape works at Walesby Primary School; GRANTED on 16/10/2020.
Farndon and Trent	Cllr Sue Saddington		To renew planning permission for the existing 30 place pre-school nursery at St Peter's Early Years, Memorial Hall Playing Fields; GRANTED on 30/10/2020.
ASHFIELD			

Division	Member	Received	Determined
Sutton Central and East	Cllr Samantha Deakin	Change of use from a residential dwelling to a small (1-2 bed) home for children in the care of the local authority at School House, Mansfield Road; received 05/11/2020.	
Sutton West	Cllr Tom Hollis		Change of use of caretaker's bungalow to school use (Class D1) and erection of 2.4m high security fencing, gates and associated landscape works at Woodland View - Caretaker's Property (John Davies) Barker Street, Huthwaite; GRANTED 13/10/2020.
Sutton North	Cllr Helen-Ann Smith		New building to house a vacuum pumping station for new sewage infrastructure to be installed within the village to alleviate potential contamination issues with associated infrastructure including hardstanding and wooden bar fencing and gates at Buttery Lane, Teversal; GRANTED 06/11/2020.
BROXTOWE - None			
GEDLING			

Division	Member	Received	Determined
Carlton East	Cllr Nicki Brooks		Proposed Thermal Hydrolysis Process plant and the associated buildings, kiosks and infrastructure changes, involving the redevelopment within the existing Sewage Treatment Works site at Severn Trent Water Plc, Stoke Lane; GRANTED on 02/11/2020.
RUSHCLIFFE			
Leake and Ruddington 2	Cllr Andrew Brown and Cllr Reg Adair	Construction of two vehicle passing places and re-surfacing of drive at St Peters C OF E Junior School; received 21/10/2020.	

Schedule of future planning applications to be reported to Planning and Licensing Committee

(Please note: The committee dates identified are for guidance only. A final decision regarding the committee date is not made until shortly before the agenda is published).

Target Committee	Planning App No.	Location	Development
24 th November 2020 or 5 th January 2021	8/20/01279/CMA	Bunny Materials Recycling Facility Loughborough Road Bunny NG11 6QN	Retrospective Section 73 planning application seeking permission to vary the approved layout of the waste recycling facility at Bunny, Notts to provide additional Incinerator Bottom Ash storage facilities
5 th January 2021	3/20/01244/FULR3N	British Sugar Corporation Ltd Sports Ground, Great North Road, Newark On Trent, NG24 1DL	Change of use from former sports field to land to be used for conditioning (drying by windrowing) of topsoil material recovered from sugar beet delivered and excavated from soil settlement lagoons onsite, and engineering works to construct an internal access route to serve the soil conditioning area and excavate a flood storage compensation area.
9 th February 2021	1/18/01611/CDM	Harworth Colliery No 2 Spoil Heap, Blyth Road, Harworth,	Importation of 3.6 million cubic metres of restoration materials to complete the restoration of Harworth Colliery No. 2 spoil heap.
9 th February 2021	8/20/01826/CTY	Ratcliffe-on-Soar Power Station, Nottingham, NG11 0EE	Proposed Development of the East Midlands Energy Re-Generation (EMERGE) Centre (a multifuel Energy Recovery Facility, recovering energy from waste material) and associated infrastructure.

Planning Applications currently being processed by the County Council which are not currently targeted to a specific meeting of the Planning and Licensing Committee.

Planning Application: 5/13/00070/CCM
 Location: Shilo Park, Shilo Way, Cossall
 Proposal: Change of use to waste timber recycling centre including the demolition of existing building and construction of new buildings

Planning Application: 8/17/02096/CMA
 Location: Land off Green Street, Mill Hill and land at Barton in Fabis, off Chestnut Lane, Nottingham
 Proposal: The extraction and processing of sand and gravel, including the construction of a new site access road, landscaping and screening bunds. Mineral washing plant and other associated infrastructure with restoration to agriculture and nature conservation areas.

Planning Application: 2/2018/0040/NCC
Location: Ratcher Hill Quarry, Southwell Road West, Rainworth, Mansfield, NG21 0HW
Proposal: Retrospective permission for silica sand extraction and associated revised site restoration proposals.

Planning Application: 3/19/00100/CMM
Location: Cromwell North Quarry, Land Between Carlton on Trent and Cromwell, Newark
Proposal: Proposed extraction of 1.8 million tonnes of sand and gravel together with the erection of mineral processing plant and associated ancillary infrastructure. the provision of a new access, and the progressive restoration of the site to nature conservation over a period of 9 years.

Planning Application: 4/V/2020/0560
Location: Leen Valley Golf Club, Wigwam Lane, Hucknall, NG15 7TA
Proposal: Improvements to Leen Valley Golf Club including improvements to the existing practice ground outfield and part of the 16th hole including a flood attenuation basin and the creation of an irrigation storage pond; an adventure golf putting area and a summer toboggan zone using imported soils; with associated ecological improvements and planting.