

# Bath & North East Somerset Council

MEETING: **Development Control Committee**

MEETING DATE: **13th February 2013**

AGENDA  
ITEM  
NUMBER

--

RESPONSIBLE OFFICER: Lisa Bartlett, Development Manager, Planning & Transport Development (Telephone: 01225 477281)

TITLE: **APPLICATIONS FOR PLANNING PERMISSION**

WARDS: ALL

BACKGROUND PAPERS:

## AN OPEN PUBLIC ITEM

### BACKGROUND PAPERS

List of background papers relating to this report of the Development Manager, Planning and Transport Development about applications/proposals for Planning Permission etc. The papers are available for inspection online at <http://planning.bathnes.gov.uk/PublicAccess/>.

- [1] Application forms, letters or other consultation documents, certificates, notices, correspondence and all drawings submitted by and/or on behalf of applicants, Government Departments, agencies or Bath and North East Somerset Council in connection with each application/proposal referred to in this Report.
- [2] Department work sheets relating to each application/proposal as above.
- [3] Responses on the application/proposals as above and any subsequent relevant correspondence from:
  - (i) Sections and officers of the Council, including:
    - Building Control
    - Environmental Services
    - Transport Development
    - Planning Policy, Environment and Projects, Urban Design (Sustainability)
  - (ii) The Environment Agency
  - (iii) Wessex Water
  - (iv) Bristol Water
  - (v) Health and Safety Executive
  - (vi) British Gas
  - (vii) Historic Buildings and Monuments Commission for England (English Heritage)
  - (viii) The Garden History Society
  - (ix) Royal Fine Arts Commission
  - (x) Department of Environment, Food and Rural Affairs
  - (xi) Nature Conservancy Council
  - (xii) Natural England
  - (xiii) National and local amenity societies
  - (xiv) Other interested organisations
  - (xv) Neighbours, residents and other interested persons
  - (xvi) Any other document or correspondence specifically identified with an application/proposal
- [4] The relevant provisions of Acts of Parliament, Statutory Instruments or Government Circulars, or documents produced by the Council or another statutory body such as the Bath and North East Somerset Local Plan (including waste and minerals policies) adopted October 2007

### **The following notes are for information only:-**

- [1] "Background Papers" are defined in the Local Government (Access to Information) Act 1985 do not include those disclosing "Exempt" or "Confidential Information" within the meaning of that Act. There may be, therefore, other papers relevant to an

application which will be relied on in preparing the report to the Committee or a related report, but which legally are not required to be open to public inspection.

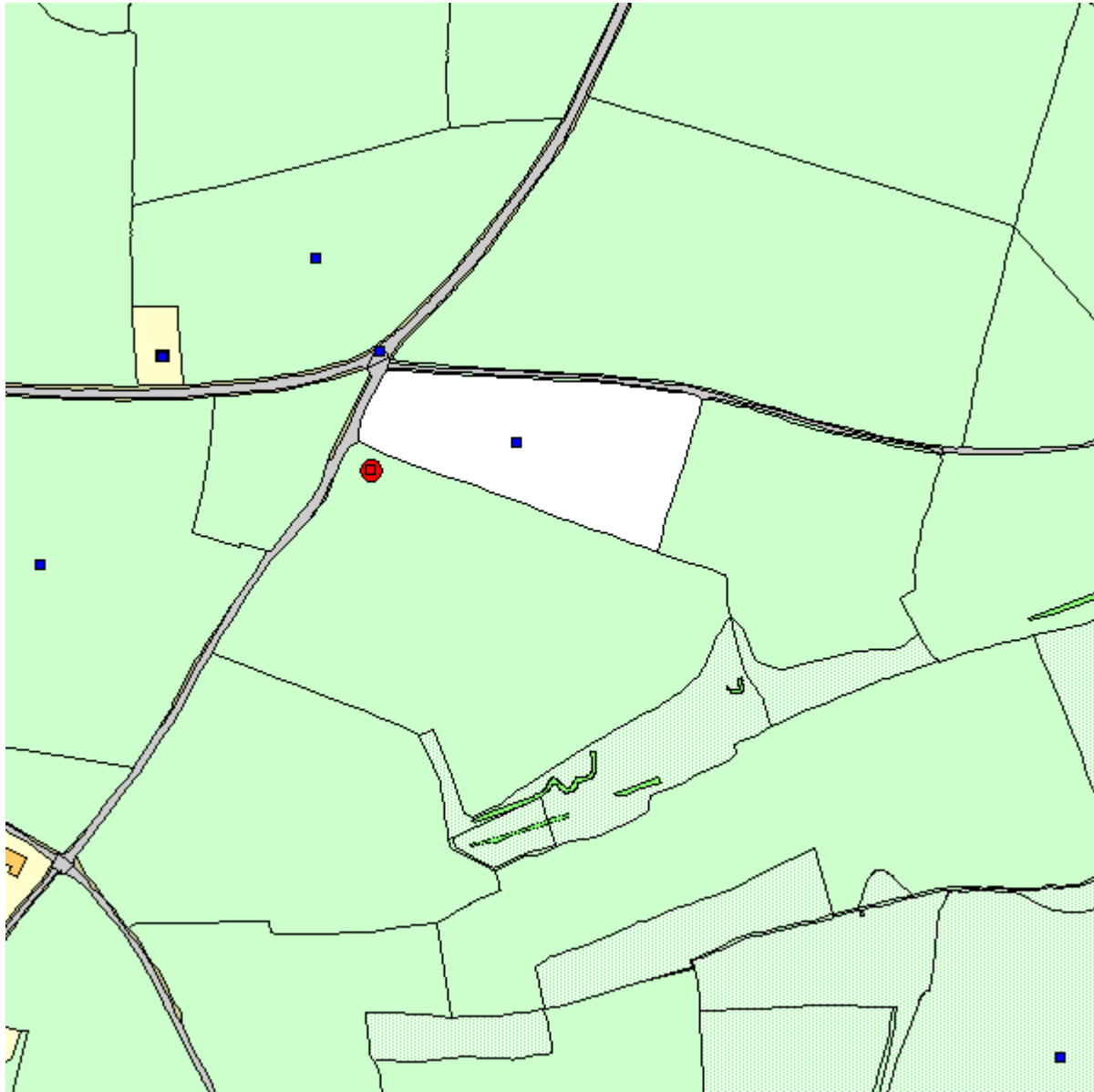
- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting the requirements of the above Act, other letters and documents of the above kinds received after the preparation of this report and reported to and taken into account by the Committee will also be available for inspection.
- [4] Copies of documents/plans etc. can be supplied for a reasonable fee if the copyright on the particular item is not thereby infringed or if the copyright is owned by Bath and North East Somerset Council or any other local authority.

## INDEX

ITEM NO.	APPLICATION NO. & TARGET DATE:	APPLICANTS NAME/SITE ADDRESS and PROPOSAL	WARD:	OFFICER:	REC:
01	05/00723/VAR 3 September 2009	Hinton Organics (Wessex) Limited Hinton Organics Ltd, Charlton Field Lane, Queen Charlton, BS31 2TN, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.	Farmborough	Anthea Hoey	REFUSE
02	05/01993/FUL 3 September 2009	Hinton Organics (Wessex) Ltd Hinton Organics Ltd, Charlton Field Lane, Queen Charlton, BS31 2TN, Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.	Farmborough	Anthea Hoey	REFUSE
03	11/00022/VAR 2 March 2011	Hinton Organics Ltd Parcel 5319, Charlton Field Lane, Queen Charlton, Bristol, Bath And North East Somerset Variation of conditions 13,16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)	Farmborough	Anthea Hoey	REFUSE
04	12/04932/FUL 15 January 2013	Mr J Hill Fir Tree Inn, 140 Frome Road, Radstock, Bath And North East Somerset, BA3 3LL Erection of 2 no. residential dwellings with associated amenity space and parking.	Radstock	Heather Faulkner	PERMIT

**REPORT OF THE DEVELOPMENT MANAGER OF PLANNING AND TRANSPORT**  
**DEVELOPMENT ON APPLICATIONS FOR DEVELOPMENT**

**Item No:** 01  
**Application No:** 05/00723/VAR  
**Site Location:** Hinton Organics Ltd Charlton Field Lane Queen Charlton BS31 2TN



**Ward:** Farmborough

**Parish:** Compton Dando

**LB Grade:** N/A

**Ward Members:** Councillor S Davis

**Application Type:** Application for Variation of Condition

**Proposal:** Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.

**Constraints:** Greenbelt,

**Applicant:** Hinton Organics (Wessex) Limited

<b>Expiry Date:</b>	3rd September 2009
<b>Case Officer:</b>	Anthea Hoey

## COMMITTEE REPORT

### Planning Applications

**05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.**

05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.

11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)

**Case Officer: Anthea Hoey**

### Details of location and proposal and Relevant History:

**Charlton Field Lane, Queen Charlton, Nr Keynsham, Bristol, BS31 2TN**

#### 1. Reason for Reporting Application to Committee

Because of the complexity of the planning history of the site. Also because of legal challenges by third parties which led to the quashing of the original planning permissions granted to the two applications dating from 2005. The challenge resulted in a requirement to screen the applications. This position was referred to the committee on 17 February 2010. The Secretary of State has subsequently made a screening direction to the effect that all three applications are for EIA development.

#### 2. Description of the site and proposed development

The site is an existing composting facility, which is located off Charlton Field lane, between Queen Charlton and Keynsham. The site was previously used as the processing works for the adjacent former Queen Charlton Quarry, now in the final stages of restoration by inert landfilling.

The applications seek variations to conditions on the planning permission granted in 1998 for the temporary use of the site for 10 years for the manufacture of organic green compost. The composting use actually commenced on 31 January 2001.

The site is in the Green Belt and is part of the Forest of Avon.

The details of the proposals in each application are as follows:-

Application 05/00723:-

**05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.**

Conditions 13 and 16 of planning permission 97/02626 state:

*"13 No material other than green garden and parks waste (and no kitchen or animal waste) shall be imported to the site without the prior written approval of the Local Planning Authority."*

*"16 No more than five heavy goods vehicles shall enter the site on any day. From the date of this permission the site operators shall maintain daily records of vehicle movements and make them available to the Local Planning Authority at any reasonable time upon request."*

These conditions were temporarily varied under planning permission 04/00105/VAR granted on the 15 March 2004 to allow the composting of cardboard waste and to allow 82 HGV movements a week between March 2004 and October 2004 and 60 HGV movements a week between November 2004 and February 2005.

Application 05/00723 seeks authorisation to retain those changes until the completion of composting operations permitted under 97/02626.

The site has in fact continued to receive cardboard waste and to operate to the higher limits of HGV movements since March 2005.

**05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.**

This application seeks authorisation for an increase in the size of the concrete hardstanding from 2048 square metres to 4082 square metres and for a further variation of condition 13 (quoted above) to allow the receipt of wood waste.

The increase in the size of the hardstanding was applied retrospectively, and due to the earlier granting of the proposals sought in the application, the site has received wood waste since November 2006.

**11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling**

This application incorporates the proposals to allow composting of cardboard and of wood waste, and to increase the number of HGV movements from both the above applications, and in addition seeks a variation of condition 19 of permission no. 97/02626/MINW.

Condition 19 of permission no. 97/02626/MINW states:-

*"The green waste composting operations authorised by this permission shall cease not later than 10 years from the commencement of composting operations."*

The variation sought is to allow operations to continue for a period of 18 months from the determination of the application. The application was submitted in January 2011, less than a month before the original 1998 permission expired.

### **3. Relevant background**

The first judicial review was against the Council's view that the two 2005 applications did not require to be screened under the 1999 EIA Regulations. The Court held that Council's understanding of the Regulations was correct, that the Regulations failed to implement the relevant EU Directive properly and that the Directive required the applications to be screened. The Council promptly screened the applications, negatively. However in January 2010 the Secretary of State intervened and took upon himself the responsibility for screening the applications. He then spent over two years doing this. By the time he made a screening direction, on 9 March 2012, application 11/00022 had also been submitted and the Secretary of State screened this also.

The Secretary of State directed that each application was for EIA development because the development was likely to have significant effects on the environment because of the possibility of unacceptable odours originating from the operations and because of the likelihood of a release of nitrogen rich effluent into the Nitrogen Vulnerable Zone (NVZ). The possible sources for the release of nitrogen rich effluent were a leak of leachate and the spreading of non PAS 100 compost/waste onto the NVZ.

In response to the screening direction Officers made it clear to local objectors that they would give the applicant an opportunity to submit an environmental statement and stated that –

‘Officers accept that, if Hinton does not avail itself of the opportunity to submit an environmental statement, the Council will be obliged to serve an enforcement notice requiring the complete cessation of all activities on the Composting Site and the restoration of the Site.’

This was a correct statement of the legal position.

Despite this statement objectors started a third judicial review against the Council, challenging its failure to take immediate enforcement action. Permission has not yet been granted for the judicial review and Officers consider that the proceedings lack any merit. A ‘rolled-up’ hearing of the judicial review proceedings will take place in the High Court in Bristol on 21 and 22 February 2013.

To assist the applicant Officers made a scoping opinion on 17 April 2012, setting out the matters to be covered in the environmental statement. They imposed a deadline of 17 July for the submission of an environmental statement.

The applicant sent a document which purported to be an environmental statement to the Council on 17 July 2013. However it failed to comply with most of the legal requirements for the ‘submission’ of an environmental statement set out in the EIA Regulations and Officers had to explain these to the applicant in some detail. The requirements for submission were only satisfied on 14 September 2012.

Upon scrutiny it was found that the applicant’s document failed to satisfy the requirements for an environmental statement in numerous respects. In these circumstances the Council was obliged to serve a notice under r19 of the Regulations, identifying the deficiencies and requiring them to be remedied. Officers sent a r19 notice to the applicant on 31 October 2012. They imposed a deadline of 17 December for the submission of the information.

A volume of information was submitted on 17 December. However on examination this too was found to be significantly deficient (see further below).

The Regulations do not provide for repeated r19 notices. R3 states that a local planning authority cannot grant an application for EIA development if there has been no environmental statement. It follows that, if Members determine the applications, they must refuse them. If Members do this, the question of enforcement action will obviously arise. This is the subject of a second report.

Members should note that, if an enforcement notice is served and appealed, the enforcement notice will be suspended and the applicant will be given a further opportunity to submit an environmental statement by the Secretary of State. (This is the result of r36 of the 2011 EIA Regulations, which will apply to any enforcement notice served in this case. The determination of the three outstanding planning applications is governed by the 1999 EIA Regulations and the references to Regulations in this report are, unless otherwise stated, to the 1999 Regulations). This is so even though the local planning authority (i) has already given abundant opportunity for this, (ii) has served a r19 notice, (iii) has no further power itself to require an environmental statement and (iv) has been forced by r3 to refuse planning permission.

#### **4. Summary of Consultation/Representations:**

**PUBLOW AND PENSFORD PARISH COUNCIL.** Requested that additional time be given to provide a response. The comments will be reported verbally at the meeting.

**COMPTON DANDO PARISH COUNCIL**

The Parish Council received the consultation request on the Reg 19 response too late to be considered at the January meeting and the next meeting is not until 19 February.

The Parish Council has asked for its original comments on the applications to be reported instead and advise that the Parish Council been invited to the liaison group meetings with local residents, and this has been a positive move. However, complaints are still received about mud on road, lorry movements, smell etc

The previous responses are:-

**11/00022/VAR –**

**Response dated April 2012**

Compton Dando Parish Council would like to raise the following comments on the above application :

- The Parish Council supports the cessation of operations in July 2012;
- The Parish Council requests that consideration be given to the proposed clause 5 of the Joint Waste Strategy Policy 8 (Landfill);
- It is noted that an Environmental Impact Assessment is required at the site;
- It is strongly recommended that scientific monitoring of the operating procedures at this site be undertaken.

**Response dated March 2011**

The Parish Council recommend that this application goes to committee as the Parish Council feel there is insufficient scientific monitoring, they have reservations with regard to the proposed increase of lorry movements, they are concerned about the visual impact of the site, they have received complaints that the conditions of the original application are not being adhered to, they have received complaints that there are inaccuracies within the application documentation in respect of the distance from the compost site to the nearest receptor.

Copies of letters from a local resident – (reported separately in this report) and from Council officers were attached together with an extract from the Joint Waste Core Strategy Pre-Submission Document:

**05/00723/VAR and 05/01993/FUL**

**Response dated July 2009,**

Due to insufficient information the Council are not clear on what they are being asked to comment on but would remind you of their previous comments which was that they had reservations, Hinton Organics have not needed the number of lorries specified so the limit should be reduced. Permission should only be granted for another 12 months and reviewed annually. There is strong feeling that there is insufficient scientific monitoring of the operating procedures and the Council still receive complaints/concerns regarding the operation.

**WHITCHURCH PARISH COUNCIL :**

Any comments will be reported verbally at the meeting.

**KEYNSHAM TOWN COUNCIL:**

The Town Council supports all the applications.

**ENVIRONMENT AGENCY:**

The EA responses to the different applications are:-

05/00723

The Environment Agency has no objection to the variation of conditions 13 and 16 to allow permanent recycling of cardboard waste and truck movements.

05/01993

The Environment Agency has no objection to the variation of condition to increase the concrete pad area. The Operator must comply with its Environmental Permit with regard to the amounts of waste stored onsite at any one time, which at this time is 800 tonnes.

Drainage from this area runs to a slurry lagoon. Please note that this slurry lagoon is only permitted to reach up to 90% full, with any excess required to be tankered away. Otherwise there will be a breach of the Environmental Permit.

11/00022/VAR

The Environment Agency has no objection to the variation of conditions 13, 16 and 19, for this proposal.

However, as a matter of completeness, and to make corrections to the accompanying documentation, wish to make the following comments:

Previous correspondence regarding this application sent on the 9<sup>th</sup> Feb 2011 should be taken into consideration. Since Feb 2011 the site then operating under the name Hinton Organics (Wessex) Limited were prosecuted for three offences for breaches of their permit, relating directly to odour control and waste acceptance criteria. A post conviction plan was provided and accepted. The site permit was transferred to Reorganics Limited on the 16<sup>th</sup> November 2012.

Reorganics Limited currently holds permit number EPR/LB3339RK. They do not hold any other Environment Agency permits or exemptions.

The following points should be noted:

The previous company in charge of this permitted facility Hinton Organics (Wessex) Limited, had a long history of non-compliance and enforcement history from the Environment Agency. Reorganics have not yet had a routine inspection for compliance. The Compliance Rating of a site shows the total Compliance Classification Scheme (CCS) score during that calendar year. All sites start the calendar year with no breaches and hence a Band A Compliance Rating. As the year progresses breaches may be recorded against permit requirements, points are accrued and band ratings go down.

Information provided under Point 2, the odour management plan.

The Odour Management plan provided by the site is not yet accepted by the Environment Agency as further improvements have been suggested. We are in the process of providing feedback for improvements to this document.

Information provided under Point 13 of the documents provided states that the Environment Agency tests the leachate lagoon. This has been done on one occasion, which indicated that the results were within the working plan limits, that was in place at the time. The EA does not regularly test the leachate in the lagoon.

Information provided under Point 15 of the documents provided states that it is not uncommon for the lagoon to run dry, and that leachate is recirculated if the lagoon reaches 90%. The Environmental Permit allows for leachate to be recirculated during the sanitisation phase only and only if the compost requires moisture. It does not allow the recirculation of leachate in order to lower the lagoon levels. An annual inspection of the lagoon liner is required by the environmental permit. Inspecting Environment Agency Officers have not noted any other occasion when the lagoon has run dry.

Information not received for incidents:



Incident information was sent to Jo Downes on the 18<sup>th</sup> Dec. The EA attached a document detailing odour related incidents for which enforcement action was taken. This information is also available on the public register at <http://epr.environment-agency.gov.uk/ePRInternet/SearchRegisters.aspx>

Reorganics refers to an odour report carried out in 2007 stating in several places that the level of odour was insignificant. The attached information listed incidences of enforcement action taken for breaches of the Environmental Permit with regard to Odour.

The Environment Agency does hold rainfall data for a number of rain gauges. To calculate predicted effect from climate change various scenarios are available on the UKCIP website. <http://www.ukcip.org.uk/bacliat/>

Please refer to the current environment agency position statement on permitting of Open Windrow Composting sites which is:  
<http://www.environment-agency.gov.uk/research/library/position/41211.aspx>

The initial response to application 11/00022 dated 9 February 2011 raised no objection in principle to the proposal but wish the following to be taken into consideration:

Advice to Planning Authority/Applicant:

The site currently operates to Permit Number EPR / DP349LJ. The closest residential property is approximately 150m from the site boundary.

On 30 November 2009 the permit was varied to require Bioaerosol Monitoring to be undertaken. The most recent report submitted as part of the Planning Statement is a draft version; the accepted final version is available through the Environment Agency's public register if required by the LPA.

The permit outlines the cardboard and wood waste streams which the site is permitted to accept.

Information was provided regarding the rules set out in the permit for the use of the compost from the site in the restoration of the adjacent inert landfilling site

The EA advised that the assertion in the planning statement that *'there have been no issues with in terms of any pollution to air, land or water over that period'* is not considered to be accurate, and a reference was given to records of past complaints pursued by the EA.

The response also gave a reference to the Environment Agency's position statement on sites which operate composting operations within 250 metres of a 'sensitive receptor' (typically a dwelling or workplace).

**HIGHWAY DEVELOPMENT OFFICER:**

05/00723, 05/01993 and 11/00022/VAR

Response dated 10<sup>th</sup> January 2013

The highway response remains one of NO OBJECTION, subject to the conditions set out in the response to 11/00022 dated February 2011.

11/00022/VAR

14<sup>th</sup> February 2011

In highway terms, this application is broadly the same as 05/00723/VAR and 05/01993/FUL, to which no highway objections were raised.

Charlton Lane is subject to a local 7.5 tonne environmental weight restriction to the north of the site, commencing at the Redlynch Lane junction. Vehicles exceeding this weight limit are not permitted to pass through the area of restriction, so it is likely all HGV's accessing and egressing the site will need to do so via Woollard Lane and A37. Drivers should be informed of this restriction.

Expressed concern about the lack of a wheel wash as required by condition 11 of 97/02626/MINW. This all the more importance given the proposed increase in vehicles

Bearing the above in mind, the highway response is one of NO OBJECTION, subject to the following conditions;

1. Vehicles carrying material to or from the site shall not exceed in size an eight wheel tipper lorry and be restricted in number to a maximum of 100 vehicles (200 movements) per seven day week.

Reason: To control the size and movement of vehicles in the interests of highway safety.

2. Each vehicle attending the site shall be properly logged with the load recorded in cubic metres (for preference). A certified summary of the records shall be submitted in writing to the Local Planning Authority on a bi-monthly basis within 10 working days of the end of each second month.

Reason: To maintain and overview of the traffic conditioned above.

3. All vehicles leaving the site shall be inspected to ensure that they are in a condition not to emit dust or deposit mud, slurry or other debris on the highway, and wheel cleaning facilities shall be installed prior to the commencement of works, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter, the wheel wash facilities shall be maintained in operation at all times during the life of the planning permission.

Reason: In the interests of highway safety.

4. The deposit of materials or slurry from the site on the public highway shall be treated as an emergency and will be cleared regularly by a vacuum/road sweeper and/or hand picked in the case of litter. Visual inspections of the site access road will be carried out daily and staff will report any problems with mud on the site surface immediately to the site manager. Vehicles will be visually inspected before exit to check that loads are safe and that no mud is carried on the wheels or body of the vehicle.

Reason: In the interests of highway safety.

**ENVIRONMENTAL HEALTH OFFICER:**

Any comments will be reported verbally at the meeting.

**COUNCIL ECOLOGIST:**

Any comments will be reported verbally at the meeting.

**PLANNING POLICY SECTION OF BANES PLANNING**

No comment.

**NATURAL ENGLAND:**

'Natural England does not consider that these applications pose any likely or significant risk to those features of the natural environment for which we would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this consultation' The features requiring more detailed consideration include SSSIs, Natura 2000 site, National Park, Area of Outstanding Natural Beauty or a large population of a protected species which may affect a significant quantity of habitat across the country.

The lack of case specific comment from NE should not be interpreted as a statement that there are no impacts on the natural environment.

In particular, NE would expect the LPA in determining the applications to assess and consider the possible impacts resulting from this proposal on Protected species and Local wildlife sites, and to consider the scope for biodiversity enhancements

Initial response dated April 2012 was written on the basis that the development was not EIA development. NE raised no objections but asked to be consulted again if any changes to the application were made.

**ENGLISH HERITAGE**

Do not consider that it is necessary for these applications to be referred to EH.

## **OTHER REPRESENTATIONS/THIRD PARTIES:**

39 letters have been received from 16 different local residents and a solicitor acting on behalf of one of them.

The letters raise objections on the grounds of

- impact on health,
- inaccuracies in the information submitted re distances to nearest receptors, this should include adjacent farmland, which retains permitted use rights fort changes to their current grazing use. Live stock should also be included as sensitive receptors.
- impact from odour and air pollution from bio-aerosols,
- impact from noise,
- impact on traffic safety, mud on roads unsuitable roads leading to the site and damage to surface and verges,
- impact on Green Belt,
- proximity to houses, the site is in the wrong place and should be restored to agriculture
- impact on wildlife,
- impact from fly tipping/litter,
- failure to comply with existing conditions and limits, including a compound on adjacent land.
- The supporting information does not satisfy the requirements for an Environmental Statement.
- The unauthorised sale of wood from the site
- Suspicion at the applicant's change of name.

Several of the respondents requested that enforcement action be taken to ensure the use of the site is discontinued.

## **5. The purported environmental statement**

The background to this case is that the composting of cardboard and wood and the increase in lorry movements were all originally approved in 2005 and 2006 and the site has been operating under these variations in the conditions to this effect since. The increase in the size of the hardstanding has been in place since before then, but was originally approved in 2006.

The NVZ was introduced by legislation that came into force on 1 January 2009.

The proposal for the extension of time was submitted before expiration of the original 10 year period commencing in January 2001.

However, in accordance with the rulings by the High Court and by the Secretary of State, the continued operation of the site is EIA development and the Council is prohibited from granting planning permission without first considering environmental information, i.e. an environmental statement.

The information submitted by the applicants in July and December is not considered to constitute an environmental statement for a number of reasons. These are set out below:-

### **Presentation**

There is no correct list of contents, nor is there a proper Non Technical Summary of the second submission. A Non Technical Summary is one of the items of information that is required as a minimum as part of an Environmental Statement.

### **Content**

The following information is considered lacking for the reasons given:-

**Restoration and after care.** Restoration and after care is a relevant aspect of the development that is to be described in the ES. The submission includes a copy of the wording of the original condition requiring submission of a restoration scheme and states that a variation will be sought to this, but does not specify

what the variation will be, nor its objectives in terms of afteruse. As the application only seeks a further 18 months operation, this is considered a material deficiency.

**Physical measures for mitigation of environmental effects.** These are also relevant aspects of the development. The submission does not address the important question of the adequacy of capacity of the lagoon, which is considered a key feature in the control of the risk of leaks of leachate into the NVZ. Other elements necessary for the control of odour such as misting systems, and weather stations are also not described. Views on the adequacy of the submitted information are awaited from the Council's Environmental Health Officer.

**Impact on the NVZ.** Information on the impact of the NVZ if effluent enters it from the site, and also if non PAS compost is spread on it. Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Water balance calculation.** This is an assessment of the quantity of leachate that would be generated in a 1 in 100 year storm and allowance for climate change. This is an important factor in assessing the risk of a leak of leachate from the site onto the NVZ. The submission states that it is not possible to assess this information without information on the duration of the storm. However this calculation, often referred to as a 'water balance', is standard practice in the design of surface water drainage systems for a wide range of developments, including composting hardstandings and lagoons. The submission does include a list of three factors relating to the management and operation of the composting process that are also relevant in the control of leachate. It also states that the lagoon is monitored and managed to ensure that it does not exceed 90% capacity. However as the size of the hardstanding was almost doubled in area without any increase in the size of the original lagoon the lack of a proper water balance calculation is considered to be a material deficiency.

**Odour management.** Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Cumulative impact.** The cumulative impact of the proposals with that of 'other development' is one of the considerations to be taken account of in the decision on a screening opinion. The composting site has been operating alongside the inert infilling of the adjacent site. Although the permission for the inert infilling had expired when the information was submitted, an appeal against refusal of permission for an extension of time was pending at the time, which has since been allowed. In any case, the sites have been operating alongside each other in the past. The submitted information includes consideration of the potential for cumulative impact from noise and odour, but does not mention the numbers of lorry movements, nor does it compare them to permitted movements. Whilst combined lorry movements are not likely to be significant, and the highways officer has not raised any objection, nevertheless this information was included in the Council's screening opinion and would have been easy to provide.

#### **Counsel's opinion**

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

## **6. Determining the applications**

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council.

## **7. PLANNING POLICY**

In the determination of the applications regard should also be had to the provisions of the development plan and to any other material considerations.

The development plan includes the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007. The following are the mainly relevant aspects:

Paragraph B1.5 states that within rural Areas the overriding objectives for development are the protection and enhancement of the character of the countryside and its settlements and the maintenance of economic and social vitality or rural Areas.

GB.1 sets out general policy for development in the green belt. In particular, it sets out a list of the types of development that are acceptable with others not being acceptable other than in "very special circumstances". Table 6a of the plan lays out the purposes of including land as well as the objectives for the use of land in the green belt.

GB.2 seeks to protect the visual amenities of the Green Belt

NE.5 development in the Forest of Avon, will only be permitted where it respects the existing and developing woodland setting and does not conflict with the objectives of the Forest Plan, having regard to its aims in the layout of development, including landscaping

NE.9 relates to locally important species and habitats. Development which would adversely affect, either directly or indirectly the nature conservation value of, Sites of Nature Conservation Importance, Local Nature Reserves or Regionally Important Geological and Geomorphological Sites, as shown on the Proposals Map, or any other sites of equivalent nature conservation value, will not be permitted unless; material factors are sufficient to override the local biological geological / geomorphological and community/amenity value of the site; and any harm to the nature conservation value of the site is minimised; and compensatory provision of at least equal nature conservation value is made.

ES.10 states amongst other things that development will not be permitted where it would have an adverse impact on health, the natural or built environment or amenity of existing or proposed uses by virtue of odour, dust and/or other forms of air pollution.

The West of England Joint Waste Core Strategy was adopted in March 2011 (JWCS).

Paragraph 5.6.7 confirms that the JWCS does not replicate or replace local development management policies. However, it explains that some local plan policies will be superseded by the JWCS and they are highlighted within Appendix 3 to that document. LP policies WM1, WM3, WM5, WM6, WM7, WM8, WMN10, WM12, WM13, WM14 and WM15 are all thereby superseded.

Overall the JWCS seeks to increase the capacity for recycling and composting available within the sub region by an additional 800,000 tonnes per annum. The Plan does not identify sites where this might take place, but Policy 3 sets out the approach to open windrow composting. The supporting text explains that open windrow composting has different land use implications to other waste management facilities least because it generally requires minimal support buildings. The operations are comparable to agricultural activities and may therefore be appropriate to locate in the open countryside.

*Policy 3 states:-*

*Planning permissions for open windrow composting, with sufficient distance, as defined in Environment Agency guidance, from any sensitive receptor will be granted, subject to development management policy:*

*1. on existing or proposed waste management sites, subject in the case of landfill and landraising sites or other temporary facilities, to the waste use being limited to the life of the landfill, landraising or other temporary facility;*

*2. on sites in the countryside which constitute previously developed land, or redundant agricultural and forestry buildings and their curtilages for proposals for the composting of waste and;*

*3. sites in agricultural use proposing composting of waste for use within that agricultural unit.*

*(12) Policy 405\_07, Policy Position composting and potential health effects from bioaerosols. Environment Agency, 2007.*

There is no indication in the development plan that the use of the site for open windrow composting is not acceptable in principle, and in addition it is material that continuation of the use would contribute to maintaining the available capacity for composting in the sub region. The key is that it is important to also determine that the environmental impact is acceptable.

The Secretary of State's screening opinion referred to above identified particular aspects of the potential impact which needed to be addressed in an Environmental Statement, which as explained above have not been adequately addressed. This has not enabled a full evaluation of the significance of these potential impacts to be undertaken.

Thus the Council is unable to form a full opinion on the implications of the proposal, which has led to the recommendation that the applications should be refused for lack of information.

## **RECOMMENDATION: REFUSE**

### **REASONS(S) FOR REFUSAL**

The applications be refused for the following reason:-

**05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.**

05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.

11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary

use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)

1 The application is for EIA development and should have been accompanied by an Environmental Statement. The information submitted in support the application is not considered to constitute an Environmental Statement within the terms of Regulation 2 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 in particular because it fails to address the risk of pollution of the NVZ, fails to give information on restoration of the site, fails to give information on cumulative impacts and fails to include a Non Technical Summary. Therefore in accordance with Regulation 3 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 the application must be refused.

### **PLANS LIST**

FOOTNOTE: This decision relates to Drawing Nos. 503/01B, 503/02A, 503/03A and 503/04B date stamped 14 April 1998.

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

#### Determining the applications

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

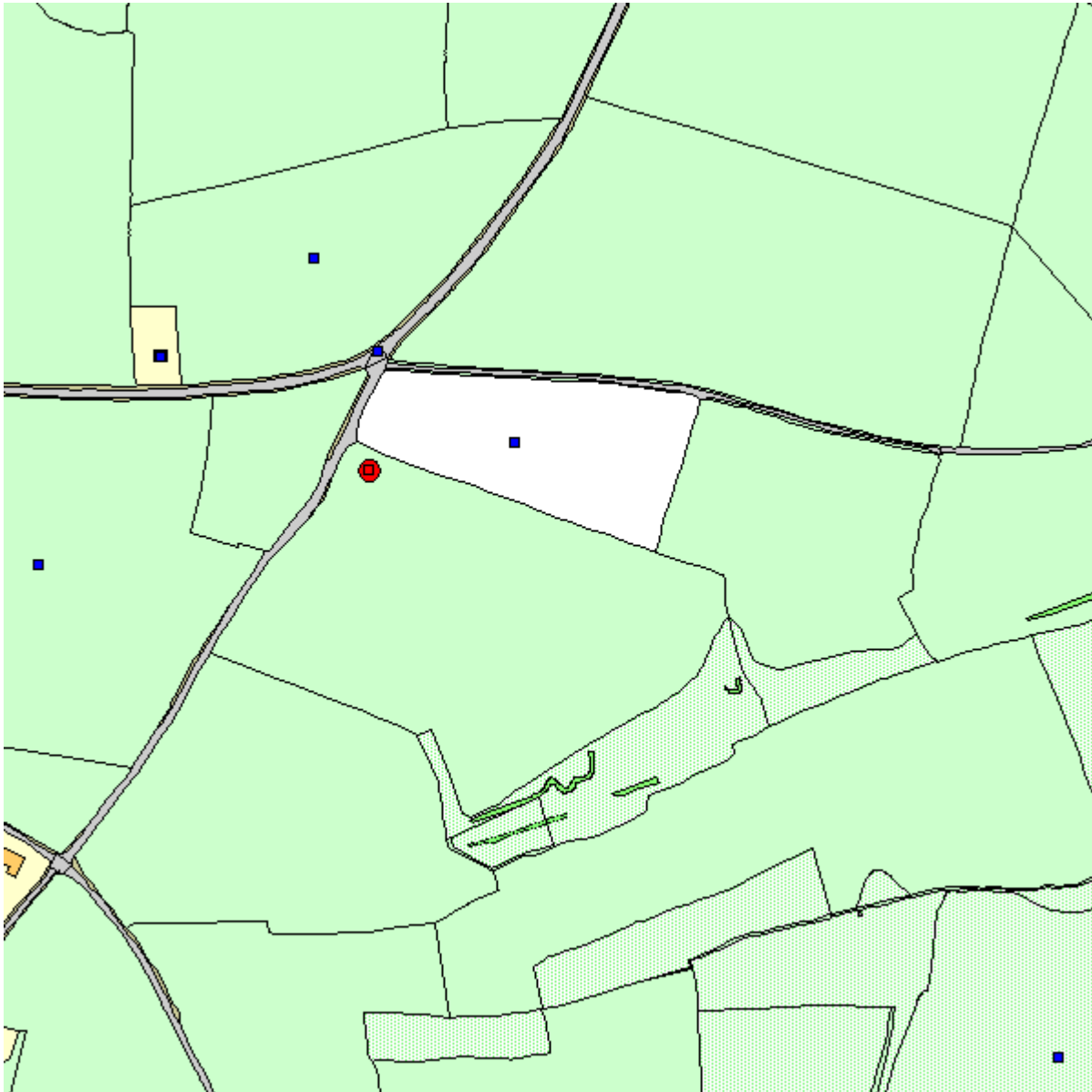
The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council



**Item No:** 02  
**Application No:** 05/01993/FUL  
**Site Location:** Hinton Organics Ltd Charlton Field Lane Queen Charlton BS31 2TN



**Ward:** Farmborough

**Parish:** Compton Dando

**LB Grade:** N/A

**Ward Members:**

**Application Type:** Full Application

**Proposal:** Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.

**Constraints:** Greenbelt,

**Applicant:** Hinton Organics (Wessex) Ltd

**Expiry Date:** 3rd September 2009

**Case Officer:** Anthea Hoey

**COMMITTEE REPORT**

## **Planning Applications**

05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.

**05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.**

11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)

**Case Officer: Anthea Hoey**

### **Details of location and proposal and Relevant History:**

**Charlton Field Lane, Queen Charlton, Nr Keynsham, Bristol, BS31 2TN**

### **8. Reason for Reporting Application to Committee**

Because of the complexity of the planning history of the site. Also because of legal challenges by third parties which led to the quashing of the original planning permissions granted to the two applications dating from 2005. The challenge resulted in a requirement to screen the applications. This position was referred to the committee on 17 February 2010. The Secretary of State has subsequently made a screening direction to the effect that all three applications are for EIA development.

### **9. Description of the site and proposed development**

The site is an existing composting facility, which is located off Charlton Field lane, between Queen Charlton and Keynsham. The site was previously used as the processing works for the adjacent former Queen Charlton Quarry, now in the final stages of restoration by inert landfilling.

The applications seek variations to conditions on the planning permission granted in 1998 for the temporary use of the site for 10 years for the manufacture of organic green compost. The composting use actually commenced on 31 January 2001.

The site is in the Green Belt and is part of the Forest of Avon.

The details of the proposals in each application are as follows:-

Application 05/00723:-

**05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.**

Conditions 13 and 16 of planning permission 97/02626 state:

*"13 No material other than green garden and parks waste (and no kitchen or animal waste) shall be imported to the site without the prior written approval of the Local Planning Authority."*

*"16 No more than five heavy goods vehicles shall enter the site on any day. From the date of this permission the site operators shall maintain daily records of vehicle movements and make them available to the Local Planning Authority at any reasonable time upon request."*

These conditions were temporarily varied under planning permission 04/00105/VAR granted on the 15 March 2004 to allow the composting of cardboard waste and to allow 82 HGV movements a week between March 2004 and October 2004 and 60 HGV movements a week between November 2004 and February 2005.

Application 05/00723 seeks authorisation to retain those changes until the completion of composting operations permitted under 97/02626.

The site has in fact continued to receive cardboard waste and to operate to the higher limits of HGV movements since March 2005.

**05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.**

This application seeks authorisation for an increase in the size of the concrete hardstanding from 2048 square metres to 4082 square metres and for a further variation of condition 13 (quoted above) to allow the receipt of wood waste.

The increase in the size of the hardstanding was applied for retrospectively, and due to the earlier granting of the proposals sought in the application, the site has received wood waste since November 2006.

**11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling**

This application incorporates the proposals to allow composting of cardboard and of wood waste, and to increase the number of HGV movements from both the above applications, and in addition seeks a variation of condition 19 of permission no. 97/02626/MINW.

Condition 19 of permission no. 97/02626/MINW states:-

*“The green waste composting operations authorised by this permission shall cease not later than 10 years from the commencement of composting operations.”*

The variation sought is to allow operations to continue for a period of 18 months from the determination of the application. The application was submitted in January 2011, less than a month before the original 1998 permission expired.

## **10. Relevant background**

The first judicial review was against the Council's view that the two 2005 applications did not require to be screened under the 1999 EIA Regulations. The Court held that Council's understanding of the Regulations was correct, that the Regulations failed to implement the relevant EU Directive properly and that the Directive required the applications to be screened. The Council promptly screened the applications, negatively. However in January 2010 the Secretary of State intervened and took upon himself the responsibility for screening the applications. He then spent over two years doing this. By the time he made a screening direction, on 9 March 2012, application 11/00022 had also been submitted and the Secretary of State screened this also.

The Secretary of State directed that each application was for EIA development because the development was likely to have significant effects on the environment because of the possibility of unacceptable odours originating from the operations and because of the likelihood of a release of nitrogen rich effluent into the Nitrogen Vulnerable Zone (NVZ). The possible sources for the release of nitrogen rich effluent were a leak of leachate and the spreading of non PAS 100 compost/waste onto the NVZ.

In response to the screening direction Officers made it clear to local objectors that they would give the applicant an opportunity to submit an environmental statement and stated that –

‘Officers accept that, if Hinton does not avail itself of the opportunity to submit an environmental statement, the Council will be obliged to serve an enforcement notice requiring the complete cessation of all activities on the Composting Site and the restoration of the Site.’

This was a correct statement of the legal position.

Despite this statement objectors started a third judicial review against the Council, challenging its failure to take immediate enforcement action. Permission has not yet been granted for the judicial review and Officers consider that the proceedings lack any merit. A ‘rolled-up’ hearing of the judicial review proceedings will take place in the High Court in Bristol on 21 and 22 February 2013.

To assist the applicant Officers made a scoping opinion on 17 April 2012, setting out the matters to be covered in the environmental statement. They imposed a deadline of 17 July for the submission of an environmental statement.

The applicant sent a document which purported to be an environmental statement to the Council on 17 July 2013. However it failed to comply with most of the legal requirements for the ‘submission’ of an environmental statement set out in the EIA Regulations and Officers had to explain these to the applicant in some detail. The requirements for submission were only satisfied on 14 September 2012.

Upon scrutiny it was found that the applicant’s document failed to satisfy the requirements for an environmental statement in numerous respects. In these circumstances the Council was obliged to serve a notice under r19 of the Regulations, identifying the deficiencies and requiring them to be remedied. Officers sent a r19 notice to the applicant on 31 October 2012. They imposed a deadline of 17 December for the submission of the information.

A volume of information was submitted on 17 December. However on examination this too was found to be significantly deficient (see further below).

The Regulations do not provide for repeated r19 notices. R3 states that a local planning authority cannot grant an application for EIA development if there has been no environmental statement. It follows that, if Members determine the applications, they must refuse them. If Members do this, the question of enforcement action will obviously arise. This is the subject of a second report.

Members should note that, if an enforcement notice is served and appealed, the enforcement notice will be suspended and the applicant will be given a further opportunity to submit an environmental statement by the Secretary of State. (This is the result of r36 of the 2011 EIA Regulations, which will apply to any enforcement notice served in this case. The determination of the three outstanding planning applications is governed by the 1999 EIA Regulations and the references to Regulations in this report are, unless otherwise stated, to the 1999 Regulations). This is so even though the local planning authority (i) has already given abundant opportunity for this, (ii) has served a r19 notice, (iii) has no further power itself to require an environmental statement and (iv) has been forced by r3 to refuse planning permission.

## **11. Summary of Consultation/Representations:**

**PUBLOW AND PENSFORD PARISH COUNCIL.** Requested that additional time be given to provide a response. The comments will be reported verbally at the meeting.

### **COMPTON DANDO PARISH COUNCIL**

The Parish Council received the consultation request on the Reg 19 response too late to be considered at the January meeting and the next meeting is not until 19 February.

The Parish Council has asked for its original comments on the applications to be reported instead and advise that the Parish Council been invited to the liaison group meetings with local residents, and this has been a positive move. However, complaints are still received about mud on road, lorry movements, smell etc

The previous responses are:-

**11/00022/VAR –  
Response dated April 2012**

Compton Dando Parish Council would like to raise the following comments on the above application :

- The Parish Council supports the cessation of operations in July 2012;
- The Parish Council requests that consideration be given to the proposed clause 5 of the Joint Waste Strategy Policy 8 (Landfill);
- It is noted that an Environmental Impact Assessment is required at the site;
- It is strongly recommended that scientific monitoring of the operating procedures at this site be undertaken.

**Response dated March 2011**

The Parish Council recommend that this application goes to committee as the Parish Council feel there is insufficient scientific monitoring, they have reservations with regard to the proposed increase of lorry movements, they are concerned about the visual impact of the site, they have received complaints that the conditions of the original application are not being adhered to, they have received complaints that there are inaccuracies within the application documentation in respect of the distance from the compost site to the nearest receptor.

Copies of letters from a local resident – (reported separately in this report) and from Council officers were attached together with an extract from the Joint Waste Core Strategy Pre-Submission Document:

**05/00723/VAR and 05/01993/FUL**

**Response dated July 2009,**

Due to insufficient information the Council are not clear on what they are being asked to comment on but would remind you of their previous comments which was that they had reservations, Hinton Organics have not needed the number of lorries specified so the limit should be reduced. Permission should only be granted for another 12 months and reviewed annually. There is strong feeling that there is insufficient scientific monitoring of the operating procedures and the Council still receive complaints/concerns regarding the operation.

**WHITCHURCH PARISH COUNCIL :**

Any comments will be reported verbally at the meeting.

**KEYNSHAM TOWN COUNCIL:**

The Town Council supports all the applications.

**ENVIRONMENT AGENCY:**

The EA responses to the different applications are:-

05/00723

The Environment Agency has no objection to the variation of conditions 13 and 16 to allow permanent recycling of cardboard waste and truck movements.

05/01993

The Environment Agency has no objection to the variation of condition to increase the concrete pad area. The Operator must comply with its Environmental Permit with regard to the amounts of waste stored onsite at any one time, which at this time is 800 tonnes.

Drainage from this area runs to a slurry lagoon. Please note that this slurry lagoon is only permitted to reach up to 90% full, with any excess required to be tankered away. Otherwise there will be a breach of the Environmental Permit.

11/00022/VAR

The Environment Agency has no objection to the variation of conditions 13, 16 and 19, for this proposal.

However, as a matter of completeness, and to make corrections to the accompanying documentation, wish to make the following comments:

Previous correspondence regarding this application sent on the 9<sup>th</sup> Feb 2011 should be taken into consideration. Since Feb 2011 the site then operating under the name Hinton Organics (Wessex) Limited were prosecuted for three offences for breaches of their permit, relating directly to odour control and waste acceptance criteria. A post conviction plan was provided and accepted. The site permit was transferred to Reorganics Limited on the 16<sup>th</sup> November 2012.

Reorganics Limited currently holds permit number EPR/LB3339RK. They do not hold any other Environment Agency permits or exemptions.

The following points should be noted:

The previous company in charge of this permitted facility Hinton Organics (Wessex) Limited, had a long history of non-compliance and enforcement history from the Environment Agency. Reorganics have not yet had a routine inspection for compliance. The Compliance Rating of a site shows the total Compliance Classification Scheme (CCS) score during that calendar year. All sites start the calendar year with no breaches and hence a Band A Compliance Rating. As the year progresses breaches may be recorded against permit requirements, points are accrued and band ratings go down.

Information provided under Point 2, the odour management plan.

The Odour Management plan provided by the site is not yet accepted by the Environment Agency as further improvements have been suggested. We are in the process of providing feedback for improvements to this document.

Information provided under Point 13 of the documents provided states that the Environment Agency tests the leachate lagoon. This has been done on one occasion, which indicated that the results were within the working plan limits, that was in place at the time. The EA does not regularly test the leachate in the lagoon.

Information provided under Point 15 of the documents provided states that it is not uncommon for the lagoon to run dry, and that leachate is recirculated if the lagoon reaches 90%. The Environmental Permit allows for leachate to be recirculated during the sanitisation phase only and only if the compost requires moisture. It does not allow the recirculation of leachate in order to lower the lagoon levels. An annual inspection of the lagoon liner is required by the environmental permit. Inspecting Environment Agency Officers have not noted any other occasion when the lagoon has run dry.

Information not received for incidents:

Incident information was sent to Jo Downes on the 18<sup>th</sup> Dec. The EA attached a document detailing odour related incidents for which enforcement action was taken. This information is also available on the public register at <http://epr.environment-agency.gov.uk/ePRInternet/SearchRegisters.aspx>

Reorganics refers to an odour report carried out in 2007 stating in several places that the level of odour was insignificant. The attached information listed incidences of enforcement action taken for breaches of the Environmental Permit with regard to Odour.

The Environment Agency does hold rainfall data for a number of rain gauges. To calculate predicted effect from climate change various scenarios are available on the UKCIP website. <http://www.ukcip.org.uk/baciat/>

Please refer to the current environment agency position statement on permitting of Open Windrow Composting sites which is:  
<http://www.environment-agency.gov.uk/research/library/position/41211.aspx>

The initial response to application 11/00022 dated 9 February 2011 raised no objection in principle to the proposal but wish the following to be taken into consideration:

Advice to Planning Authority/Applicant:

The site currently operates to Permit Number EPR / DP349LJ. The closest residential property is approximately 150m from the site boundary.

On 30 November 2009 the permit was varied to require Bioaerosol Monitoring to be undertaken. The most recent report submitted as part of the Planning Statement is a draft version; the accepted final version is available through the Environment Agency's public register if required by the LPA.

The permit outlines the cardboard and wood waste streams which the site is permitted to accept.

Information was provided regarding the rules set out in the permit for the use of the compost from the site in the restoration of the adjacent inert landfilling site

The EA advised that the assertion in the planning statement that *'there have been no issues with in terms of any pollution to air, land or water over that period'* is not considered to be accurate, and a reference was given to records of past complaints pursued by the EA.

The response also gave a reference to the Environment Agency's position statement on sites which operate composting operations within 250 metres of a 'sensitive receptor' (typically a dwelling or workplace).

**HIGHWAY DEVELOPMENT OFFICER:**

05/00723, 05/01993 and 11/00022/VAR

Response dated 10<sup>th</sup> January 2013

The highway response remains one of NO OBJECTION, subject to the conditions set out in the response to 11/00022 dated February 2011.

11/00022/VAR

14<sup>th</sup> February 2011

In highway terms, this application is broadly the same as 05/00723/VAR and 05/01993/FUL, to which no highway objections were raised.

Charlton Lane is subject to a local 7.5 tonne environmental weight restriction to the north of the site, commencing at the Redlynch Lane junction. Vehicles exceeding this weight limit are not permitted to pass through the area of restriction, so it is likely all HGV's accessing and egressing the site will need to do so via Woollard Lane and A37. Drivers should be informed of this restriction.

Expressed concern about the lack of a wheel wash as required by condition 11 of 97/02626/MINW. This all the more importance given the proposed increase in vehicles

Bearing the above in mind, the highway response is one of NO OBJECTION, subject to the following conditions;

1. Vehicles carrying material to or from the site shall not exceed in size an eight wheel tipper lorry and be restricted in number to a maximum of 100 vehicles (200 movements) per seven day week.

Reason: To control the size and movement of vehicles in the interests of highway safety.

2. Each vehicle attending the site shall be properly logged with the load recorded in cubic metres (for preference). A certified summary of the records shall be submitted in writing to the Local Planning Authority on a bi-monthly basis within 10 working days of the end of each second month.

Reason: To maintain and overview of the traffic conditioned above.

3. All vehicles leaving the site shall be inspected to ensure that they are in a condition not to emit dust or deposit mud, slurry or other debris on the highway, and wheel cleaning facilities shall be installed prior to the commencement of works, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter, the wheel wash facilities shall be maintained in operation at all times during the life of the planning permission.

Reason: In the interests of highway safety.

4. The deposit of materials or slurry from the site on the public highway shall be treated as an emergency and will be cleared regularly by a vacuum/road sweeper and/or hand picked in the case of litter. Visual inspections of the site access road will be carried out daily and staff will report any problems with mud on the site surface immediately to the site manager. Vehicles will be visually inspected before exit to check that loads are safe and that no mud is carried on the wheels or body of the vehicle.

Reason: In the interests of highway safety.

**ENVIRONMENTAL HEALTH OFFICER:**

Any comments will be reported verbally at the meeting.

**COUNCIL ECOLOGIST:**

Any comments will be reported verbally at the meeting.

**PLANNING POLICY SECTION OF BANES PLANNING**

No comment.



### **NATURAL ENGLAND:**

'Natural England does not consider that these applications pose any likely or significant risk to those features of the natural environment for which we would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this consultation' The features requiring more detailed consideration include SSSIs, Natura 2000 site, National Park, Area of Outstanding Natural Beauty or a large population of a protected species which may affect a significant quantity of habitat across the country.

The lack of case specific comment from NE should not be interpreted as a statement that there are no impacts on the natural environment.

In particular, NE would expect the LPA in determining the applications to assess and consider the possible impacts resulting from this proposal on Protected species and Local wildlife sites, and to consider the scope for biodiversity enhancements

Initial response dated April 2012 was written on the basis that the development was not EIA development. NE raised no objections but asked to be consulted again if any changes to the application were made.

### **ENGLISH HERITAGE**

Do not consider that it is necessary for these applications to be referred to EH.

### **OTHER REPRESENTATIONS/THIRD PARTIES:**

39 letters have been received from 16 different local residents and a solicitor acting on behalf of one of them.

The letters raise objections on the grounds of

- impact on health,
- inaccuracies in the information submitted re distances to nearest receptors, this should include adjacent farmland, which retains permitted use rights fort changes to their current grazing use. Live stock should also be included as sensitive receptors.
- impact from odour and air pollution from bio-aerosols,
- impact from noise,
- impact on traffic safety, mud on roads unsuitable roads leading to the site and damage to surface and verges,
- impact on Green Belt,
- proximity to houses, the site is in the wrong place and should be restored to agriculture
- impact on wildlife,
- impact from fly tipping/litter,
- failure to comply with existing conditions and limits, including a compound on adjacent land.
- The supporting information does not satisfy the requirements for an Environmental Statement.
- The unauthorised sale of wood from the site
- Suspicion at the applicant's change of name.

Several of the respondents requested that enforcement action be taken to ensure the use of the site is discontinued.

## **12. The purported environmental statement**

The background to this case is that the composting of cardboard and wood and the increase in lorry movements were all originally approved in 2005 and 2006 and the site has been operating under these variations in the conditions to this effect since. The increase in the size of the hardstanding has been in place since before then, but was originally approved in 2006.

The NVZ was introduced by legislation that came into force on 1 January 2009.

The proposal for the extension of time was submitted before expiration of the original 10 year period commencing in January 2001.

However, in accordance with the rulings by the High Court and by the Secretary of State, the continued operation of the site is EIA development and the Council is prohibited from granting planning permission without first considering environmental information, i.e. an environmental statement.

The information submitted by the applicants in July and December is not considered to constitute an environmental statement for a number of reasons. These are set out below:-

### **Presentation**

There is no correct list of contents, nor is there a proper Non Technical Summary of the second submission. A Non Technical Summary is one of the items of information that is required as a minimum as part of an Environmental Statement.

### **Content**

The following information is considered lacking for the reasons given:-

**Restoration and after care.** Restoration and after care is a relevant aspect of the development that is to be described in the ES. The submission includes a copy of the wording of the original condition requiring submission of a restoration scheme and states that a variation will be sought to this, but does not specify what the variation will be, nor its objectives in terms of afteruse. As the application only seeks a further 18 months operation, this is considered a material deficiency.

**Physical measures for mitigation of environmental effects.** These are also relevant aspects of the development. The submission does not address the important question of the adequacy of capacity of the lagoon, which is considered a key feature in the control of the risk of leaks of leachate into the NVZ. Other elements necessary for the control of odour such as misting systems, and weather stations are also not described. Views on the adequacy of the submitted information are awaited from the Council's Environmental Health Officer.

**Impact on the NVZ.** Information on the impact of the NVZ if effluent enters it from the site, and also if non PAS compost is spread on it. Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Water balance calculation.** This is an assessment of the quantity of leachate that would be generated in a 1 in 100 year storm and allowance for climate change. This is an important factor in assessing the risk of a leak of leachate from the site onto the NVZ. The submission states that it is not possible to assess this information without information on the duration of the storm. However this calculation, often referred to as a 'water balance', is standard practice in the design of surface water drainage systems for a wide range of developments, including composting hardstandings and lagoons. The submission does include a list of three factors relating to the management and operation of the composting process that are also relevant in the control of leachate. It also states that the lagoon is monitored and managed to ensure that it does not exceed 90% capacity. However as the size of the hardstanding was almost doubled in area without any increase in the size of the original lagoon the lack of a proper water balance calculation is considered to be a material deficiency.

**Odour management.** Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Cumulative impact.** The cumulative impact of the proposals with that of 'other development' is one of the considerations to be taken account of in the decision on a screening opinion. The composting site has been operating alongside the inert infilling of the adjacent site. Although the permission for the inert infilling had expired when the information was submitted, an appeal against refusal of permission for an extension of time was pending at the time, which has since been allowed. In any case, the sites have been operating alongside each other in the past. The submitted information includes consideration of the potential for cumulative impact from noise and odour, but does not mention the numbers of lorry movements, nor does it

compare them to permitted movements. Whilst combined lorry movements are not likely to be significant, and the highways officer has not raised any objection, nevertheless this information was included in the Council's screening opinion and would have been easy to provide.

### **Counsel's opinion**

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

## **13. Determining the applications**

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council.

## **14. PLANNING POLICY**

In the determination of the applications regard should also be had to the provisions of the development plan and to any other material considerations.

The development plan includes the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007. The following are the mainly relevant aspects:

Paragraph B1.5 states that within rural Areas the overriding objectives for development are the protection and enhancement of the character of the countryside and its settlements and the maintenance of economic and social vitality or rural Areas.

GB.1 sets out general policy for development in the green belt. In particular, it sets out a list of the types of development that are acceptable with others not being acceptable other than in "very special circumstances".

Table 6a of the plan lays out the purposes of including land as well as the objectives for the use of land in the green belt.

GB.2 seeks to protect the visual amenities of the Green Belt

NE.5 development in the Forest of Avon, will only be permitted where it respects the existing and developing woodland setting and does not conflict with the objectives of the Forest Plan, having regard to its aims in the layout of development, including landscaping

NE.9 relates to locally important species and habitats. Development which would adversely affect, either directly or indirectly the nature conservation value of, Sites of Nature Conservation Importance, Local Nature Reserves or Regionally Important Geological and Geomorphological Sites, as shown on the Proposals Map, or any other sites of equivalent nature conservation value, will not be permitted unless; material factors are sufficient to override the local biological geological / geomorphological and community/amenity value of the site; and any harm to the nature conservation value of the site is minimised; and compensatory provision of at least equal nature conservation value is made.

ES.10 states amongst other things that development will not be permitted where it would have an adverse impact on health, the natural or built environment or amenity of existing or proposed uses by virtue of odour, dust and/or other forms of air pollution.

The West of England Joint Waste Core Strategy was adopted in March 2011 (JWCS).

Paragraph 5.6.7 confirms that the JWCS does not replicate or replace local development management policies. However, it explains that some local plan policies will be superseded by the JWCS and they are highlighted within Appendix 3 to that document. LP policies WM1, WM3, WM5, WM6, WM7, WM8, WMN10, WM12, WM13, WM14 and WM15 are all thereby superseded.

Overall the JWCS seeks to increase the capacity for recycling and composting available within the sub region by an additional 800,000 tonnes per annum. The Plan does not identify sites where this might take place, but Policy 3 sets out the approach to open windrow composting. The supporting text explains that open windrow composting has different land use implications to other waste management facilities least because it generally requires minimal support buildings. The operations are comparable to agricultural activities and may therefore be appropriate to locate in the open countryside.

*Policy 3 states:-*

*Planning permissions for open windrow composting, with sufficient distance, as defined in Environment Agency guidance, from any sensitive receptor will be granted, subject to development management policy:*

*1. on existing or proposed waste management sites, subject in the case of landfill and landraising sites or other temporary facilities, to the waste use being limited to the life of the landfill, landraising or other temporary facility;*

*2. on sites in the countryside which constitute previously developed land, or redundant agricultural and forestry buildings and their curtilages for proposals for the composting of waste and;*

*3. sites in agricultural use proposing composting of waste for use within that agricultural unit.*

*(12) Policy 405\_07, Policy Position composting and potential health effects from bioaerosols. Environment Agency, 2007.*

There is no indication in the development plan that the use of the site for open windrow composting is not acceptable in principle, and in addition it is material that continuation of the use would contribute to maintaining the available capacity for composting in the sub region. The key is that it is important to also determine that the environmental impact is acceptable.

The Secretary of State's screening opinion referred to above identified particular aspects of the potential impact which needed to be addressed in an Environmental Statement, which as explained above have not been adequately addressed. This has not enabled a full evaluation of the significance of these potential impacts to be undertaken.

Thus the Council is unable to form a full opinion on the implications of the proposal, which has led to the recommendation that the applications should be refused for lack of information.

## **RECOMMENDATION: REFUSE**

### **REASON(S) FOR REFUSAL**

The applications be refused for the following reason:-

05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.

**05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.**

11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry

1 The application is for EIA development and should have been accompanied by an Environmental Statement. The information submitted in support the application is not considered to constitute an Environmental Statement within the terms of Regulation 2 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 in particular because it fails to address the risk of pollution of the NVZ, fails to give information on restoration of the site, fails to give information on cumulative impacts and fails to include a Non Technical Summary. Therefore in accordance with Regulation 3 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 the application must be refused.

### **PLANS LIST**

FOOTNOTE This decision relates to drawing Nos 503/01B, 503/02A, 503/03A and 503/04B date stamped 14th April 1998

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

Determining the applications

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

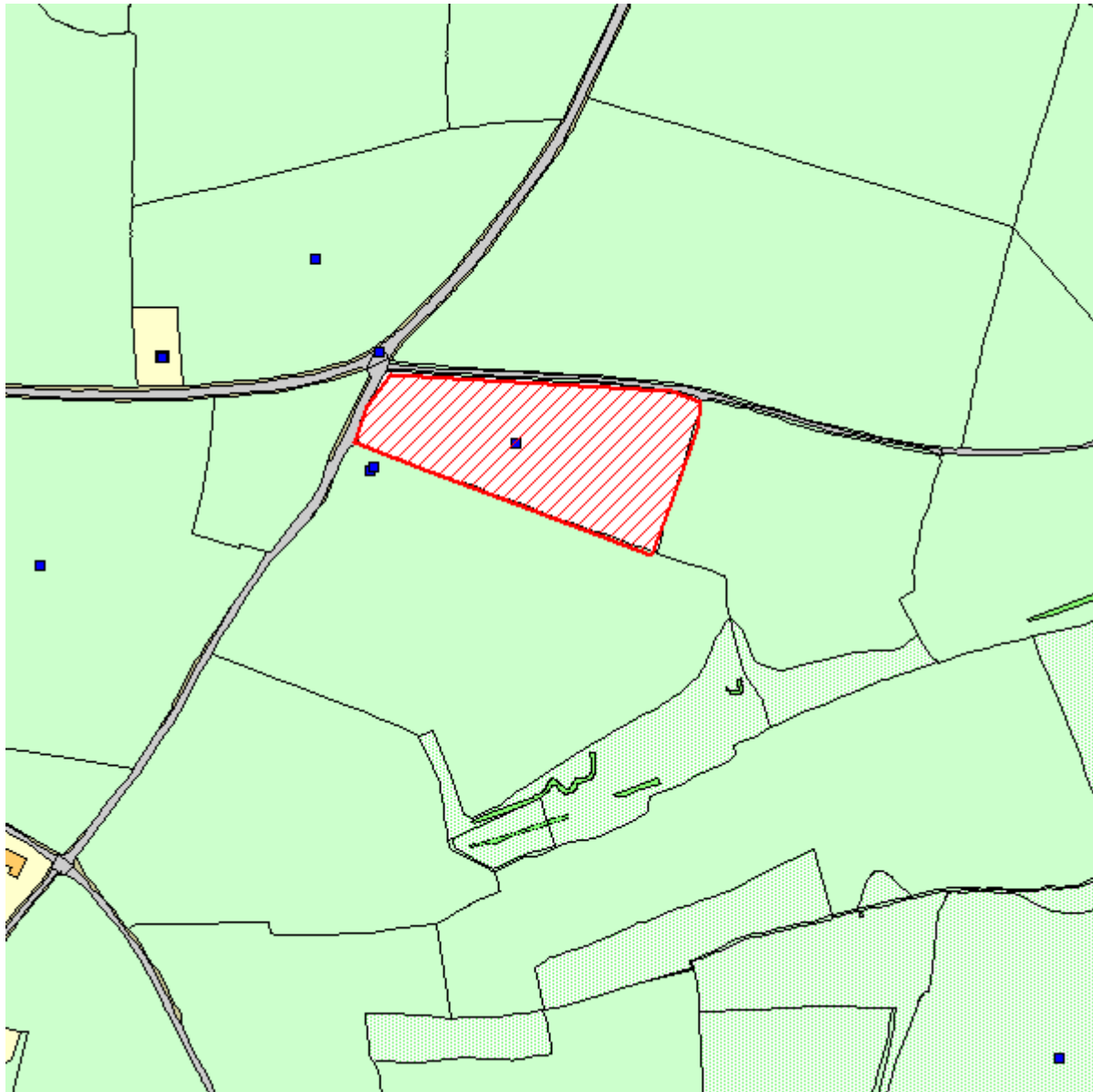
The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council

**Item No:** 03  
**Application No:** 11/00022/VAR  
**Site Location:** Parcel 5319 Charlton Field Lane Queen Charlton Bristol Bath And North East Somerset



**Ward:** Farmborough

**Parish:** Compton Dando

**LB Grade:** N/A

**Ward Members:** Councillor S Davis

**Application Type:** Application for Variation of Condition

**Proposal:** Variation of conditions 13,16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)

**Constraints:** Agric Land Class 1,2,3a, Forest of Avon, Greenbelt,

<b>Applicant:</b>	Hinton Organics Ltd
<b>Expiry Date:</b>	2nd March 2011
<b>Case Officer:</b>	Anthea Hoey

## COMMITTEE REPORT

### Planning Applications

05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.

05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.

**11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)**

**Case Officer: Anthea Hoey**

### Details of location and proposal and Relevant History:

**Charlton Field Lane, Queen Charlton, Nr Keynsham, Bristol, BS31 2TN**

### 15. Reason for Reporting Application to Committee

Because of the complexity of the planning history of the site. Also because of legal challenges by third parties which led to the quashing of the original planning permissions granted to the two applications dating from 2005. The challenge resulted in a requirement to screen the applications. This position was referred to the committee on 17 February 2010. The Secretary of State has subsequently made a screening direction to the effect that all three applications are for EIA development.

### 16. Description of the site and proposed development

The site is an existing composting facility, which is located off Charlton Field lane, between Queen Charlton and Keynsham. The site was previously used as the processing works for the adjacent former Queen Charlton Quarry, now in the final stages of restoration by inert landfilling.

The applications seek variations to conditions on the planning permission granted in 1998 for the temporary use of the site for 10 years for the manufacture of organic green compost. The composting use actually commenced on 31 January 2001.

The site is in the Green Belt and is part of the Forest of Avon.

The details of the proposals in each application are as follows:-

Application 05/00723:-

**05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.**

Conditions 13 and 16 of planning permission 97/02626 state:



*"13 No material other than green garden and parks waste (and no kitchen or animal waste) shall be imported to the site without the prior written approval of the Local Planning Authority."*

*"16 No more than five heavy goods vehicles shall enter the site on any day. From the date of this permission the site operators shall maintain daily records of vehicle movements and make them available to the Local Planning Authority at any reasonable time upon request."*

These conditions were temporarily varied under planning permission 04/00105/VAR granted on the 15 March 2004 to allow the composting of cardboard waste and to allow 82 HGV movements a week between March 2004 and October 2004 and 60 HGV movements a week between November 2004 and February 2005.

Application 05/00723 seeks authorisation to retain those changes until the completion of composting operations permitted under 97/02626.

The site has in fact continued to receive cardboard waste and to operate to the higher limits of HGV movements since March 2005.

**05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.**

This application seeks authorisation for an increase in the size of the concrete hardstanding from 2048 square metres to 4082 square metres and for a further variation of condition 13 (quoted above) to allow the receipt of wood waste.

The increase in the size of the hardstanding was applied for retrospectively, and due to the earlier granting of the proposals sought in the application, the site has received wood waste since November 2006.

**11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling**

This application incorporates the proposals to allow composting of cardboard and of wood waste, and to increase the number of HGV movements from both the above applications, and in addition seeks a variation of condition 19 of permission no. 97/02626/MINW.

Condition 19 of permission no. 97/02626/MINW states:-

*"The green waste composting operations authorised by this permission shall cease not later than 10 years from the commencement of composting operations."*

The variation sought is to allow operations to continue for a period of 18 months from the determination of the application. The application was submitted in January 2011, less than a month before the original 1998 permission expired.

**17. Relevant background**

The first judicial review was against the Council's view that the two 2005 applications did not require to be screened under the 1999 EIA Regulations. The Court held that Council's understanding of the Regulations was correct, that the Regulations failed to implement the relevant EU Directive properly and that the Directive required the applications to be screened. The Council promptly screened the applications, negatively. However in January 2010 the Secretary of State intervened and took upon himself the responsibility for screening the applications. He then spent over two years doing this. By the time he made

a screening direction, on 9 March 2012, application 11/00022 had also been submitted and the Secretary of State screened this also.

The Secretary of State directed that each application was for EIA development because the development was likely to have significant effects on the environment because of the possibility of unacceptable odours originating from the operations and because of the likelihood of a release of nitrogen rich effluent into the Nitrogen Vulnerable Zone (NVZ). The possible sources for the release of nitrogen rich effluent were a leak of leachate and the spreading of non PAS 100 compost/waste onto the NVZ.

In response to the screening direction Officers made it clear to local objectors that they would give the applicant an opportunity to submit an environmental statement and stated that –

‘Officers accept that, if Hinton does not avail itself of the opportunity to submit an environmental statement, the Council will be obliged to serve an enforcement notice requiring the complete cessation of all activities on the Composting Site and the restoration of the Site.’

This was a correct statement of the legal position.

Despite this statement objectors started a third judicial review against the Council, challenging its failure to take immediate enforcement action. Permission has not yet been granted for the judicial review and Officers consider that the proceedings lack any merit. A ‘rolled-up’ hearing of the judicial review proceedings will take place in the High Court in Bristol on 21 and 22 February 2013.

To assist the applicant Officers made a scoping opinion on 17 April 2012, setting out the matters to be covered in the environmental statement. They imposed a deadline of 17 July for the submission of an environmental statement.

The applicant sent a document which purported to be an environmental statement to the Council on 17 July 2013. However it failed to comply with most of the legal requirements for the ‘submission’ of an environmental statement set out in the EIA Regulations and Officers had to explain these to the applicant in some detail. The requirements for submission were only satisfied on 14 September 2012.

Upon scrutiny it was found that the applicant’s document failed to satisfy the requirements for an environmental statement in numerous respects. In these circumstances the Council was obliged to serve a notice under r19 of the Regulations, identifying the deficiencies and requiring them to be remedied. Officers sent a r19 notice to the applicant on 31 October 2012. They imposed a deadline of 17 December for the submission of the information.

A volume of information was submitted on 17 December. However on examination this too was found to be significantly deficient (see further below).

The Regulations do not provide for repeated r19 notices. R3 states that a local planning authority cannot grant an application for EIA development if there has been no environmental statement. It follows that, if Members determine the applications, they must refuse them. If Members do this, the question of enforcement action will obviously arise. This is the subject of a second report.

Members should note that, if an enforcement notice is served and appealed, the enforcement notice will be suspended and the applicant will be given a further opportunity to submit an environmental statement by the Secretary of State. (This is the result of r36 of the 2011 EIA Regulations, which will apply to any enforcement notice served in this case. The determination of the three outstanding planning applications is governed by the 1999 EIA Regulations and the references to Regulations in this report are, unless otherwise stated, to the 1999 Regulations). This is so even though the local planning authority (i) has already given abundant opportunity for this, (ii) has served a r19 notice, (iii) has no further power itself to require an environmental statement and (iv) has been forced by r3 to refuse planning permission.

## **18. Summary of Consultation/Representations:**

**PUBLOW AND PENSFORD PARISH COUNCIL.** Requested that additional time be given to provide a response. The comments will be reported verbally at the meeting.

### **COMPTON DANDO PARISH COUNCIL**

The Parish Council received the consultation request on the Reg 19 response too late to be considered at the January meeting and the next meeting is not until 19 February.

The Parish Council has asked for its original comments on the applications to be reported instead and advise that the Parish Council been invited to the liaison group meetings with local residents, and this has been a positive move. However, complaints are still received about mud on road, lorry movements, smell etc

The previous responses are:-

### **11/00022/VAR – Response dated April 2012**

Compton Dando Parish Council would like to raise the following comments on the above application :

- The Parish Council supports the cessation of operations in July 2012;
- The Parish Council requests that consideration be given to the proposed clause 5 of the Joint Waste Strategy Policy 8 (Landfill);
- It is noted that an Environmental Impact Assessment is required at the site;
- It is strongly recommended that scientific monitoring of the operating procedures at this site be undertaken.

### **Response dated March 2011**

The Parish Council recommend that this application goes to committee as the Parish Council feel there is insufficient scientific monitoring, they have reservations with regard to the proposed increase of lorry movements, they are concerned about the visual impact of the site, they have received complaints that the conditions of the original application are not being adhered to, they have received complaints that there are inaccuracies within the application documentation in respect of the distance from the compost site to the nearest receptor.

Copies of letters from a local resident – (reported separately in this report) and from Council officers were attached together with an extract from the Joint Waste Core Strategy Pre-Submission Document:

### **05/00723/VAR and 05/01993/FUL Response dated July 2009,**

Due to insufficient information the Council are not clear on what they are being asked to comment on but would remind you of their previous comments which was that they had reservations, Hinton Organics have not needed the number of lorries specified so the limit should be reduced. Permission should only be granted for another 12 months and reviewed annually. There is strong feeling that there is insufficient scientific monitoring of the operating procedures and the Council still receive complaints/concerns regarding the operation.

**WHITCHURCH PARISH COUNCIL :**

Any comments will be reported verbally at the meeting.

**KEYNSHAM TOWN COUNCIL:**

The Town Council supports all the applications.

**ENVIRONMENT AGENCY:**

The EA responses to the different applications are:-

05/00723

The Environment Agency has no objection to the variation of conditions 13 and 16 to allow permanent recycling of cardboard waste and truck movements.

05/01993

The Environment Agency has no objection to the variation of condition to increase the concrete pad area. The Operator must comply with its Environmental Permit with regard to the amounts of waste stored onsite at any one time, which at this time is 800 tonnes.

Drainage from this area runs to a slurry lagoon. Please note that this slurry lagoon is only permitted to reach up to 90% full, with any excess required to be tankered away. Otherwise there will be a breach of the Environmental Permit.

11/00022/VAR

The Environment Agency has no objection to the variation of conditions 13, 16 and 19, for this proposal.

However, as a matter of completeness, and to make corrections to the accompanying documentation, wish to make the following comments:

Previous correspondence regarding this application sent on the 9<sup>th</sup> Feb 2011 should be taken into consideration. Since Feb 2011 the site then operating under the name Hinton Organics (Wessex) Limited were prosecuted for three offences for breaches of their permit, relating directly to odour control and waste acceptance criteria. A post conviction plan was provided and accepted. The site permit was transferred to Reorganics Limited on the 16<sup>th</sup> November 2012.

Reorganics Limited currently holds permit number EPR/LB3339RK. They do not hold any other Environment Agency permits or exemptions.

The following points should be noted:

The previous company in charge of this permitted facility Hinton Organics (Wessex) Limited, had a long history of non-compliance and enforcement history from the Environment Agency. Reorganics have not yet had a routine inspection for compliance. The Compliance Rating of a site shows the total Compliance Classification Scheme (CCS) score during that calendar year. All sites start the calendar year with no breaches and hence a Band A Compliance Rating. As the year progresses breaches may be recorded against permit requirements, points are accrued and band ratings go down.

Information provided under Point 2, the odour management plan.

The Odour Management plan provided by the site is not yet accepted by the Environment Agency as further improvements have been suggested. We are in the process of providing feedback for improvements to this document.

Information provided under Point 13 of the documents provided states that the Environment Agency tests the leachate lagoon. This has been done on one occasion, which indicated that the results were within the working plan limits, that was in place at the time. The EA does not regularly test the leachate in the lagoon.

Information provided under Point 15 of the documents provided states that it is not uncommon for the lagoon to run dry, and that leachate is recirculated if the lagoon reaches 90%. The Environmental Permit allows for leachate to be recirculated during the sanitisation phase only and only if the compost requires moisture. It does not allow the recirculation of leachate in order to lower the lagoon levels. An annual inspection of the lagoon liner is required by the environmental permit. Inspecting Environment Agency Officers have not noted any other occasion when the lagoon has run dry.

Information not received for incidents:

Incident information was sent to Jo Downes on the 18<sup>th</sup> Dec. The EA attached a document detailing odour related incidents for which enforcement action was taken. This information is also available on the public register at <http://epr.environment-agency.gov.uk/ePRIInternet/SearchRegisters.aspx>

Reorganics refers to an odour report carried out in 2007 stating in several places that the level of odour was insignificant. The attached information listed incidences of enforcement action taken for breaches of the Environmental Permit with regard to Odour.

The Environment Agency does hold rainfall data for a number of rain gauges. To calculate predicted effect from climate change various scenarios are available on the UKCIP website. <http://www.ukcip.org.uk/bacliat/>

Please refer to the current environment agency position statement on permitting of Open Windrow Composting sites which is:

<http://www.environment-agency.gov.uk/research/library/position/41211.aspx>

The initial response to application 11/00022 dated 9 February 2011 raised no objection in principle to the proposal but wish the following to be taken into consideration:

Advice to Planning Authority/Applicant:

The site currently operates to Permit Number EPR / DP349LJ. The closest residential property is approximately 150m from the site boundary.

On 30 November 2009 the permit was varied to require Bioaerosol Monitoring to be undertaken. The most recent report submitted as part of the Planning Statement is a draft version; the accepted final version is available through the Environment Agency's public register if required by the LPA.

The permit outlines the cardboard and wood waste streams which the site is permitted to accept.

Information was provided regarding the rules set out in the permit for the use of the compost from the site in the restoration of the adjacent inert landfilling site

The EA advised that the assertion in the planning statement that '*there have been no issues with in terms of any pollution to air, land or water over that period*' is not considered to be accurate, and a reference was given to records of past complaints pursued by the EA.

The response also gave a reference to the Environment Agency's position statement on sites which operate composting operations within 250 metres of a 'sensitive receptor' (typically a dwelling or workplace).

**HIGHWAY DEVELOPMENT OFFICER:**

05/00723, 05/01993 and 11/00022/VAR

Response dated 10<sup>th</sup> January 2013

The highway response remains one of NO OBJECTION, subject to the conditions set out in the response to 11/00022 dated February 2011.

11/00022/VAR

14<sup>th</sup> February 2011

In highway terms, this application is broadly the same as 05/00723/VAR and 05/01993/FUL, to which no highway objections were raised.

Charlton Lane is subject to a local 7.5 tonne environmental weight restriction to the north of the site, commencing at the Redlynch Lane junction. Vehicles exceeding this weight limit are not permitted to pass through the area of restriction, so it is likely all HGV's accessing and egressing the site will need to do so via Woollard Lane and A37. Drivers should be informed of this restriction.

Expressed concern about the lack of a wheel wash as required by condition 11 of 97/02626/MINW. This all the more importance given the proposed increase in vehicles

Bearing the above in mind, the highway response is one of NO OBJECTION, subject to the following conditions;

1. Vehicles carrying material to or from the site shall not exceed in size an eight wheel tipper lorry and be restricted in number to a maximum of 100 vehicles (200 movements) per seven day week.

Reason: To control the size and movement of vehicles in the interests of highway safety.

2. Each vehicle attending the site shall be properly logged with the load recorded in cubic metres (for preference). A certified summary of the records shall be submitted in writing to the Local Planning Authority on a bi-monthly basis within 10 working days of the end of each second month.

Reason: To maintain and overview of the traffic conditioned above.

3. All vehicles leaving the site shall be inspected to ensure that they are in a condition not to emit dust or deposit mud, slurry or other debris on the highway, and wheel cleaning facilities shall be installed prior to the commencement of works, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter, the wheel wash facilities shall be maintained in operation at all times during the life of the planning permission.

Reason: In the interests of highway safety.

4. The deposit of materials or slurry from the site on the public highway shall be treated as an emergency and will be cleared regularly by a vacuum/road sweeper and/or hand picked in the case of litter. Visual inspections of the site access road will be carried out daily and staff will report any problems with mud on the site surface immediately to the site manager. Vehicles will be visually inspected before exit to check that loads are safe and that no mud is carried on the wheels or body of the vehicle.

Reason: In the interests of highway safety.

**ENVIRONMENTAL HEALTH OFFICER:**

Any comments will be reported verbally at the meeting.

**COUNCIL ECOLOGIST:**

Any comments will be reported verbally at the meeting.

**PLANNING POLICY SECTION OF BANES PLANNING**

No comment.

**NATURAL ENGLAND:**

'Natural England does not consider that these applications pose any likely or significant risk to those features of the natural environment for which we would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this consultation' The features requiring more detailed consideration include SSSIs, Natura 2000 site, National Park, Area of Outstanding Natural Beauty or a large population of a protected species which may affect a significant quantity of habitat across the country.

The lack of case specific comment from NE should not be interpreted as a statement that there are no impacts on the natural environment.

In particular, NE would expect the LPA in determining the applications to assess and consider the possible impacts resulting from this proposal on Protected species and Local wildlife sites, and to consider the scope for biodiversity enhancements

Initial response dated April 2012 was written on the basis that the development was not EIA development. NE raised no objections but asked to be consulted again if any changes to the application were made.

**ENGLISH HERITAGE**

Do not consider that it is necessary for these applications to be referred to EH.

**OTHER REPRESENTATIONS/THIRD PARTIES:**

39 letters have been received from 16 different local residents and a solicitor acting on behalf of one of them.

The letters raise objections on the grounds of

- impact on health,
- inaccuracies in the information submitted re distances to nearest receptors, this should include adjacent farmland, which retains permitted use rights fort changes to their current grazing use. Live stock should also be included as sensitive receptors.
- impact from odour and air pollution from bio-aerosols,
- impact from noise,
- impact on traffic safety, mud on roads unsuitable roads leading to the site and damage to surface and verges,
- impact on Green Belt,
- proximity to houses, the site is in the wrong place and should be restored to agriculture
- impact on wildlife,
- impact from fly tipping/litter,



- failure to comply with existing conditions and limits, including a compound on adjacent land.
- The supporting information does not satisfy the requirements for an Environmental Statement.
- The unauthorised sale of wood from the site
- Suspicion at the applicant's change of name.

Several of the respondents requested that enforcement action be taken to ensure the use of the site is discontinued.

## **19. The purported environmental statement**

The background to this case is that the composting of cardboard and wood and the increase in lorry movements were all originally approved in 2005 and 2006 and the site has been operating under these variations in the conditions to this effect since. The increase in the size of the hardstanding has been in place since before then, but was originally approved in 2006.

The NVZ was introduced by legislation that came into force on 1 January 2009.

The proposal for the extension of time was submitted before expiration of the original 10 year period commencing in January 2001.

However, in accordance with the rulings by the High Court and by the Secretary of State, the continued operation of the site is EIA development and the Council is prohibited from granting planning permission without first considering environmental information, i.e. an environmental statement.

The information submitted by the applicants in July and December is not considered to constitute an environmental statement for a number of reasons. These are set out below:-

### **Presentation**

There is no correct list of contents, nor is there a proper Non Technical Summary of the second submission. A Non Technical Summary is one of the items of information that is required as a minimum as part of an Environmental Statement.

### **Content**

The following information is considered lacking for the reasons given:-

**Restoration and after care.** Restoration and after care is a relevant aspect of the development that is to be described in the ES. The submission includes a copy of the wording of the original condition requiring submission of a restoration scheme and states that a variation will be sought to this, but does not specify what the variation will be, nor its objectives in terms of afteruse. As the application only seeks a further 18 months operation, this is considered a material deficiency.

**Physical measures for mitigation of environmental effects.** These are also relevant aspects of the development. The submission does not address the important question of the adequacy of capacity of the lagoon, which is considered a key feature in the control of the risk of leaks of leachate into the NVZ. Other elements necessary for the control of

odour such as misting systems, and weather stations are also not described. Views on the adequacy of the submitted information are awaited from the Council's Environmental Health Officer.

**Impact on the NVZ.** Information on the impact of the NVZ if effluent enters it from the site, and also if non PAS compost is spread on it. Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Water balance calculation.** This is an assessment of the quantity of leachate that would be generated in a 1 in 100 year storm and allowance for climate change. This is an important factor in assessing the risk of a leak of leachate from the site onto the NVZ. The submission states that it is not possible to assess this information without information on the duration of the storm. However this calculation, often referred to as a 'water balance', is standard practice in the design of surface water drainage systems for a wide range of developments, including composting hardstandings and lagoons. The submission does include a list of three factors relating to the management and operation of the composting process that are also relevant in the control of leachate. It also states that the lagoon is monitored and managed to ensure that it does not exceed 90% capacity. However as the size of the hardstanding was almost doubled in area without any increase in the size of the original lagoon the lack of a proper water balance calculation is considered to be a material deficiency.

**Odour management.** Views on the adequacy of the submitted information are awaited from the EA and the Council's ecologist.

**Cumulative impact.** The cumulative impact of the proposals with that of 'other development' is one of the considerations to be taken account of in the decision on a screening opinion. The composting site has been operating alongside the inert infilling of the adjacent site. Although the permission for the inert infilling had expired when the information was submitted, an appeal against refusal of permission for an extension of time was pending at the time, which has since been allowed. In any case, the sites have been operating alongside each other in the past. The submitted information includes consideration of the potential for cumulative impact from noise and odour, but does not mention the numbers of lorry movements, nor does it compare them to permitted movements. Whilst combined lorry movements are not likely to be significant, and the highways officer has not raised any objection, nevertheless this information was included in the Council's screening opinion and would have been easy to provide.

### **Counsel's opinion**

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

## **20. Determining the applications**

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council.

## **21. PLANNING POLICY**

In the determination of the applications regard should also be had to the provisions of the development plan and to any other material considerations.

The development plan includes the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007. The following are the mainly relevant aspects:

Paragraph B1.5 states that within rural Areas the overriding objectives for development are the protection and enhancement of the character of the countryside and its settlements and the maintenance of economic and social vitality or rural Areas.

GB.1 sets out general policy for development in the green belt. In particular, it sets out a list of the types of development that are acceptable with others not being acceptable other than in "very special circumstances". Table 6a of the plan lays out the purposes of including land as well as the objectives for the use of land in the green belt.

GB.2 seeks to protect the visual amenities of the Green Belt

NE.5 development in the Forest of Avon, will only be permitted where it respects the existing and developing woodland setting and does not conflict with the objectives of the Forest Plan, having regard to its aims in the layout of development, including landscaping NE.9 relates to locally important species and habitats. Development which would adversely affect, either directly or indirectly the nature conservation value of, Sites of Nature Conservation Importance, Local Nature Reserves or Regionally Important Geological and Geomorphological Sites, as shown on the Proposals Map, or any other sites of equivalent nature conservation value, will not be permitted unless; material factors are sufficient to override the local biological geological / geomorphological and community/amenity value of the site; and any harm to the nature conservation value of the site is minimised; and compensatory provision of at least equal nature conservation value is made.

ES.10 states amongst other things that development will not be permitted where it would have an adverse impact on health, the natural or built environment or amenity of existing or proposed uses by virtue of odour, dust and/or other forms of air pollution.

The West of England Joint Waste Core Strategy was adopted in March 2011 (JWCS).

Paragraph 5.6.7 confirms that the JWCS does not replicate or replace local development management policies. However, it explains that some local plan policies will be superseded by the JWCS and they are highlighted within Appendix 3 to that document. LP policies WM1, WM3, WM5, WM6, WM7, WM8, WMN10, WM12, WM13, WM14 and WM15 are all thereby superseded.

Overall the JWCS seeks to increase the capacity for recycling and composting available within the sub region by an additional 800,000 tonnes per annum. The Plan does not identify sites where this might take place, but Policy 3 sets out the approach to open windrow composting. The supporting text explains that open windrow composting has different land use implications to other waste management facilities least because it generally requires minimal support buildings. The operations are comparable to agricultural activities and may therefore be appropriate to locate in the open countryside.

*Policy 3 states:-*

*Planning permissions for open windrow composting, with sufficient distance, as defined in Environment Agency guidance, from any sensitive receptor will be granted, subject to development management policy:*

- 1. on existing or proposed waste management sites, subject in the case of landfill and landraising sites or other temporary facilities, to the waste use being limited to the life of the landfill, landraising or other temporary facility;*
- 2 . on sites in the countryside which constitute previously developed land, or redundant agricultural and forestry buildings and their curtilages for proposals for the composting of waste and;*
- 3. sites in agricultural use proposing composting of waste for use within that agricultural unit.*

*(12) Policy 405\_07, Policy Position composting and potential health effects from bioareosols. Environment Agency, 2007.*

There is no indication in the development plan that the use of the site for open windrow composting is not acceptable in principle, and in addition it is material that continuation of the use would contribute to maintaining the available capacity for composting in the sub

region. The key is that it is important to also determine that the environmental impact is acceptable.

The Secretary of State's screening opinion referred to above identified particular aspects of the potential impact which needed to be addressed in an Environmental Statement, which as explained above have not been adequately addressed. This has not enabled a full evaluation of the significance of these potential impacts to be undertaken.

Thus the Council is unable to form a full opinion on the implications of the proposal, which has led to the recommendation that the applications should be refused for lack of information.

## **RECOMMENDATION: REFUSE**

### **REASON(S) FOR REFUSAL**

The applications be refused for the following reason:-

05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.

05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.

**11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)**

### **PLANS LIST:**

1 The application is for EIA development and should have been accompanied by an Environmental Statement. The information submitted in support the application is not considered to constitute an Environmental Statement within the terms of Regulation 2 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 in particular because it fails to address the risk of pollution of the NVZ, fails to give information on restoration of the site, fails to give information on cumulative impacts and fails to include a Non Technical Summary. Therefore in accordance with Regulation 3 of the Town and Country Planning (Environmental Impact etc) Regulations 1999 the application must be refused.

### **PLANS LIST**

FOOTNOTE The decision relates to drawings No's 2159/1093/01, and 2159/1093/03 date stamped 5th January 2011 and 2159/1093 Rev A date stamped 19th October 2012

The advice of counsel is attached. He agrees with the above and makes a further point about the lack of assessment of non-PAS 100 compost/waste.

These deficiencies are considered sufficiently material to mean that the applications have not been accompanied by a proper Environmental Statement; therefore irrespective of the merits of the application, the Council may not approve the applications.

#### Determining the applications

The first issue before Members is whether to determine the applications now (by refusing them). If Members determine the applications, a second issue, enforcement action, arises. This is the subject of a separate report.

Officers consider that there are no considerations which suggest that the applications should not be determined now and that all relevant considerations suggest that they should be determined now, viz -

Two of the applications were made over 7 years ago. The third was made 2 years ago.

The applicant has been given abundant opportunity to submit the information required to empower the Council to grant the applications but has failed to do so, in significant ways.

The Regulations do not empower the Council to make further demands for information.

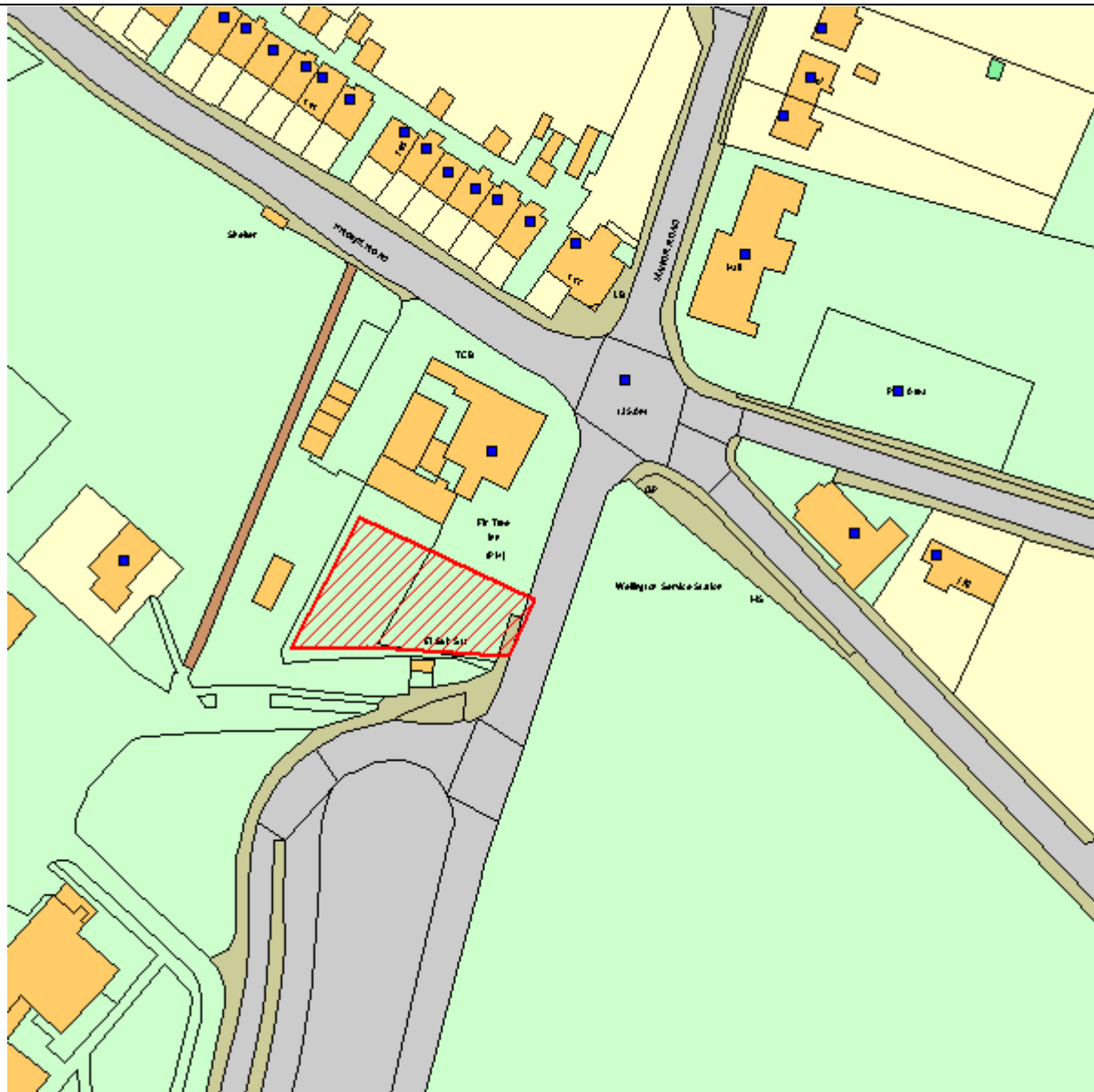
The Council is undoubtedly under an obligation to determine planning applications made to it, despite the existence of the right of appeal against non-determination.

The Council is banned from granting planning permission for this development. However the development is actually taking place and not determining the applications is tantamount to permitting it to continue. It will not be possible to take enforcement action until the applications have been determined.

There are justifications for the non-determination of the applications in the period up to 13 February 2013. However none of these justifications apply to the future.

As has been pointed out, the Council faces a hearing in the judicial review proceedings on 21 February. The fact of this imminent hearing is not relevant to the above issue. The judicial review is a challenge to past actions by the Council

<b>Item No:</b>	04
<b>Application No:</b>	12/04932/FUL
<b>Site Location:</b>	Fir Tree Inn 140 Frome Road Radstock Bath And North East Somerset BA3 3LL



**Ward:** Radstock

**Parish:** Radstock

**LB Grade:**

**Ward Members:** Councillor E Jackson

Councillor S Allen

**Application Type:** Full Application

**Proposal:** Erection of 2 no. residential dwellings with associated amenity space and parking.

**Constraints:** Agric Land Class 3b,4,5, Coal fields, Forest of Avon,

**Applicant:** Mr J Hill

**Expiry Date:** 15th January 2013

**Case Officer:** Heather Faulkner

## REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE



Radstock Town Council objected to the application on the basis of concerns regarding access and egress and drainage concerns. The Chair of the Committee has agreed that this application should be considered by Committee.

## DETAILS OF LOCATION AND PROPOSAL AND RELEVANT HISTORY

This is a full planning application for the development of land to the south of the Fir Tree Inn, the development proposes the construction of a pair of semi-detached dwellings each with four bedrooms.

The Fir Tree Inn is Grade II Listed and has planning permission to be converted into 9 dwellings.

The development site itself has access from Knobsbury Lane and would be adjacent to the access to the Writhlington School and Sports Centre which is to the south and west of the site. Opposite the site is agricultural fields.

The site is situated outside of the housing development boundary but is in close proximity to the built up area of this part of Writhlington with an immediate catchment that can access its facilities on foot. It has good public transport access links to the centre of Radstock.

Revised drawings were submitted on the 24th December which made changes to the access to the buildings and provided additional information on drainage.

## PLANNING HISTORY:

DC - 11/00285/FUL - Change of use of former public house to form 9no. one and two bedroom dwellings and associated external and internal works to the building and formation of 9no. parking spaces - PERMITTED 23.08.2011

DC - 11/00286/LBA Internal and external alterations for the change of use of former public house to form 9no. one and two bedroom dwellings and associated external and internal works to the building and formation of 9no. parking spaces

3543 - New canopy and elevational alterations - Permission 26/04/90

## **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

Neighbouring properties were consulted in respect of this development and no responses were received. Comments were received from the ward councillor in support of the development.

CHILDREN'S SERVICES - no requirement for a contribution on a development of this size

ENVIRONMENTAL HEALTH - no observation

HIGHWAYS - no objection to the principle of the development as it is in a sustainable location. Initially there were objections to the access as cars would need to reverse out onto Knobsbury Lane. Revised drawings were submitted to allow for turning space and this is acceptable subject to condition.

DRAINAGE -following the provision of additional information the drainage situtaion is now considered to be acceptable subject to condition.

LISTED BUILDINGS - I have visited the site and consider that the proposed development is acceptable in terms of the setting of the listed building. It is sufficiently distant from the flank wall of the historic building to avoid encroaching on or causing any significant harm to its character or appearance. The traditional design approach for the new houses is acceptable in this location. I would request that the repair and reuse of the listed building is linked to and guaranteed as part of the planning permission for the new enabling development, to avoid it remaining empty and at risk.

RADSTOCK TOWN COUNCIL - Objection - access and egress issues and high rainfall, concerns with water runoff.

## **POLICIES/LEGISLATION**

The following policies are material considerations:

IMP1 Planning Obligations  
D2 General design and public realm considerations  
D4 Townscape considerations  
CF1 Protection of land and buildings used for commercial purposes  
CF7 Loss of public houses  
HG1 Meeting the District housing requirement  
HG4 Residential development in the urban areas and R1 settlements  
HG7 Minimum residential density  
HG10 Housing outside settlements  
BH2 Listed buildings and their settings  
BH4 Change of use of a listed building  
NE14 Flood Risk  
T1 Overarching Access Policy  
T24 General development control and access policy  
T26 On-site parking and servicing provision

of the Bath and North East Somerset Local Plan, including minerals and waste policies, adopted October 2007.

Bath and North East Somerset Submission Core Strategy (May 2011) is out at inspection stage and therefore will only be given limited weight for development management purposes.

The National Planning Policy Framework was published in March 2012 and will be given full consideration.

## **OFFICER ASSESSMENT**

Principle of the development:

The application site whilst currently a vacant was previously land which was part of the carpark and garden of the public house. Planning permission 11/00285/FUL granted consent for the change of use of the public house to housing and therefore there is no objection to the change of the use of the land on this basis.

Policy HG.4 of the Local Plan states that residential development in the urban areas will be permitted if it is within the defined Housing Development Boundary. The application site is located outside of the defined Housing Development Boundary and in such cases Policy HG.4 states that residential development will be permitted if it forms an element of either a comprehensive scheme for a major mixed use site defined in Policy GDS.1 (not applicable in this case) or a scheme coming forward under Policies ET.2(2&3), ET.3(3). In addition the development must be appropriate to the scale of the settlement in terms of the availability of facilities and employment opportunities and accessibility to public transport.

The application site lies close to the housing development boundary (which runs along Frome Road to the north) as well as adjacent to the vacant public house which has recently gained consent for residential use. The Draft Core Strategy Policy SV1 - Somer Valley Spatial Strategy priorities development on previously developed land. The Policy aims to enable up to 2700 new homes to be built at Midsomer Norton, Radstock, Westfield, Paulton and Peasesdown St John. This Policy ensures that any new housing above the existing commitment of 2,200 dwellings is within the Housing Development Boundary. The Housing Development Boundary will be reviewed accordingly to enable delivery of the overall scale of development directed towards the Somer Valley Area.

However, this needs to be set against the priorities set out in the National Planning Policy Framework (NPPF). The NPPF states that there is a presumption in favour of sustainable development and highlights the importance of boosting significantly the supply of housing, encouraging the effective use of land by re-using land previously developed/brownfield land provided that it is not of high environmental value.

Paragraph 49 of the National Planning Policy Framework (NPPF) states that "housing applications should be considered in the context of the presumption in favour of sustainable development" and that "relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year land supply of deliverable housing". Furthermore, in order to boost the supply of housing, paragraph 47 makes it clear that where there has been a record of persistent under delivery an additional buffer of 20% to this supply of deliverable sites should be identified to ensure choice and competition in the market for land.

Para 14 of the NPPF states that "where the development plan is absent, silent or the relevant policies are out of date" the local authority should grant permission unless there are any adverse impacts in doing so that would "significantly or demonstrably outweigh the benefits of the scheme".

It has been publicised through the Core Strategy process that Bath and North East Somerset Council does not have an up-to-date five year land supply. In light of the NPPF the relevant local plan policies cannot be considered up-to-date. The Local Plan was produced under the auspices of the Town and Country Planning Act 1990 and in accordance with paragraph 215 of the NPPF where there is a conflict between existing

policies, in this case housing supply policies, and those outlined in the NPPF significant weight should be attached to the NPPF in decision making despite a conflict with adopted Local Plan policy.

Whilst it remains the case that the site is outside any defined housing development boundary, and therefore the development is contrary to Policy HG.4, there is clear evidence that the Secretary of State and the Planning Inspectorate are giving precedence to guidance set out in the NPPF especially where local authorities are unable to demonstrate a five-year land supply. In this case, it is therefore not considered that the application could be solely refused on the grounds that it falls outside of any Housing Development Boundary.

#### Impact on the Listed Building and Design:

The Council's Conservation Officer has stated no objection to the proposal. The proposed houses are set a reasonable distance away from the Listed Building so that they do not harm its setting.

The houses are set back from the road by a reasonable distance which gives the site a more spacious layout and works reasonably well with the building line formed by the public house building.

The proposed design and layout of the houses are fairly simple however the features used are in keeping with the character of the surrounding area. For example the gable front projections are similar to those found on Frome Road. The use of a mixture of stone and render is also appropriate given the mix of similar materials in near locality. The layout of the front of the properties contains a reasonable amount of hard standing and the materials used for this and the landscaping would help to soften the appearance. It will therefore be necessary to condition these details.

Overall the appearance of the development and the impact on the adjacent Listed Building is considered to be acceptable.

#### Impact on neighbouring properties:

The closest residents to the proposed dwellings will be those in the public house once it is converted. Other residential properties are a reasonable distance from the site and the development would only have limited impact on the adjacent school.

The unit (4) closest to the site within the Fir Tree Inn would be most affected by the proposed development and the building would have some impact on it. There would be a more reduced outlook, and light levels to the bedrooms may be affected. The main windows to the living area would be unaffected. The impact is not overly harmful and prospective occupiers would be aware of the situation before occupying the unit.

In order to protect the privacy of the adjacent development it will be conditioned that the first floor windows in the north east side elevation are obscurely glazed and that no further windows can be added.

The proposed development would result in the loss of the communal garden for the proposed flats on the adjacent site. The private garden for unit four would remain as well as some other external space. It is regrettable that the proposed flats would be without outside space, however, it is not uncommon for flats not to have gardens and overall it is considered to be acceptable.

#### Amenity issues of future occupiers:

The proposed dwellings are of a reasonable size with good sized gardens. The rooms within the property would have good outlook and access to light. There may be some disturbance to the occupiers of dwelling 2 by the use of the carpark for the adjacent flats when converted, however, this would not be so severe to warrant the applications refusal.

#### Highway issues:

The properties have been provided with adequate parking spaces. The plans have been altered to allow for turning space on the site so that cars can leave in forward gear. There had been concerns in respect of cars reversing out onto the pavement which is heavily used by students of the school. Following the amendments to the plans there have been no further objections from the Highways Department. There are other existing access points on this part of Knobsbury Lane and the access itself is not considered to be any more dangerous than the existing accesses.

In terms of accessibility the site is located very close to a public transport route into Radstock and Frome. Therefore when taking into account that the level of parking provision has been achieved, it is within an accessible and sustainable location and there is the option of using public transport the proposal is acceptable in highway terms.

#### Drainage and Flooding:

Concerns have been raised by the Town Council in respect of run off from the site.

The application site is not within flood zones 2 or 3 and is not therefore considered to be at risk of flooding. This part of the site has also recently been hard surfaced which would have an effect on run off. The Drainage Team originally objected to the schemes drainage proposals. Further information was submitted to show that the drainage would be dealt with by storm water soakaways. The Drainage Team were satisfied with this approach and recommended that a condition be attached to require further information to be submitted in respect of the disposal of surface water. It is considered that subject to a sufficient drainage system being in place there will not be a significant increase in run off.

#### Contributions:

The Council's Education officer has confirmed that the size and number of the units proposed has not justified a request for a planning contribution.

Other:

The Listed Building Officer requested that should planning permission be granted that a condition be attached to ensure that the works to convert the pub are carried out. Whilst this is a reasonable suggestion this application is not considered to be an enabling development and each planning application for the site has been assessed and justified on its own merits. Such a condition would not be considered to be reasonable under the guidance within Circular 11/95.

Conclusion:

The proposed development is contrary to Policy HG.4 of the Local Plan, being located outside the Housing Development Boundary. However the proposals also need to be considered in the light of the NPPF which promotes sustainable development, the importance of boosting significantly the supply of housing and encouraging the effective use of land by re-using previously developed/brownfield land not of high environmental value. Given the characteristics of this site and its setting and the lack of a five year supply of housing land it is considered that on balance and subject to conditions the proposed development is acceptable.

The application has been advertised as a departure from the Development Plan as the application site is outside of the housing development boundary. The closing period for representations will end after the date of the committee, on the 21st February 2013. Subject to there being no representations that raise new issues it is recommended that the committee delegate the decision to the Development Manager to issue following the end of this time period.

## **RECOMMENDATION**

PERMIT with condition(s)

## **CONDITIONS**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2 The area allocated for parking and turning on the submitted plan shall be properly bound and compacted (not loose stone or gravel) in accordance with details which shall have been submitted to and approved in writing by the Local Planning, and thereafter kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of amenity and highway safety.

3 Provision shall be made within the site for the disposal of surface water, so as to prevent its discharge onto the highway, details of which including the means of outfall shall be submitted to and approved in writing prior to construction.

Reason: In the interests of flood risk management.

4 No dwelling shall be occupied until its associated screen walls/fences or other means of enclosure have been erected in accordance with the approved plans and thereafter retained.

Reason: In the interests of privacy and/or visual amenity.

5 No development shall be commenced until a hard and soft landscape scheme has been first submitted to and approved in writing by the Local Planning Authority, such a scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of all new walls, fences and other boundary treatment and finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.

Reason: To ensure the provision of an appropriate landscape setting to the development.

6 All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: To ensure that the landscape scheme is implemented and maintained.

7 No development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of the appearance of the development and the character and appearance of the surrounding area.

8 The development shall not be occupied until the proposed first floor window in the north east side elevation has been glazed with obscure glass and thereafter permanently retained as such.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no windows, roof lights or openings, other than those shown on the plans hereby approved, shall be formed in the north east side elevation at first floor level or above at any time unless a further planning permission has been granted.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

10 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

### **PLANS LIST:**

1 The development shall be carried out strictly in accordance with the details shown on the following drawings/documents:

Received 8th November 2012  
Planning, Design and Access Statement  
679/300A Existing Topographical Survey/Site Plan  
679/302 Proposed Floor Plans

Received 29th November 2012  
Housing Land Supply Assessment

Received 24th December 2012  
679/301C Proposed Site Plan  
679/303B Existing and proposed street scene  
679/304B Proposed front (SE) and Side (NE) Elevations  
679/305B Proposed rear (NW) and Side (SW) Elevations  
679/306A Site Location Plan and Existing and Proposed Block Plans

### **2 REASONS FOR GRANTING APPROVAL**

1 The proposed development is contrary to Policy HG.4 of the Local Plan, being located outside any Housing Development Boundary. However the proposals also need to be considered in the light of the NPPF which promotes sustainable development, the importance of boosting significantly the supply of housing and encouraging the effective use of land by re-using previously developed/brownfield land not of high environmental value. Given the characteristics of this site and its setting and the lack of a five year supply of housing land it is considered that on balance and subject to conditions the proposed development is acceptable. The development is considered not to harm the setting of the adjacent Listed Building or the character of the surrounding area. The development is not considered to have an adverse impact upon highway safety, drainage or residential amenity.



The decision to grant approval has taken account of the Development Plan, relevant emerging Local Plans and approved Supplementary Planning Guidance. This is in accordance with the Policies set out below at A.

Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007

IMP1 Planning Obligations

D2 General design and public realm considerations

D4 Townscape considerations

CF1 Protection of land and buildings used for commercial purposes

CF7 Loss of public houses

HG1 Meeting the District housing requirement

HG7 Minimum residential density

HG10 Housing outside settlements

BH2 Listed buildings and their settings

BH4 Change of use of a listed building

NE14 Flood Risk

T1 Overarching Access Policy

T24 General development control and access policy

T26 On-site parking and servicing provision

The National Planning Policy Framework

Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007

The proposed development is not fully in accordance with the Policies set out below at B, but the planning merits of the proposed development outweigh the conflict with these Policies.

B: HG4 Residential development in the urban areas and R1 settlements of the Bath & North East Somerset Local Plan (including minerals and waste policies) 2007.

Bath and North East Somerset Submission Core Strategy (May 2011)

Decision Taking Statement

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. Negotiations have taken place during the application process resulting in revised plans being submitted. For the reasons given, and expanded upon in a related case officer's report, a positive view of the submitted proposals was taken .

3 ADVICE NOTE:

Where a request is made to a Local Planning Authority for written confirmation of compliance with a condition or conditions attached to a planning permission or where a

request to discharge conditions is submitted a fee shall be paid to that authority. Details of the fee can be found on the "what happens after permission" pages of the Council's Website. Please send your requests to the Registration Team, Planning Services, PO Box 5006, Bath, BA1 1JG. Requests can be made using the 1APP standard form which is available from the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk).

4 The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to the Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of the Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

5 Condition Information: The applicant has indicated that surface water will be disposed of via soakaways. Infiltration testing to BRE Digest 365 should be carried out and the soakaway appropriately designed. The results of the testing and the sizing of the soakaways should be submitted as part of an application to discharge the above condition.