

BATH AND NORTH EAST SOMERSET COUNCIL

Development Control Committee

13th February 2013

OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN AGENDA

ITEM 10

ITEMS FOR PLANNING PERMISSION

ITEMS 1, 2 and 3

Planning Applications

- 1) 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.
- 2) 05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.
- 3) 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)

COMPTON DANDO PARISH COUNCIL

An email has been received from the Chair of Compton Dando Parish Council (7 Feb)

As chairman of the parish council, I would like to state that I now believe that odour and traffic movements associated with the composting business have not been an issue in the last 12 – 18 months, and that I have no objection in principle to the application, but would like any extension to the composting business to be finite.

If the committee determination is delayed, I will ask Planning if we can give them a full council decision after our February meeting and add it to the agenda.

ENVIRONMENTAL HEALTH

Environmental Protection has no objection

The Odour Management Plan submitted as item 2 in the Reg 19 Response from the applicant is sufficient and satisfies the points listed below:

1. Precise details of proposed odour monitoring and mitigation measures
2. Height of windrows to be maintained (Page 8, Para 3.1.2 30m x 5m x 3m)

With regard to the need to identify triggers for management measures by reference to specific wind speeds, odour intensity and character, temperature and weather conditions, we consider that the OMP is considered adequate with regard to all of the above, however the reference made to specific wind speeds is poorly addressed.

We conclude that the **wind direction** is the important trigger with regard to potential odour complaints from nearby receptors and that specifying wind speeds as a trigger is not necessary as this is addressed within the OMP (3.2.7, 4.2.1, 4.3.1 4.5, 5.6)

3. The monitoring form is considered adequate as part of the OMP
4. Generally the OMP is considered adequate however the daily monitoring process could require external checks to ensure compliance

COUNCIL ECOLOGIST

The operational site for the proposal is surrounded by land all of which adjacent is part of the Wooscombe Complex designated Site of Nature Conservation Interest (SNCI).

There is a need for the submitted documents to assess likely ecological impacts of the proposal, on land within the site boundary and any potential impacts on adjacent land and further afield.

The submitted documents do not provide sufficient information to properly assess likely impacts of the proposals on ecology, ecological value of the watercourses / drainage channels and bankside habitats, and ground water quality, and impacts of the existing and proposed operations.

The consideration of such information by the LPA is likely to require further specialist input (hydrological / water quality assessment and pollution).

However I am confident that the documents provided so far for these applications do not in any case sufficiently address the ecological issues.

There is no ecological assessment – including provision of information regarding previous and existing ecological value at and adjacent to the site (such as ecological survey & mapping of habitats and habitat quality; botanical value; species diversity; protected species; water quality in drainage channels; identification of non-native invasive species); recognition of historical ecological value of land including land within the designated SNCI; provision of assessment of likely impacts of all operations and these proposals on habitats, species and overall ecological value of the area. A significant proportion of the submitted information that would relate to potential impacts on ecology is theoretical, and fails to provide data or factual evidence of current or historical conditions of the above features at and adjacent to the site, on which assessment can confidently be made.

I object to the proposal due to insufficient information to assess ecological value at the site (prior to and existing) and demonstrate that the proposals will not harm ecology and water quality. The likelihood that ecological damage has in the past already resulted from operations at the site can not be eliminated; any such historical impacts need to be addressed.

Should the LPA decide to consent these proposals, I would expect the above issues to be properly addressed by:

- Full EIA and ecological assessment by suitably experienced and qualified personnel that comply with best practice methods and meet all current good practice standards
- Detailed proposals for ecological mitigation, compensation and enhancement (on and off site) and long term provision of new ecological benefits on and adjacent to the site to compensate for impacts
- Details for prevention of spread of non-native species (eg Japanese knotweed) and treatment of such when found to occur on the site or adjacent or nearby land (when it may have originated from the site)

OTHER REPRESENTATIONS AND THIRD PARTIES

One further letter of objection has been received, but does not raise any issues that have not already been raised by others.

15 local residents have written in support of all three applications. The points made are

- The site is a good operation and serves a useful and valued role to local businesses and there is no alternative.
- It provides much needed jobs and work for local people
- The business is doing its bit for the environment by producing a great compost from waste, also used as farm fertiliser.
- The staff are very helpful people.
- The site is being held back by red tape and it seems inappropriate to remove the consent with the consequential detrimental effects on a sustainable local business.

CORRECTIONS

On Page 3

'The applicant sent a document which purported to be an environmental statement to the Council on 17 July 2012'. not 2013 as stated.

IN THE MATTER OF LAND AT
CHARLTON FIELD LANE, KEYNSHA

OPINION

Legal and Democratic Services
Bath and North East Somerset Council
Upper Borough Walls
Bath BA1 1RG

IN THE MATTER OF LAND AT CHARLTON FIELD LANE, KEYNSHAM

OPINION

1. I am asked to advise Bath and North East Somerset Council ('the Council') in relation to three undetermined planning applications concerning the above land, nos. 05/000723, 05/01993 and 11/00022.

Relevant background

2. Use of the land for the composting of waste started in January 2001, pursuant to a temporary planning permission granted in 1999 (97/02626). Applications 05/000723 and 05/01993, submitted in 2005, sought to vary conditions in the 1999 permission. These applications were granted in November 2006 but the two decisions were quashed in February 2009. The applications remain undetermined.
3. The period of use permitted by permission 97/02626 expired in January 2011. Application 11/00022 seeks permission for a further period of use. The original applicant, Hinton Organics Limited, stated that it sought permission to continue the use for 18 months after a favourable determination of the application.
4. The composting use has continued to take place since January 2011.
5. As applications 05/000723 and 05/01993 are made under s73 of the Town and Country Planning Act 1990, the Council is required to reconsider the conditions imposed in permission 97/02626 generally, including the time limit condition. These applications therefore give the Council the opportunity to grant permissions for composting use in the future, as does application 11/00022.
6. Officers did not consider that any of these applications were for EIA development. However in March 2012 the Secretary of State made a screening direction to the opposite effect. He identified in particular odour and the pollution of the NVZ by the leak of leachate and the spreading of non-PAS100 compost/waste.

7. The Council made a scoping opinion in April 2012 and imposed a deadline of 17 July 2012 for the submission of an environmental statement. The applicant did not challenge the screening direction, the scoping opinion or the imposition of this deadline.
8. The applicant sent a document which it contended was an environmental statement on 17 July 2012, but only managed to comply with the publicity requirements for the submission of an environmental statement on 14 September 2012. Officers then determined that the document did not in fact constitute an environmental statement and notice under r19 of the 1999 EIA Regulations was given on 31 October 2012, identifying the deficiencies. The Council required submission of the missing information by 17 December 2012. The applicant did not challenge the r19 notice or the imposition of this deadline.
9. A significant volume of material was submitted to the Council on 17 December 2012. In the remainder of this Opinion I set out why I consider that this material does not address the requirements for an environmental statement set out in the r19 notice.

The 1999 EIA Regulations

10. All three applications are governed by the 1999 EIA Regulations since they were all submitted before 24 August 2011, the date on which the 2011 EIA Regulations came into effect (see r65 of the 2011 Regulations).
11. The 1999 Regulations define an environmental statement as a statement
 - ‘(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
 - ‘(b) that includes at least the information referred to in Part II of Schedule 4.’
12. Part II of Schedule 4 of the Regulations covers -

1. A description of the development comprising information on the site, design and size of the development.
2. A description of the measures envisaged in order to avoid, reduce, and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the development is likely to have on the environment.
4. ...
5. A non-technical summary ...

13. Part I of Schedule 4 covers -

1. A description of the development, including in particular (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases ... (c) an estimate, by type and quantity, of expected residues and emissions ... resulting from the operation of the proposed development.
2. ...
3. A description of the aspects of the environment likely to be significantly affected by the development including, in particular, population, fauna, flora, soil, water air, climatic factors, material assets ...
4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, negative and positive effects ... and the description by the applicant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary ...
7. An indication of any difficulties (technical difficulties or lack of know-how) encountered by the applicant in compiling the required information.

Deficiencies

14. All the information required in the r19 notice is needed before the material submitted by the applicant constitutes an environmental statement. I set out in paragraphs 16 - 26 deficiencies in the material submitted which I have been able to discuss with the Case Officer. She has seen a draft of this Opinion and is happy with my comments.
15. In paragraphs 27 et seq I identify further matters which I have not had the opportunity to discuss with the Case Officer but which, in my opinion, constitute serious deficiencies, or raise serious questions requiring further investigation.

'Q.8 The restoration and aftercare proposed. Timescale proposed for restoration and aftercare.'

16. This information is required under paragraph 1 of Part II and paragraph 1 of Part I of Schedule 4 of the Regulations.

17. There is no answer to the question. The applicant merely states that it does not intend to comply with condition 20 of permission 97/02626. However it would not be acceptable for the applicant simply to abandon the site when the temporary composting use ceases and any planning permissions granted on the present applications would have to provide for proper restoration. How the site will be used after the temporary composting use ceases is part of the development requiring to be described and assessed.

'Q.9 Details of physical measures incorporated into the operational development on the Site for the purposes of environmental protection. Include details of features which retain run-off on the concrete pad and drain it into the lagoon. The capacity of the lagoon.'

18. This information is required under paragraph 2 of Part II and paragraph 5 of Part I of Schedule 4 of the Regulations.

19. In answer to the question the applicant merely provides reports on the laying of the lagoon liner in March 2003 and on the extension of the pad in June 2005. I do not think that a description of the liner is good enough as a description of the lagoon. The answer does not address the drains (appendix 8 of the Management System gives the capacity of the lagoon).

20. The applicant does not address the misting system, the weather station or the bunds (see Odour Management Plan paragraphs 3.2.1, 3.2.2, 3.2.4, 4.3.1).

'Q.13 An assessment of the impact on the soil, water, flora and fauna of the NVZ if effluent enters it from the Composting Site. State quantity, strength and duration of leakage of effluent assumed for the purposes of assessment. Include long term effects.'

21. The Case Officer is consulting the Environment Agency on the adequacy of the information provided on (i) the vulnerability of this particular NVZ and (ii) the composition of the leachate, in particular the materiality of a measurement of Biochemical Oxygen Demand and Chemical Oxygen Demand to the question of harm to a NVZ.

'Q.15 Assess the quantity of leachate which would be generated in a 1 in 100 year storm event (making an allowance for climate change).'

22. The question is not answered at all. This information is required under paragraph 3 of Part II and paragraph 4 of Part I of Schedule 4 of the Regulations.

'Q.16 Provide a water balance detailing how leachate from the composting area is managed annually, with a breakdown per month. Show the level of rainfall assessed, the rate at which leachate is generated and assumptions made about the loss of leachate through evaporation. Explain how the lagoon is managed to ensure that it always has sufficient capacity to accommodate the quantity of leachate assessed under paragraph 15.'

23. This information is required under paragraph 3 of Part II and paragraphs 1(c) and 5 of Part I of Schedule 4 of the Regulations. The question is not answered at all. The calculations in Appendix 8 of the Management System state what the capacity of the lagoon is but do not justify it. I understand that the Case Officer nevertheless wants to consult the Environment Agency on this question since the Agency must have assessed the adequacy of the lagoon when granting the environmental permit.

'Q.20 Precise details of proposed odour monitoring and mitigation measures, including height of windrows to be maintained. In particular (a) identify triggers for management measures by reference to specific wind speeds, odour intensity and character, temperature and weather conditions ...'

24. There is no reference to specific wind speeds or weather conditions. However the Case Officer is consulting with the EHO on whether the fairly comprehensive control

regime described in the Odour Management Plan obviates the need for triggers to be formulated in this way.

'Q.23 The Council is faced with an appeal in relation to the continuation of inert landfill operations on adjoining land. This constitutes 'other development' within the meaning of paragraph 1(b) of Schedule 3 of the 1999 Regulations. Provide data required to identify and assess the main effects of this cumulation. In particular address (i) whether the cumulation of traffic and of noise emissions are main effects and (ii) whether the proposed landfill operations will generate odour. If any of the main cumulative effects are likely to involve significant effects on the environment, provide a description of such effects, including the effect of intended mitigation measures.'

25. There is no answer to (i). The applicant is obliged to provide the data needed to identify and assess the main impacts of the cumulation by paragraph 3 of Part II of Schedule 4 of the Regulations. This certainly requires data about the cumulative traffic impact.

Non-technical summary

26. There is no non-technical summary, in breach of paragraph 5 of Part II of Schedule 4 of the Regulations.

Failure to address pollution from 'the spreading of non-PAS 100 compost/waste in the NVZ'

27. The screening direction and Q.14 required an assessment of the potential for pollution from 'the spreading of non-PAS 100 compost/waste in the NVZ'. I do not consider that any useful information on this is provided by the applicant. The answer to Q.14 consists almost entirely of generalisations. The only detailed information about the composition of compost is of PAS 100 compost. The answer ends by stating 'the combination of possibilities of impacts and influences are too numerous to be covered completely within the scope of this report' (a comment seemingly made only in the context of PAS 100 compost). Since 'the report' is supposed to be an environmental statement, 'the combination of possibilities of impacts and influences' is precisely what it is required to cover. If the applicant wants to rely on technical

difficulties or lack of know-how within paragraph 7 of Part I of Schedule 4, it must give an 'indication' of these.

28. The difficulty with this part of the screening direction is that 'non-PAS 100 compost/waste' could cover just about anything. Of course, if the applicant thought that the Secretary of State's direction was unclear or unreasonable, it should have challenged it. The applicant does not contend that no non-PAS 100 compost/waste ever leaves the site: I therefore consider that it is required to specify what products/wastes other than PAS 100 compost are generated and what they contain. However, as far as I can make out, there is only a single sentence dealing specifically with this.
29. It is not sufficient merely to state that any spreading of non-PAS 100 compost would be in accordance with an Environment Agency permit.

Accuracy of information provided

30. Q.6 asked for records of leachate removal. The applicant states baldly that 'no leachate has been removed from the site', presumably ever. If this is true it is a complete answer to the request. However this statement is difficult to reconcile with what is said elsewhere, eg about annual removal of leachate. I note that the Environment Agency states that it inspects the lagoon liner annually. This presumably means that the lagoon has to be empty.
31. Q.7 asked about details of past monitoring of odour. The applicant refers to its present daily monitoring record sheet. However this sheet could not have been used to record the monitoring required since 2007 by the 2007 Working Plan, let alone the monitoring required since September 2012 by the 2012 Odour Management Plan. Officers are investigating what the applicant actually records and whether monitoring has actually been carried out in accordance with these Plans (as the applicant implies).
32. The following points arising from the response of the Environment Agency also concern me -
- a. The response to Q.13 states 'the leachate is monitored by the Environment Agency' and 'there has never been cause for concern with the COD and BOD

in the leachate'. The first of these statements is essentially untrue. The Environment Agency in no sense monitors the leachate, and has tested it only once, in 2006. Apart from the concentrations recorded in 2006, it appears that there is no information about 'the COD and BOD in the leachate'.

- b. The response to Q.16 states that, should the lagoon reach 90% capacity, 'an appropriate quantity of leachate is recirculated over the windrows to bring the lagoon level down to between 40 and 60%'. This implies the removal of 30-50% of the capacity of the lagoon (130m³ – 216m³). According to the Environment Agency, such recirculation is prohibited by the environmental permit. The applicant does not mention this, nor the fact that compliance with the environmental permit presumably requires substantial volumes of leachate to be removed from the site.

Conclusion

33. Since the information provided by the applicant does not amount to an environmental statement, the Council has no power to grant any of the three applications (see r3 of the 1999 Regulations).



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LANGHAM
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5 February 2013

Item No.	Application No.	Address
04	12/04932/FUL	Fir Tree Inn, 140 Frome Road, Radstock

The wording of the recommendation to permit this application is incorrect on the main Agenda as a decision cannot be issued until after the 'departure advertisement' has expired. The recommendation should therefore be as follows:

Delegate authority to the Development Manager to PERMIT subject to no new objections being received by 21st February, and subject to the following conditions.
