

# Planning (Regulatory) Committee

<b>Report title:</b>	<b>C/2/2018/2006: Land adjacent to Riverside Farm, Garage Lane, Setchey, King's Lynn</b>
<b>Date of meeting:</b>	<b>15 March 2019</b>
<b>Responsible Chief Officer:</b>	<b>Tom McCabe, Executive Director of Community and Environmental Services</b>
<b>Proposal and applicant:</b> Change of use of agricultural land to extension of existing waste facility for storage purposes (partly in retrospect) with associated landscaping and provision of 2 no. modular office/welfare units (Applicant: Skippy Skip Hire)	

## Executive summary

Part retrospective planning permission is sought for a change of use of agricultural land to an extension of an existing waste facility for storage purposes (partly in retrospect) with associated landscaping and provision of 2 no. modular office/welfare units. The existing waste facility (planning permission ref: C/2/2013/2017) on the adjoining site, has permission to sort and process recyclable material within the existing building.

No objections have been received from statutory or non-statutory consultees subject to conditions, however the Parish Council had concerns. No public representations have been received. The proposal is considered to represent a departure from the adopted Norfolk Core Strategy and Minerals and Waste Development Management Policies DPD 2010-2026 and an inadequate Sequential Test has been received to date.

The application is being reported to this committee on the basis it is a departure from policy and at the request of the local Member, Cllr Alexandra Kemp.

### Recommendation:

It is recommended that the Executive Director of Community and Environmental Services be authorised to:

#### I. Refuse planning permission

It is considered the proposal is contrary to the Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals 2010-2016 Policy CS6: *General Waste Management Considerations* and DM4: *Flood Risk*. It is considered there is insufficient information provided in the information submitted to undertake a Sequential Test, to enable the County Planning Authority to justify a departure from policy; on an unallocated site, designated countryside and in Flood Zone 3. Therefore, there is not considered to be sufficient weighting in terms of material considerations that warrant determining the application otherwise than in accordance with the development plan.

## 1. The Proposal

- 1.1 Type of development : Change of use of agricultural land to an extension of existing waste facility for storage purposes (partly in retrospect) with associated landscaping and provision of 2 no. modular office/welfare units
- 1.2 Site : 0.87 hectares excluding site access down Garage Lane
- 1.3 Annual tonnage : 7,500 tonnes per annum (as approved in permission ref: C/2/2013/2017)
- 1.4 Duration : Permanent
- 1.5 Hours of working / operation : In accordance with planning permission for the applicant's existing adjacent waste facility (ref: C/2/2013/2017)  
Monday to Friday: 08.00 – 18.00  
Saturday: 08.00 – 13.00  
Sunday/Bank holidays: CLOSED
- 1.6 Vehicle movements and numbers : No increase in throughput/tonnage and therefore no increase in vehicle movements (as approved in permission ref: C/2/2013/2017)
- 1.7 Access : Access to the site is as per the existing waste facility site, down Garage Lane, a private industrial estates road, approximately 700 m from the junction of Garage Lane and the A10.
- 1.8 Landscaping : 2m steel mesh boundary fence; Hedge outside fence boundary; 1.5m screening mound to the south of the site with planting on the outer bank.
- 1.9 Description of proposal

The existing permitted and operational waste facility (permission ref: C/2/2013/2017) on the adjoining site, has permission to sort and process the recyclable material within the existing building. This application seeks to regularize the retrospective change of use of the 0.87 hectare extension of land directly to the east of the existing permitted waste facility site for:

- storage of clean soil and rubble, recyclable waste and wood in skips/containers, and storage of empty skips, containers, plant and overnight vehicle parking.
- creation of new area for site, staff and visitor parking (which increases current site parking capacity from the currently consented 4 spaces to 10);
- siting of 2 no. modular buildings measuring 12 m (length) x 3 m (width) x 3 m (height) for use as office/welfare facilities (part-retrospect)
- Utilising existing site access gates (shown on the plan) for the purpose of providing access to the whole site (i.e. the application site and the existing

waste facility) and maintaining a vehicle access route through the site;

- Fencing the site perimeter using steel mesh fencing to 2m
- Landscaping works

- 1.10 The applicant explains the purpose of utilising the new land within the application area is solely to provide additional storage capacity for the existing adjacent waste management facility. This application does not seek to increase the throughput of the site from the 7,500 tonnes per annum currently consented for the adjacent waste facility (permission ref: C/2/2013/2017).
- 1.11 In the most recent information received shortly before this report was finalised, the applicant has confirmed that wood separated from the existing recycling activities on site will be stored on the proposed application area in a 40yd<sup>3</sup> skip along with the storage of clean soil and rubble, recyclable waste in skips/containers, storage of empty skips, containers, plant and overnight vehicle parking.
- 1.12 It is noted that the existing unauthorised development on site, goes beyond the red line demarcating the northernmost boundary of the land proposed for development within the current planning application area, which at present accommodates a bund currently under construction to the north of the site. The agent has stated it is intended to either remove this second bund or to submit a second planning application to regularise this bund will be submitted to the Council upon determination of the existing planning application.
- 1.13 Since mid-2014, following the grant of planning permission for the existing waste facility (adjacent to the current application site), the applicant has brought skips back to the permitted site for processing and separation of recyclable materials from the skips to improve the service offered and increase the revenue received per skip by reducing the tipping costs for the business. As a result of the facility to separate the recyclable fractions of the skip wastes handled by the applicant, the business has grown since 2014.
- 1.14 Therefore, the applicant states that the land to the rear (west) of the recycling building on the adjacent permitted site is no longer adequate for the storage of these materials. As a result, the applicant began utilising the application site for storage purposes under what was believed to be an extant timber storage yard permission. The ongoing use of this land for the purposes outlined in this application is stated by the agent to be essential for the business to operate successfully and sustainably.
- 1.15 The applicant is currently subject to enforcement action, under the Environment Agency (EA). The application area was subject to an enforcement notice under Section 59 of the Environmental Protection Act 1990 with a compliance date to clear the land of waste by 14 December 2018. The EA have confirmed that the requirements of the enforcement notice have not been met and are currently considering further enforcement action to take for failing to comply with that enforcement notice. The agency have taken enforcement action because of the type of material that has been bought and stored on site, which does not accord

with the permit/exemption. As this is being dealt with under separate legislation, and the EA do not have an objection to the proposal as set out in this planning application, limited weighting should be given to this material consideration.

- 1.16 The EA further explained that there is currently waste timber being stored on the application area, which was previously authorised in accordance with a S2 Exemption for Storage of Waste in a Secure Place. However, the EA subsequently de-registered this exemption when non-conformant waste was identified on the land, which became subject to an enforcement notice served on 13 September 2018. The waste timber was not subject to the enforcement notice, however, at the current time there is no permission in force from the EA authorising the continued storage of waste timber within the application area.
- 1.17 The site is regularly monitored by Norfolk County Council monitoring officers and this application was submitted as a result of considering enforcement action. There are two Norfolk County Council enforcement records;
- ENF/1563 on 26 February 2016 recorded concerns over wind blowing litter into the drains, the IDB raising concerns, and the burning of waste. The complaint was closed on 4 May 2016, after a site visit, and referral of the issues to the EA. No further issues were noted and the matter considered complied with in May 2016.
  - ENF/1706 on 18 July 2018 is regarding the result of this planning application being considered, to regularise the unauthorised storage of waste. The EA also de-registered the exemption they granted on the application land, due to non-conformant waste (i.e. mixed skip waste, and construction and demolition waste requiring additional processing).
- 1.18 It is noted in the monitoring records that the applicant is 'barely complying' with conditions relating to the existing permission on the adjacent site, which appears to be due to the growth of the business since 2014. On the most recent site visit, it was noted that an incinerator had been bought onto the site, which is not subject to an existing permission, nor the subject application. The applicant believed this to be part of an existing planning permission, which is not the case. The site will need to be brought back into compliance or subject to appropriate action

## **2. Site**

- 2.1 The site is located on the periphery of the Garage Lane Industrial Estate on what is previously undeveloped agricultural land. The site is in the parish of West Winch and is included within the boundaries of the adopted West Winch and North Runcton Neighbourhood Plan. The site is not allocated in the adopted Waste Site Specific Allocations DPD and is not allocated in the adopted King's Lynn & West Norfolk Borough Council Site Allocations and Development Management Policies Plan (July 2016).
- 2.2 The site is adjoined to the western boundary by the existing permitted waste recycling facility, which was granted permission by Norfolk County Council on 26

March 2014 (ref: C/2/2013/2017). The nearest residential development is a group of properties some 320m to the north east of the site, off Garage Lane and two isolated properties 480m to the south west of the site. There are predominantly agricultural fields to the north, west and south of the site. The industrial estate is to the east of the site along the private access road, Garage Lane.

- 2.3 West Winch lies on the western end of a low ridge of land between the Nar and Gaywood valleys, and the Common fringes the Fens stretching beyond to the west.

### **3. Constraints**

- 3.1 The following constraints apply to the application site:

- Flood Zone 3 (High Risk)
- Grade 3 Agricultural Land Class
- Common land - West Winch Common (8m - North East corner of the application site)
- County Wildlife site – West Winch Common (immediately off the North East corner of the application site)
- Core River Valley
- SSSI – Setchey (320m south of the site)
- SSSI – River Nar (300m south of the site)

### **4. Planning History**

- 4.1 The site has one historic and expired permission from Kings Lynn and West Norfolk Borough Council (permission ref: 11/00982/CU), which granted approval for a change of use of 'agricultural area' to 'timber storage yard'. The permission was deemed as not implemented as the prior to commencement conditions were never discharged/fulfilled, which required the implementation of full details to be submitted and approved by the Local Planning Authority, including:

- Hardstanding to be laid (to verify it being impermeable)
- Surface water drainage details
- 2 no. access construction details

- 4.2 The existing and adjacent waste recycling facility, to the western boundary of the application site was approved on 26 March 2014 (permission ref: C/2/2013/2017) for a change of use of HGV maintenance and service yard/building to a waste recycling centre with associated storage round the curtilage of the building. All waste sorting/processing is only permitted within the building and the curtilage of the building is for the storage of those materials. The permission allows 7,500 tonnes per annum to be processed on the existing site.

### **5. Planning Policy**

#### **Development Plan Policy**

- 5.1 **Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2016 (2011) (NMWDF)**

CS5 – General location of waste management facilities  
 CS6 – General waste management considerations  
 CS7 – Recycling, composting, anaerobic digestion and waste transfer station  
 CS15 – Transport  
 DM2 – Core River Valley  
 DM4 – Flood Risk  
 DM16 – Soils  
 CS13 – Climate change and renewable energy generation  
 CS14 – Environmental Protection  
 DM1 – Nature Conservation  
 DM3 – Groundwater and Surface water  
 DM8 – Design, local landscape and townscape character  
 DM9 - Archaeological sites  
 DM10 – Transport  
 DM12 – Amenity  
 DM16 – Soils

**5.2 Norfolk Minerals and Waste Local Development Framework: Waste Site Specific Allocations DPD (2013)**

The site is not allocated in the local plan.

**5.3 King's Lynn & West Norfolk Borough Council Core Strategy (July 2011)**

Rural Areas - Policy CS06  
 Sustainable Development - Policy CS08  
 The Economy - Policy CS10  
 Transportation - Policy CS11  
 Environmental Assets - Policy CS12

**5.4 King's Lynn & West Norfolk Borough Council Site Allocations and Development Management Policies Plan (SADMP) (September 2016)**

DM1 - Presumption in Favour of Sustainable Development  
 DM2 - Development Boundaries  
 DM3 - Development in the Smaller Villages and Hamlets  
 DM15 - Environment, Design and Amenity  
 DM17 - Parking Provision in New Development  
 DM20 - Renewable Energy  
 DM21 - Sites in Areas of Flood Risk

**5.5 Adopted Neighbourhood Plan for West Winch and North Runcton (WWNRMP)**

WA04: Providing sustainable drainage  
 WA06: Protecting agricultural land and soils  
 WA07: Design to protect and enhance local character

**5.6 The National Planning Policy Framework (2019)**

- 1: Building a strong competitive economy
- 11. Making effective use of land
- 12. Achieving well-designed places
- 15. Conserving and enhancing the natural environment
- 14. Meeting the challenge of climate change, flooding and coastal change

5.7      **National Planning Policy for Waste (2014)**

5.8      **Waste Management Plan for England (2013)**

**6.      Consultations**

- 6.1      Borough / District Council      :      No response received.  
Council
- 6.2      *West Winch* Parish Council      :      Concerns that there is risk to the River Nar and River Puny from pollution and that the River Nar and Embankment is an SSSI site. It is against the West Winch and North Runcion Neighbourhood Plan Policy GA06. They have also highlighted the requirements of Policy GA03 and Policy GA07. Question over what impact will have on the junction to the A10.
- 6.3      *Middleton* Parish Council      :      No response received.
- 6.4      *North Runcion* Parish Council      :      No response received.
- 6.5      Environmental Health Officer (district/borough)      :      No objection, but note complaints about the operations on site from the IDB in relation to contamination and blocking of the Puny Drain which runs beyond the north eastern boundary, and burning of commercial waste at weekends. Require conditions on the stockpile height, fence design/layout, covering of skips/containers, dust control, prohibition of site bonfires, hours of work and foul drainage.  
  
No objection relating to air quality.
- 6.6      Natural England      :      No comments and standing advice.
- 6.7      Environment Agency      :      Three consultation responses which all stated no objection to the proposals but advise that the applicant must adhere to advice (i.e. adequate security/guard against pollution, including fires) provided in order to be considered for an Environmental Permit (not necessarily planning considerations), without which the site would be inoperable.
- 6.8      Lead Local Flood Authority (NCC)      :      Below threshold, standing advice.
- 6.9      Highway Authority (NCC)      :      No objection.
- 6.10      Ecologist (NCC)      :      No objections provided that the 9m IDB easement can be implemented. Due to the distances

- involved and the 9m buffer provided there are unlikely to be impacts on West Winch Common County Wildlife Site.
- 6.11 Norfolk Fire and rescue Service (NCC) : No response received.
- 6.12 East of the Ouse, Polver & Nar Internal Drainage Board : The Board highlighted that they objected to the previous Borough Application. The board is also concerned with the pollution risk to the watercourse from the materials stored on site. Water abstraction does take place from the Puny Drain, so any pollution incident could affect the local farming community.
- 6.13 Defence Infrastructure Organisation No safeguarding objections.
- 6.14 County Councillor (Alexandra Kemp) : Wishes to call-in the application in “as it is contentious and there are concerns from Parish Councillors about light pollution, the risk of contamination to the Puny Drain, the burning at weekends of waste and there is insufficient fencing in the plans. Stockpiled waste has blown into the drain in the past and there are ongoing enforcement issues. Waste should not be stockpiled over 1.5m high so it does not blow over the fence, and the waste should be covered. There should be an ecology report because the Nar is a SSSI.”
- 6.15 Representations  
The application was advertised by means of neighbour notification letters, site notices, and an advertisement in the Eastern Daily Press newspaper.
- 6.16 No representations have been received from members of the public.

## **7. Assessment**

7.1 The issues to be assessed for this application are:

### **7.2 Principle of development**

A basic principle when assessing planning applications is outlined in Section 38(6) of the Town and Country Planning Compulsory Purchase Act 2004 which states:

*“if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise”.*

7.3 In terms of the development plan, the County Planning Authority considers the relevant documents in relation to this application are the Norfolk Minerals and



Waste Local Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2016 (the “NMWDF Core Strategy”), the *West Norfolk and King’s Lynn Borough Council Core Strategy* (2011), the *West Norfolk and King’s Lynn Borough Council Site Allocation and Development Management Policies* (2016), and the adopted Neighbourhood Plan for West Winch and North Runcton (2017). Whilst not part of the development plan, policies within the National Planning Policy Framework (2018) and National Planning Policy for Waste (2014) are also a further material consideration of significant weight.

- 7.4 The principle of the development is changing the use of agricultural land to an extension of the existing waste facility for storage purposes (partly in retrospect) with associated landscaping and provision of 2 no. modular office/welfare units.
- 7.5 In the context of Policy CS5: *General location of waste management facilities of the NMWDF*, due to the throughput of the waste management facility (7,500 tpa), the site is a ‘non-strategic’ facility. The application site is located at Setchey, which is approximately 3 miles from King’s Lynn and therefore the site is located in accordance with this policy.
- 7.6 The land on which the application is located does not have any extant planning permission and was previously undeveloped. The site was an arable agricultural field prior to the current development for which planning permission (part retrospective) is being sought. Policy CS6: *General waste management considerations* requires that waste sites will be acceptable on the following types of land, provided they would not cause unacceptable environmental impacts:
- a) land already in waste management use;
  - b) existing industrial/employment/allocated land
  - c) other previously-developed land; and
  - d) contaminated or derelict land.
- 7.7 The land on which the application is located is not in accordance with any of the types of land listed above in Policy CS6 and therefore is not in accordance with this policy.
- 7.8 As an agricultural field, the land is also not an unused or under-used agricultural or forestry building and is also not within the curtilage of an unused or under-used agricultural or forestry building. The adjacent buildings to the field are in industrial use and waste management use and therefore are not agricultural buildings.
- 7.9 King’s Lynn and West Norfolk Borough Council granted a change of use permission for the subject land in 2012 (ref: 11/00982/CU) from agricultural land to timber storage yard, as an extension to store timber as part of an existing HGV Maintenance Yard facility (which is now the permitted recycling facility). The permission, however, has expired without being implemented as the pre-commencement conditions had not been satisfied. Had the permission been implemented including the laying of an impermeable hardstanding, the land would have met caveat c) above as previously developed land.

- 7.10 Therefore, despite the adjacent permitted waste facility, the application site occupies what would be agricultural land apart from the unauthorised use. The site is not allocated in the adopted Waste Site Specific Allocations Plan and is therefore not recognised as an allocated waste management site to be provided for the plan period until 2026. The development therefore represents a departure from the NMWDF development plan and is considered a ground for refusal.
- 7.11 In terms of NMWDF policy CS7: *Recycling, composting, anaerobic digestion and waste transfer stations*, it states that “the expansion of ... recycling facilities and waste transfer stations to handle all types of waste would be considered favourably, so long as they would not cause unacceptable environmental, amenity and/or highways impacts. The planning officer considers that given the highways officer and District EHO has no objections, subject to mitigating the development through conditions, that it does fulfil the requirements of this policy.
- 7.12 West Winch is defined in the SADMP Policy CS02: *The Settlement Hierarchy* as a settlement adjacent to King’s Lynn and the main towns, however, the site is in designated countryside as it is outside the development boundary. Policy DM2: *Development Boundaries* and Policy DM 3: *Development in the Smaller Villages and Hamlets* state that the areas outside development boundaries (excepting specific allocations for development) will be treated as countryside where new development will be more restricted and will be limited to that identified as suitable in rural areas by other policies of the local plan, including small scale employment (under Core Strategy Policy CS10). Policy CS10: *The Economy* states that the Council will support the rural economy and diversification through a rural exception approach to new development within the countryside. However, the policy states ‘permission may be granted on land which would not otherwise be appropriate for development for an employment generating use which meets a local business need.’
- 7.14 Therefore, in accordance with Section 38(6) of the Town and Country Planning Compulsory Purchase Act 2004, it needs to be determined whether there are sufficient material considerations that would justify a grant of permission and outweigh this land use policy conflict. Also, because the site is not in conformity with the NMWDP development plan, in accordance with the National Policy for Waste (2014), there is also a requirement for the applicant to have demonstrated a need for this facility.
- 7.15 The application explains that the need for the development is due to the growth of the business, and the inadequacy of the existing storage as permitted within the current application. The applicant has been in business in the local area for just over 6 years. The first 4 years were for collection and delivery of skips only. Since mid-2014, following the grant of planning permission for the existing waste facility (adjacent to the current application site), the applicant has brought skips back to this site for processing and separation of recyclable materials from the skips to improve the service offered and increase the revenue received per skip by reducing the tipping costs for the business. As a result of the facility to separate the recyclable fractions of the skip wastes handled by the applicant, the business has grown since 2014. According to the council’s records, for the year 2017/18,

2,748 tonnes was processed, out of a permitted 7,500 tonnes.

- 7.16 In summary, it is recognised there is a business case for expansion, and that the geographical location suits the existing permitted waste recycling business. The proposal is considered to accord with NMWDF policies CS5: *General location of waste management facilities* and CS7: *Recycling, composting, anaerobic digestion and waste transfer stations*. The proposal would also move the management of waste up the waste hierarchy in accordance with the National Planning Policy for Waste (2014) and the Waste Management Plan for England (2013) because materials are being diverted away from disposal, such as Landfill, at the bottom of the hierarchy, to recycling and therefore potential re-use of the materials. However the proposal is not in accordance with policy CS6: *General waste management considerations*, and the existing industrial estate on Garage Lane has not been included within a settlement boundary or employment land allocations in either the NMWDF or the SADMP local plan. The principle of the development for a change of use of land is considered therefore to be unacceptable, and a ground for refusal.
- 7.17 It is recognised that the Borough Council permitted a change of the use of the land in 2012 (ref: 11/00982/CU), through policy CS10: *The Economy* which states that the Council will support the rural economy and diversification through a rural exception approach to new development within the countryside (meeting the specific criteria). However, no Sequential Test was undertaken. Furthermore, the development proposed for a timber storage yard was not considered a waste management development. This application is for a waste management development and subject to the application of the NMWDF policies, as well as the SADMP.
- 7.18 **Amenity (noise, dust, light pollution etc)**
- The protection of amenity for people living in close proximity of waste management facilities is a key consideration and NMWDF policy DM12: *Amenity* states that development will only be permitted where "...unacceptable impact to local amenity will not arise from the operation of the facility." Policy NMWDF CS14: *Environmental protection* which also seeks to avoid unacceptable impacts on amenity. The SADMP policy DM15: *Environment, Design and Amenity* also seeks to prevent new development causing unacceptable impact on local amenity. NMWDF policy DM13: *Air Quality* seeks to only permit development where development would not impact negatively on Air Quality Management Areas (AQMA), or lead to the designation of new ones. Furthermore, NPPF paragraph 109 requires that new and existing development should be prevented 'from contributing to unacceptable levels of air pollution'.
- 7.19 The nearest residential properties are a group of properties some 320m to the north east of the site, off Garage Lane and two isolated properties 480m to the south west of the site. No public representations were received, however the parish council expressed concerns over the impact of existing/current unauthorised activities on site, which are under the jurisdiction and enforced by the Environment Agency, under Environmental Protection Act 1990. This planning application is considering the development only as proposed, which is in part retrospect only, and does not reflect the current unauthorised development

on-site today, hence why the application is part-retrospective.

- 7.20 With regards to the actual regulation of an operation such as this, in accordance with paragraph 122 of the NPPF and the National Planning Policy for Waste, the County Council needs to be satisfied that the facility can in principle operate without causing an unacceptable impact on amenity by taking advice from the relevant regulation authority (the Environment Agency (EA)). However, it is the role of the Environmental Permit as issued by the Environment Agency to actually control emissions such as noise and dust through conditions.
- 7.21 Both the EA and Borough EHO have no objection to the development, subject to a number of conditions and informatives, namely the covering of skips and containers to prevent the wind blowing any recyclable waste off-site, a stockpile height of 3m, dust mitigation measures, to prevent wind blowing soil/dust into the Puny Drain, site operation hours and the prohibition of site bonfires.
- 7.22 The EHO commented that whilst no details have been provided in relation to external lighting for the site, it is considered that the location and separation distance from residences does not warrant any conditioning of this aspect, or in terms of potential noise impacts. There are many other surrounding businesses on Garage Lane which utilise external lighting and engage in industrial uses, so there should not be any further adverse impact from any current or proposed site lighting or use.
- 7.23 The applicant has commented that a limitation on the stockpile height of 1.5m would be unworkable/unviable for his business and would require a minimum height of 3m. The EHO has advised that 3m will be acceptable, subject to a condition requiring dust mitigation measures.
- 7.24 In the event of an approval, it is recommended that a condition regarding a timed schedule of works is drawn up with the monitoring officers involved, to ensure that the retrospective parts of the site are put into place as soon as is possible, to ensure compliance at the earliest opportunity, to avoid the likelihood of enforcement action being taken against the applicant.
- 7.25 In terms of amenity and landscape, the Landscape Visual Impact Assessment indicates that, given the existing surrounding industrial uses and sparse residential properties, the heights of the stockpiles of soil and rubble would not be of material concern in visual amenity and landscape terms, and is considered to be in accordance with policies DM8: *Design, local landscape and townscape character*, DM12: *Amenity* and CS14: *Environmental Protection* of the NMWDF and DM15 - *Environment, Design and Amenity* of the SADMP.
- 7.26 **Contamination**  
In accordance with NMWDF Policy CS14 *Environmental Protection*, developments must ensure that there are no unacceptable adverse impacts on, and ideally improvements to natural resources, including water, air and soil. Councillor Kemp, who requested for the application to be called in, is concerned that there is a risk of contamination to the Puny Drain, and where stockpiled waste which has blown into the drain in the past, which comes from comments

made by the district EHO. The Borough EHO commented that although it has no grounds to object to this proposal, their team has previously received complaints about the operations on site from the IDB in relation to contamination and blocking of the Puny Drain which runs beyond the north eastern boundary. The IDB stated in their consultation response that they were concerned with the pollution risk to the watercourse from the materials stored on site, as water abstraction takes place from the Puny Drain, so any pollution incident could affect the local farming community.

- 7.27 In terms of contamination and determining this planning application, it is the consideration of future uses, as set out in National Planning Policy Guidance (2014) that is being considered. It is therefore the proposed type of material and how it will be stored in the extension area that is being considered (i.e. the storage of clean soil and rubble, recyclable waste, wood in skips/containers, and storage of empty skips, containers, plant and overnight vehicle parking). Any current issues/infringements that have occurred prior to this application, have been referred, as required, in accordance with the appropriate legislation (Part 2A of the Environmental Protection Act 1990) and legislative bodies (Environment Agency).
- 7.28 The EA stated in their extended consultation response “as the only activities proposed in this application are storage either in skips, or of inert material, we don’t have concerns about the water environment being polluted as a result. The EHO has no objection to the proposal subject to appropriate conditions, as previously set out and are therefore satisfied that the risks of pollution to the surrounding environment have been sufficiently mitigated.
- 7.29 There appears to be no planning considerations that would present negative impacts, subject to the implementation of appropriate conditions that have been set out and discussed in the Amenity section above, that would negatively impact the environment or the amenity of surrounding businesses/neighbours. The application is therefore considered to be in accordance with the requirements of NMWDF policy CS14: *Environmental Protection* and SADMP DM15: *Environment, Design and Amenity* and CS06: *Environmental Assets*.
- 7.30 **Design and Landscape**
- The Landscape Visual Impact Assessment indicated that in the wider setting any views of the site facilities are expected to be perceived as part of the existing industrial estate. There are unlikely to be notable identified views from local public access paths and spaces, including West Winch Common, an identified ‘site of local value’. It is unlikely to be intervisible with the main village of West Winch as demonstrated by photos included within the assessment. The report highlights it will not be notable from the Nar Valley Way footpath or be intrusive on the tranquillity of the Nar corridor. Therefore the proposed 1.5m bund to the south of the site, with plants on the outer bank and proposed hedging on the outside of the 2m steel mesh security fence is considered appropriate.
- 7.31 The proposed 2m steel mesh fencing which fully encloses the extended site, is was originally a concern of the Borough EHO and Councillor Kemp, as it was only partially enclosed. In terms of the visual impact of the fencing, it is considered

that given the wider industrial estate setting and surrounding landscape, that the proposed fencing would not be considered to detract from the local landscape. The security aspect of the fence, which is understood to be a requirement of the Environment Agency permit, would help to prevent any loose waste, should there be any that escape the covered skips/containers, blowing into the drain.

- 7.32 In terms of the height of stockpiles, the Borough EHO requested that these be capped at 1.5m; however it is considered given the sparse countryside/industrial nature of the location, with limited visual impacts on the local landscape, the stockpiles would be acceptable at a height of 3m. Particularly given the storage of the loose piles of material will be soils and stones; any recyclable material would be stored in containers/covered skips, and a condition requiring a dust mitigation scheme to be approved and implemented would be recommended, in the event of an approval. The risk of potential inert waste being blown off site into the drain is considered therefore to be minimal and appropriately mitigated. In addition there would also be the boundary fencing to 2m and the hedging outside of this.
- 7.33 Further landscaping mitigation measures were proposed by the developer and given the Council's Green Infrastructure and Landscape Officer also required further clarification of the landscape specification proposed, a condition would be required to ensure these details are appropriate, clear and implemented within an appropriate timescale and maintained, should Members be minded to grant permission.
- 7.34 The 2 no. modular office/welfare units are already installed onsite and are considered acceptable in terms of scale and specification.
- 7.35 The visual impact and scale of the proposed development, including the proposed 2 no. modular office/welfare units, stockpiles of material, the proposed fence, planting/landscaping and bunding to the development are in principle considered to be commensurate with the existing industrial development on Garage Lane Industrial Estate, and in accordance with NMWDF policy DM8: *Design, local landscape and townscape character* and SADMP policy DM15: *Environment, Design and Amenity*.
- 7.36 **Biodiversity and geodiversity**  
NMWDF policy CS14: *Environmental Protection* states developments must ensure there are no unacceptable adverse impacts on biodiversity and geodiversity including nationally and internationally designated sites.
- 7.37 Following a site visit by the NCC ecologist, there were no objections to this application provided that the 9m IDB easement can be implemented. Due to the distances involved and the 9m buffer provided it has been considered there are unlikely to be impacts on West Winch Common County Wildlife Site. Informatives relating to protected species have been recommended.
- 7.38 It has been noted during the consultation period that Natural England has no comments on the application. However, Councillor Kemp highlighted concerns

over the impact the development could have on the River Nar, which is a designated SSSI; due to pollution from the waste being stored on site, both by airborne waste, and from surface and ground water freely drainage off the site into the Puny Drain. She also was concerned that no ecology report was provided.

- 7.39 The potential risk of impacts of the development have been considered and as concluded in the 'contamination' section above, it is concluded that the mitigation measures that could be put in place via condition, as suggested by the Borough EHO, and also the measures endorsed by the applicant themselves, would be acceptable; as the development proposed in this application are storage either in skips, or of inert material, and there are no concerns about the water environment being polluted as a result, as is the considered case on other such sites around the county.
- 7.40 As the risks of pollution are considered to be appropriately mitigated, there are no material concerns regarding the designated SSSI, and no ecology report is considered to be necessary.
- 7.41 The application is, therefore, considered to be in accordance with the requirements of NMWDF Policies DM1: *Nature Conservation* and CS14: *Environmental Protection* and SADMP Policy CS06: *Environmental Assets*, which all require developments to ensure that there are no unacceptable adverse impacts on biodiversity.
- 7.42 Appropriate Assessment  
The site is located within 10 kilometres of Roydon Common, which forms part of the Roydon Common and Dersingham Bog Special Area of Conservation. The application has been assessed in accordance with Regulation 63 of The Conservation of Habitats and Species Regulations 2017, and based on the information submitted to the County Planning Authority (CPA), it is considered that the development would not have a significant impact on this or any other protected habitat. Accordingly, no Appropriate Assessment of the development is required.
- 7.43 **Transport**  
NMWDF Policies CS15: *Transport* and DM10: *Transport* require that proposed new waste facilities will be satisfactory in terms of access where anticipated HGV movements, taking into account any mitigation measures proposed, do not generate, inter alia, unacceptable risks/impacts to the safety of road users and pedestrians, the capacity and efficiency of the highway network, or to air quality and residential and rural amenity, including from air and noise.
- 7.44 Whilst the applicant is looking to expand the existing waste facility, the additional land required is for storage purposes only.  
In terms of highway considerations, it is noted that the applicant is not looking to increase the existing maximum throughput of waste which can be brought on the overall site per annum (which is 7,500 tonnes as per condition 3 of pp C/2/2013/2017) and will therefore not result in additional traffic movement to / from the site.

7.45 It should be noted that in the event of an approval, planning permission C/2/2013/2017 would need to be linked to this permission, to ensure that the land is only used for storage purposes, and does not constitute an additional throughput of 7,500 tonnes per annum, but 7,500 tonnes per annum shared between the two permissions/sites.

7.46 **Sustainability**

NMWDF policy CS13: *Climate change and renewable energy generation* seeks to ensure seeks to generate a minimum of 10% renewable energy from new development. The proposed development includes the siting of two modular office buildings for an office and canteen. The power usage for these buildings will be low but it is nonetheless regrettable the applicant has not examined opportunities to generate renewable energy. However, this policy encourages on-site renewable energy generation, in this instance it is considered an additional ground on which to refuse the planning application.

7.47 **Impact on Heritage Assets**

Whilst the site is some 500m from a number of listed buildings located on the A10, it is not considered these would be harmed by the development. There are no impacts considered to impact on heritage assets, including archaeology, as covered in policy DM9: *Archaeological sites*.

7.48 **Core River Valley**

The site is located within a Core River Valley under Policy DM2 - *Core River Valleys*. Policy DM2 states that “development will only be permitted in Core River Valleys where it can be demonstrated to enhance the local landscape and/or biodiversity and not impede floodplain functionality”. The proposal is therefore not compliant with this policy. It is understood the Core River Valleys were mapped in the 1990s and the whole of the industrial estate to the south of Garage Lane is also within the Core River Valley. As it appears that the land uses to the south have changed significantly since the Core River Valley was defined, it is therefore considered it may no longer be appropriate to consider this particular location to form part of a Core River Valley. Limited weighting is therefore given to this departure from policy.

7.49 **Groundwater/surface water**

NMWDF policy DM3: *Groundwater and surface water* seeks to ensure that developments do not adversely impact on ground water quality or resources, or surface water quality or resources. None of the proposed development site lies above a groundwater protection zone and the Environment Agency has not raised any issues with regards to this.

7.50 The IDB responded to the application with comments, but did not state whether they objected to this specific application or not. The Board did comment that they are concerned with the pollution risk to the watercourse from the materials stored on site, as water abstraction does take place from the Puny Drain, so any



pollution incident could affect the local farming community. They further commented that Board also has a Byelaw that restricts any works, structure erected, or materials placed within nine metres of the Board's Drain without the prior consent of the Board. This consent is separate from the planning process, and could be included in the event of an approval as an informative.

- 7.51 The Environment Agency has confirmed that as the only activities proposed in this application are storage either in skips, or of inert material, they do not have concerns about the water environment being polluted as a result and therefore there is no requirement for a formal surface water drainage scheme to be provided on the site. All the processing of waste takes place within the existing waste facility, inside the building, which has its own self-contained drainage scheme, as approved and discharged by Norfolk County Council. The FRA provided by the applicant states that as the graveled site is permeable, no further surface water drainage is necessary. Accordingly, the proposal is considered compliant with NMWDF policy DM3.
- 7.52 In terms of foul drainage, the agent confirmed on 21 February 2019, that the site does not have means to connect to a mains sewer, as there is not one along Garage Lane. Therefore a waste water holding tank ('Tuff Tank') has been proposed to handle the drainage from the site. An example specification has been provided in Appendix 1 of the Additional Information received on 21 February 2019. The Borough EHO requested for details of the foul drainage system to be conditioned, which is considered appropriate in the absence of a confirmed installation of foul drainage – furthermore, no plans have been provided to show the location of the system itself.
- 7.53 **Flood risk**
- NMWDF policy DM4: *Flood risk* only seeks to permit waste management sites that do not increase the risk of flooding. The entirety of the application site falls in flood zone 3, and a Flood Risk Assessment (FRA) was submitted as part of the application in accordance with chapter 10: Meeting the challenge of climate change, flooding and coastal change of the NPPF. A sequential test was requested and the agent submitted additional information shortly before the report was finalised in order to address this.
- 7.54 The FRA stated that the Environment Agency's Flood Risk Team was contacted to discuss the site's flood risk designation prior to the submission of the application for the adjacent waste management facility in early 2014. It was advised that the site is in an area at low risk of flooding due to the works carried out on the River Nar by the Environment Agency and that this should be reflected in the Flood Risk Assessment. The FRA concluded that development would not increase any known flood risk to the site nor incur any known residual risks, due to the fact the site benefits from protection from flood defences installed by the Environment Agency on the River Nar, and the site is therefore in an area at low risk of flooding. However, it is noted the Environment Agency flood risk map show the site as outside of areas that benefit from flood defences.

- 7.55 Notwithstanding this, the Environment Agency has raised no objections with regards to this issue, however it has advised that the site is at residual risk of flooding in the event of failure of the defences. This response suggests that the Environment Agency consider this site to have an adequate degree of protection from the flood defences. They have therefore recommended that an evacuation plan is produced to ensure that the site can be safely evacuated in the event of a breach.
- 7.56 Sequential Test  
The NPPF (2018) states that development in flood zone 2 or 3 are subject to the submission of a Sequential Test. Paragraph 155 of the NPPF (2018) states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Environment Agency commented that the site lies within Flood Zone 3, defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The proposal is classified as a 'less vulnerable' development, as defined in in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance.
- 7.57 The agent has not provided the evidence to undertake a Sequential Test, as set out in the National Planning Policy Guidance. There is no information about alternative sites (which are required to be specifically named and described) and no attempted search area. The test is then required to compare the risk of flooding at the site proposed with the risk of flooding at the alternative sites that have been identified, and this has not been undertaken. It is noted that no exception test would have been needed in this case due to its vulnerability classification. There is land in and around Setchey which is in flood zone 1 or 2. There is also an argument that the development does not need to be restricted to being in Setchey itself. There is no evidence provided to demonstrated that there are not other areas of land available in Setchey, or further afield, in an area of lower flood risk.
- 7.58 Therefore the agent is considered to have incorrectly summarised in their additional information, that "the sequential test has been applied...and that the possibility of locating the development proposals in flood zones 1 or 2 has been investigated." Furthermore, the agent is also to have incorrectly concluded that "the site benefits from flood defences which effectively place the site in flood zone 1." There is no principle in place in that respect for this countryside location, nor policy document which supports this assertion. The site is also not shown to be in an area close to, but not actually benefitting from flood defences on the Environment Agency flood risk map. Given that an inadequate evidence to undertake a Sequential Test has been submitted on this basis, the proposal is not considered to have adequately demonstrated compliance with policy DM4: *Flood Risk* of the NMWDF and chapter 11 of the NPPF and is therefore considered to form a ground for refusal.

#### 7.59 **Protection of agricultural land**

The proposed extension site is located on what was previously agricultural land. According to the agent, the applicant was unaware that the pre-commencement conditions required to the 2011 Borough permission for the storage of timber, to install impermeable hardstanding and agree and put in place a drainage strategy were unfulfilled. The agent suggested the applicant was instructed by the landowner to commence construction of the formation levels and acted in good faith in this regard unbeknownst at the time to the fact that no information was submitted by the landowner to satisfy the conditions.

7.60 The agricultural land is recorded by Natural England as Grade 3, however no evidence has been put forward by the applicant as to whether it is grade 3a or 3b land. The additional information received on 21 February 2019 stated that discussions have been carried out with the adjacent landowner's agronomist who has recently has undertaken an ALC survey of the fields adjacent to the site to the immediate north and west. The agricultural land to which the site relates (and the adjacent fields) has been identified as being clay soils which can only be cultivated satisfactorily under a relatively narrow range of soil moisture conditions and are prone to retention of water. As such, the Agricultural Land Classification Grade would be 3b to 4.

7.61 Due to these factors, the proposal is not considered to undermine policy NMWDF Policy DM16: *Soils* which seeks to prevent development only on grade 1 agricultural land and paragraph 112 of the NPPF, given that this not considered to be the significant development of agricultural land. The West Winch and North Runcton Neighbourhood Plan Policy WA06: *Protecting Agricultural Land and soils* requires proposals involving the loss of agricultural land to be accompanied by information which demonstrates how:

- (1) Development site boundaries have been defined so as to ensure, as far as possible, the retention of viable parcels of agricultural land adjacent to, and outside of, the development site.
- (2) Where appropriate, development on locally available brownfield sites has been considered over greenfield sites.
- (3) A soil conservation plan has been prepared and will be implemented, setting out how the topsoil resource on the particular site will be conserved and reused, following DEFRA and other best practice guidance.

7.62 It is clear that the site boundaries ensure the viable retention and use of the remaining agricultural land. The agent points out that it is not appropriate to consider development on locally available brownfield sites over greenfield sites, as that would mean the upheaval of translocating an existing established facility. However, the lack of evidence of considering alternative sites in an area of lower flood risk, which were not provided in the information submitted for the Sequential Test, suggest that it is appropriate to consider this criterion, as it is in the high risk flood zone 3, and is required for consideration by the NPPF and the NMWDF.

7.63 A soil conservation plan has not been prepared, however the applicant states that the landowner had already prepared the ground for occupation and this is unlikely to be relevant at this point, in terms of the development being proposed. The

proposal is not considered to fully comply with this neighbourhood plan policy, however it is considered to be of limited weighting.

**7.64 Public Rights of Way**

No public Rights of Way would be affected by the development.

**7.65 Environmental Impact Assessment**

In accordance with the Town and Country Planning Environmental (Impact Assessment) Regulations 2017 the application was screened on receipt and re-screened at the determination stage and it is not considered that the development would have significant impacts on the environment. No Environmental Impact Assessment is therefore required.

**7.66 Intentional Unauthorized Development**

Following the Chief Planner's letter of 31 August 2015 to planning authorities, intentional unauthorised development can now be a material consideration in the determination of all planning applications received after 31 August 2015. This is therefore capable of being a material consideration in the determination of this application.

7.67 Moreover, in making unauthorised development a material consideration, the Government was particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt. In this case, whilst the development has taken place on a greenfield site, it is not actually in the Green Belt. Whilst regrettable, in this instance it is not felt that the retrospective nature of the application would represent a ground for refusing planning permission for this development and no weight is given to this in the planning balance.

**7.68 The Community Infrastructure Levy**

The development is CIL liable.

**7.69 Local Finance Considerations**

In accordance with Section 70(2) of the Town and Country Planning Act 1990 (as amended) the County planning authority must have regard to a local finance consideration as far as it is material. Section 74 of the 1990 Act defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown, or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

7.70 In this instance is not considered that there are local finance considerations material to this decision.

**8. Resource Implications**

8.1 **Finance:** The development has no financial implications from the Planning Regulatory perspective.

8.2 **Staff:** The development has no staffing implications from the Planning Regulatory

perspective.

8.3 **Property:** The development has no property implication from the Planning Regulatory perspective.

8.4 **IT:** The development has no IT implications from the Planning Regulatory perspective.

## **9. Other Implications**

### **9.1 Human rights**

9.2 The requirements of the Human Rights Act 1998 must be considered. Should permission not be granted Human Rights are not likely to apply on behalf of the applicant.

9.3 The human rights of the adjoining residents are engaged under Article 8, the right to respect for private and family life and Article 1 of the First Protocol, the right of enjoyment of property. A grant of planning permission may infringe those rights but they are qualified rights, that is that they can be balanced against the economic interests of the community as a whole and the human rights of other individuals. In making that balance it may also be taken into account that the amenity of local residents could be adequately safeguarded by conditions albeit with the exception of visual amenity. However, in this instance it is not considered that the human rights of adjoining residents would be infringed.

9.4 The human rights of the owners of the application site may be engaged under the First Protocol Article 1, that is the right to make use of their land. An approval of planning permission may infringe that right but the right is a qualified right and may be balanced against the need to protect the environment and the amenity of adjoining residents.

### **9.5 Equality Impact Assessment (EqIA)**

9.6 The Council's planning functions are subject to equality impact assessments, including the process for identifying issues such as building accessibility. None have been identified in this case.

9.7 **Legal Implications:** There are no legal implications from the Planning Regulatory perspective.

9.8 **Communications:** There are no communication issues from a planning perspective.

9.9 **Health and Safety Implications:** There are no health and safety implications from a planning perspective.

9.10 **Any other implications:** Officers have considered all the implications which members should be aware of. Apart from those listed in the report (above), there are no other implications to take into account.

## **10. Section 17 – Crime and Disorder Act**

10.1 It is not considered that the implementation of the proposal would generate any issues of crime and disorder, and there have been no such matters raised during

the consideration of the application.

## **11. Risk Implications/Assessment**

11.1 There are no risk issues from a planning perspective.

## **12. Conclusion and Reasons for Refusing of Planning Permission**

12.1 The proposal put forward by the applicant is considered finely balanced. Principally, it is a departure from the NMWDF Policy CS6: *General Waste Management Considerations*. The Sequential Test provided is insufficient in justifying whether the development is being directed away from areas at highest risk (i.e. Flood Zone 3), whether existing or future development. It is unknown whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, as the information required as set out in National Planning Policy (2014) has not been submitted. The Sequential Test therefore has not been correctly undertaken or justified, and is therefore contrary to NMWDF Policy DM4: *Flood Risk and the requirements chapter 14 of the NPPF (2018) (Meeting the challenge of climate change, flooding and coastal change)*.

12.2 Whilst the recommendation is for refusal, there are a number of material considerations in favour of the application, namely that:

- The location of the development is considered favourable as a non-strategic waste facility, less than 3 miles to King's Lynn, on the edge of an existing industrial estate in West Winch (however it is not allocated employment land in the SADMP) and in accordance with NMWDF Policies CS5: *General location of waste management facilities* and CS7: *Recycling, composting, anaerobic digestion and waste transfer station*.
- The proposal is for an extension to an existing business rather than a new development and there are benefits of co-locating the two sites together including that there would be no additional impact on the highway network given the proposal does not seek to increase the throughput of the site.
- The development is classified as a 'less vulnerable development' for flood risk and would not materially increase the flood risk elsewhere, given the permeable nature of the site surface.
- The potential amenity and environmental impacts of the development could be sufficiently mitigated via conditions, as agreed by statutory consultees; neither the Environment Agency nor the Borough EHO objected to the proposal. There were also no third party objections or representations made.

12.3 For the reasons set out in the report, the proposal would be contrary to NMWDF Policy CS6: *General Waste Management Considerations* and DM4: *Flood Risk*. It is considered there is insufficient information provided in the Sequential Test submitted on 21 February 2019, to justify a departure from policy, on an unallocated site (both in terms of the NMWDF and the SADMP), designated countryside and in Flood Zone 3. Therefore, there is not considered to be sufficient weighting in terms of material considerations that warrant determining the application otherwise than in accordance with the development plan.

Therefore, the application is recommended for refusal.

- 12.4 Should members refuse the application in accordance with the recommendation, relevant enforcement action will need to be taken in order to clear the site of unauthorised development.

## **Background Papers**

Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2016 (2011)

<https://www.norfolk.gov.uk/what-we-do-and-how-we-work/policy-performance-and-partnerships/policies-and-strategies/minerals-and-waste-planning-policies/adopted-policy-documents>

The National Planning Policy Framework (NPPF) (2018)

<http://planningguidance.planningportal.gov.uk/>

Planning Practice Guidance (2014)

<http://planningguidance.planningportal.gov.uk/>

National Planning Policy for Waste (2014):

<https://www.gov.uk/government/publications/national-planning-policy-for-waste>

Waste Management Plan for England (2013)

<https://www.gov.uk/government/publications/waste-management-plan-for-england>

Government's Ministerial Statement on Intentional Unauthorized Development

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/457632/Final\\_Chief\\_Planning\\_Officer\\_letter\\_and\\_written\\_statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457632/Final_Chief_Planning_Officer_letter_and_written_statement.pdf)

## **Officer Contact**

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

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If you need this report in large print, audio, braille, alternative format or in a different language please contact 0344 800 8020 or 0344 800 8011 (textphone) and we will do our best to help.