

DEVELOPMENT CONTROL AND REGULATION COMMITTEE
22 January 2020
A report by the Executive Director for Economy and Infrastructure

Application Reference Nos. 5/19/9012, 5/19/9013 & 5/19/9014

Application Types: Section 73 Applications to Vary/Remove Planning Conditions

Applicant: L & W Wilson (Endmoor) Ltd

Location: Roan Edge Inert Landfill, Waste Recycling Facility and Quarry, New Hutton, Killington, Kendal, LA8 0AP

Proposals: To Remove Operational Hours Restrictions on the site

Ref. 5/19/9012: Section 73 Application to Remove Conditions 9 and 10 of Planning Permission Ref. 5/16/9014 so as to remove restrictions on the operational hours of the site (Main Site)

Ref. 5/19/9013: Section 73 Application to Remove Conditions 2 and 3 of Planning Permission Ref. 5/16/9015 so as to remove restrictions on the operational hours of the site access

Ref. 5/19/9013: Section 73 Application to Remove Conditions 4 and 5 of Planning Permission Ref. 5/16/9016 so as to remove restrictions on the operational hours of the wash plant

Date Valid: 31 October 2019

Reason for Committee Level Decision: Objection received from Parish Council

1.0 RECOMMENDATIONS

1.1 That

- a) planning permission is granted for planning application ref. 5/19/9012 subject to conditions set out in Appendix 1 to this report so as to allow night-time working for specified operations for up to 30 days per year.
- b) planning permission is granted for planning application ref. 5/19/9013 subject to conditions set out in Appendix 2 to this report so as to allow unlimited night time use of the access.
- c) planning permission is granted for planning application ref. 5/19/9014 subject to conditions set out in Appendix 3 to this report so as to allow a further two year temporary time period for night time operation of the wash plant (as the wash plant is not yet operational).

2.0 THE PROPOSAL

2.1 These applications initially sought to remove all planning conditions restricting the operational hours of the existing operational areas of the Roan Edge Inert Landfill, Waste Recycling and Quarry site so as to allow the applicant to operate the site 24 hours per day seven days a week so that the site may serve construction and repair projects on main roads and railways which are

undertaken at nights, weekends and on bank holidays. These applications follow the expiry of a temporary two year trial period for night time working. The applications relate as follows:

- Application Ref. 5/19/9012 relates to the operational hours of inert landfilling, waste recycling and quarrying operations (that is say it relates to conditions 9 and 10 of Planning Permission Ref. 5/16/9014 which cover the main bulk of the site). N.B. Permission Ref. 5/16/9014 is the principle permission for the existing site.
- Application Ref. 5/19/9013 relates to the operational hours of the site access (that is say it relates to conditions 2 and 3 of Planning Permission Ref. 5/16/9015).
- Application Ref. 5/19/9014 relates to the operational hours of the wash plant (that is say it relates to conditions 4 and 5 of Planning Permission Ref. 5/16/9016).

2.2 The initial condition of each of the current planning permission conditions referenced above (i.e. condition 9 of permission Ref. 5/16/9014; condition 2 of permission Ref. 5/16/9015 & condition 4 of permission Ref. 5/16/9016) set out the current permitted operational hours of the permission area as 07.00 to 19.00 hours Mondays to Saturdays and 08.00 to 17.00 hours on Sundays or Public or Bank Holidays. In the case of the main site and wash plant these operational hour limitations were qualified so as to not prevent the use of pumping equipment, running of the wash plant with water only to prevent damage from freezing conditions, or the carrying out of essential maintenance to this plant and machinery outside of these hours. These conditions were imposed in order to limit the effects of the development upon the amenity of the local area.

2.3 The second condition of each of the current planning permission conditions referenced (i.e. condition 10 of permission Ref. 5/16/9014; condition 3 of permission Ref. 5/16/9015 & condition 5 of permission Ref. 5/16/9016) provided for a two year temporary trial period for night time working subject to prior notification from the operator of such working and their keeping of records in respect of said operations. In the case of permission reference 5/16/9014 night time working was limited to the following operations:

- Importation, sorting and deposit (stockpiling and tipping) of inert wastes;
- Loading and export of minerals, secondary aggregates and other processed wastes from stockpiles;

2.4 The trial conditions were imposed so as to quantify the level of demand for such out of ordinary hours working and allow for an appraisal of its impact.

2.5 Following discussions over the course of the application, the applicant elected to:

- a) reduce the scope of night time working activities to waste deposit and recycling related operations and mineral transfer only (i.e. no winning or working of minerals or waste processing or landfill engineering operations) for application ref 5/19/9012 (main site).
- b) To progress application ref. 5/19/9014 on the basis of a further two year trial period for night time operation of the wash plant in light of the fact that the

wash plant is not yet operational and therefore the impact of the proposal could not be assessed via the previous temporary trial period allowed.

3.0 SITE LOCATION

- 3.1 For the purposes of this and further sections of the report, the term “application site” is used to reference the combined current operational footprint of the Roan Edge Inert Landfill, Waste Recycling Facility (including wash plant) and Quarry site as covered by the planning permissions in question (Refs. 5/16/9014, 5/16/9015 and 5/16/9016).
- 3.2 The application site is located approximately 500m to the west of Junction 37 of the M6 motorway and 5 miles to the east of Kendal. It is situated on an eastern fellside flank between Cemex’s 42.7ha Roan Edge Quarry and the M6 Motorway. The application site, like the adjacent Roan Edge Quarry, is accessed from the U5637 road. The U5637 is a short 900m section of unclassified highway which joins the A684 Sedbergh Road and terminates in proximity to the M6. The U5637 serves only Roan Edge Quarry, the application site, agricultural fields and two public rights of way. The site is approximately a 1km journey from Junction 37 of the M6.
- 3.3 Aside from Cemex’s Roan Edge Quarry, the land surrounding the application site is rough poorly drained acid grassland in agricultural use. Roan Edge Quarry and the application site are separated by a bridleway (public right of way no. 559018) which runs along the western side of the application site. Another public footpath (public right of way no. 559020) runs north-eastward from the U5367 outside the north-eastern corner of the application site to the A684.
- 3.4 Residential dwellings in the broad area are dispersed and isolated. The nearest dwelling to the application site is ‘Big Park Manor House’ which lies approximately 700m north-west of the site. No other properties lie within a 1km radius of the application site. The next nearest residential dwelling is ‘Hutton Park House’ which lies approximately 1.25km west of the application site. The nearest settlement is the hamlet of New Hutton which lies 1.7mile south-west of the application site.
- 3.5 Killington Motorway Services and Reservoir are approximately 1km south of the site. The 5 turbine Lambrigg Windfarm lies 500m north of the application site.
- 3.6 The Yorkshire Dales National Park boundary, at its closest point, measures approximately 1.6km to the east of the application site. Tarnbarrow Hill (243m), Black Hill, Drybeck Hill (260m), Owshaw Hill (289m) and Firbank Fell (310m) lie between the application site and the National Park boundary which generally follows the 230m contour line in this area before descending into the River Lune Valley.

4.0 SITE DESCRIPTION

- 4.1 The existing operational footprint of the application site covers approximately 5ha. An additional 1ha area to its eastern side has been restored to agricultural use. Two grass seeded screening bunds are present to the eastern side of the operational area. The north-eastern bund measures up to 278m AOD at its highest point, while the south-eastern bund measures up to 282m AOD at its highest point on the eastern side. Two settlement lagoons are located on the eastern slopes outside the working area.

- 4.2 A weighbridge and two portacabins (providing an office and workshop space) are located just set-back from the entrance of the site. A number of stockpiles of incoming and outgoing materials are located within the entrance reception area.
- 4.3 The wash plant and processing area is located within the north-eastern part of the site. A large quantity of waste material has been temporarily stored by the applicant to the south of the wash plant pending processing. This stockpile of temporarily stored material is currently visible from outside the site.
- 4.4 The site is still within Phase A of the approved scheme with mineral extraction taking place in the southern-western area of the application site. The operator estimates that the mineral reserve within the original main site footprint would be exhausted early in 2020.
- 4.5 Waste recycling operations at the site involve the importation of inert wastes such as soil, spoil, rubble, tarmacs (e.g. road planings) and river gravels produced as part of river management and their subsequent sorting and processing/grading for re-use. Construction and demolition wastes such as aggregate products are crushed and screened onsite. Once operational, the wash plant would allow a greater proportion of material to be recycled, allowing more effective processing of materials with a high silt/clay content and enabling the production of a cleaner secondary aggregate product with a higher re-use value.

5.0 SITE PLANNING HISTORY

- 5.1 This site was first granted planning permission for inert landfilling and waste recycling operations in March 1995 (Ref. 5/95/9002). This permitted the infill of a depression/hollow on an unimproved grassland area containing a small watercourse with 290,000 cubic metres of inert waste and the storage, sorting and re-use of soil, stone and aggregate. This permission covered a 6.1ha area. A new vehicular access to the site was approved in July 2004 (Ref. 5/04/9006).
- 5.2 The operational life of the site has been extended a number of times and operations at the site have also intensified over time to include:
- the crushing and screening of inert waste (Ref. 5/96/9013);
 - engineering of a 1.4 ha area of further void space through the extraction of stone (Ref. 5/06/9008);
 - the erection and operation of a wash plant to produce secondary aggregates from inert wastes (Ref. 5/12/9009 – granted in January 2013). *N.B. The wash plant has been substantially constructed but is still not yet operational.*
 - further lateral extensions to facilitate further quarrying of stone and release further void space for inert landfilling (Ref. 5/16/9018) *N.B. This permission was part-retrospective.*
 - construction of a building to house and operate a batching plant to manufacture concrete (Ref. 5/16/9017). *N.B. This permission has not yet been implemented.*
- 5.3 The most recent suite of planning permissions covering the site (Refs. 5/16/9014,

5/16/9015, 5/16/9016, 5/16/9017 and 5/16/9018) allowed operation of the site until the 1 November 2031. The first of these three permissions also imposed conditions allowing out-of-ordinary hours working for a limited two year trial period (i.e. expiring 1 November 2019) in order to quantify the level of demand for such and allow for full appraisal of its impact.

- 5.4 The site is subject to chargeable visits to monitor compliance with its planning permissions. We are aware of the operators' non-compliance with their planning conditions which limit the height of stockpiles on site. Consequently, the council increased the frequency of monitoring visits undertaken to the site, with four visits having been undertaken within the last 16 months. These visits prompted a small reduction in the height of the main stockpile around late spring 2019, however since then progress reversed and the stockpiles have continued to increase in height. It is understood that some of the key issues that the operator is facing that have led to the current situation are the significant delays in bringing the wash plant online since construction of it commenced circa 2015 and that the operator is currently unable to landfill any material until the next landfill cell is appropriately engineered to the satisfaction of the Environment Agency.
- 5.5 A Planning Contravention Notice (PCN) was issued to the operator in respect of this breach on Friday 10 January 2020. A PCN enables a Local Planning Authority to formally gather further information, escalate a contravention and provides an opportunity to formally negotiate a remedy. The operator is required to respond to the PCN by Friday 31 January 2020. Once we have received the operator's response we will review the options available to us to help bring the site into compliance with its conditions.

6.0 CONSULTATIONS AND REPRESENTATIONS

- 6.1 South Lakeland District Council Planning Department: No response received.
- 6.2 South Lakeland District Council Environmental Health Department: State that they have received no complaints regarding noise from the site during the periods of extended operational hours.
- 6.3 Yorkshire Dales National Park Planning Department: Stated that they have no comments to make on the proposals.
- 6.4 New Hutton Parish Council: Object to the applications. Report that their Parish Council has expressed concerns about the adequacy of monitoring of this site, in particular the visual intrusion caused by the piles of material, over several years. Comment that at present, stockpiled material extends "well above the skyline and are judged to be the highest they have ever been". Requested copies of the monitoring records for the site be provided.
- 6.5 Set out that there is a tributary beck running westwards from Roan Edge under the A684 towards Hutton Park and that this used to be a fairly powerful stream but there is now water in it only during rainy periods. Set out that it is unclear whether the reduction in volume has been caused by the main quarry or by the recycling site or both but raise concerns in respect of further reductions in volume being a cause for concern as it is used by livestock. Also query what is being done with the silt which is produced at the wash plant, stressing that it is important that it does not get into the becks, but should also not contribute to the rising piles of material on the site.

- 6.6 Explain that they support in principle the recycling of waste, but object to these applications. Set out that “if the site operator could demonstrate and give confidence that they were able to operate the facility in compliance with the conditions of their current permissions over time AND investigations showed that operations at this site were not adversely affecting the flow in the becks then their opinion might change”.
- 6.7 CCC Highway and Lead Local Flood Authority: No objection. Note that there have been no accidents that could be connected with the extended hours operated during the temporary trial period of working outside of normal operational hours. Consider that the removal of restrictions on the operational hours of the site would be unlikely to have a significant material effect on existing highway or flood risk conditions.
- 6.8 Environment Agency: No objection.
- 6.9 The application site falls within the County Council electoral division of Upper Kent. Councillor Stanley who represents this division has been notified of these applications.
- 6.10 No public representations have been received.

7.0 PLANNING POLICY

- 7.1 [Section 38\(6\)](#) of the [Planning & Compulsory Purchase Act 2004](#) provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process.
- 7.2 The [Cumbria Minerals and Waste Local Plan 2015-2030](#) was formally adopted on 6 September 2017. The key policies relevant to the determination of this planning application are considered to be:
- Policy SP1 - Presumption in Favour of Sustainable Development
 - Policy SP2 - Provision for Waste
 - Policy SP3 - Waste Capacity
 - Policy SP14 - Economic Benefit
 - Policy SP15 - Environmental Assets
 - Policy SP18 - Monitoring and Enforcing Planning Control
 - Policy DC1 - Traffic and Transport
 - Policy DC2 - General Criteria
 - Policy DC3 - Noise
 - Policy DC4 - Quarry Blasting
 - Policy DC5 - Dust
 - Policy DC6 - Cumulative Environmental Impacts
 - Policy DC16 - Biodiversity and Geodiversity
 - Policy DC18 - Landscape and Visual Impact
- 7.3 Some strategic and area based policies of South Lakeland District Council’s Local Development Plan are also of relevance to the determination of these applications. South Lakeland District Council’s Local Development Plan currently comprise of the following:
- [South Lakeland Core Strategy](#) - adopted 20 October 2010

- [South Lakeland Local Plan Land Allocation Development Plan Document Policies](#) - adopted 17 December 2013.
- [South Lakeland Development Management Policies Development Plan Document](#) – adopted 28 March 2019.

7.4 The following policies from the above documents are considered to be of some relevance to the determination of these planning applications:

- CS8.2 - Protection and enhancement of landscape and settlement character;
- CS8.4 - Biodiversity and Geodiversity
- DM1 - General Requirements for all development
- DM5 - Right of Way and other routes providing pedestrian, cycle and equestrian access
- DM7 - Addressing Pollution, Contamination Impact, and Water Quality

7.5 [The National Planning Policy Framework](#) (NPPF) was published in a revised form in February 2019. The national online [Planning Practice Guidance](#) (PPG) suite was launched in March 2014 and is continually updated. Both are material considerations in the determination of planning applications. The following sections and paragraphs of the NPPF are considered to be relevant to the determination of this application:

- Section 2 - Achieving sustainable development: Paragraphs 8 & 11;
- Section 4 - Decision Making: Paragraphs 54 & 55 (Planning Conditions) and Paragraph 58 (Enforcement);
- Section 6 - Building a strong, competitive economy: Paragraphs 80 & 82;
- Section 15 - Conserving and enhancing the natural environment: Paragraphs 170, 172, 175 & 180;
- Section 17 - Facilitating the Sustainable Use of Minerals: Paragraph 203.

7.6 [The National Planning Policy for Waste](#) (NPPW) was published on 16 October 2014. This sets out the government's current waste policy to be taken into account by waste planning authorities and forms part of the national waste management plan for the UK. This has also been taken into account.

8.0 PLANNING ASSESSMENT

8.1 In relation to applications made under Section 73 of the Town and Country Planning Act 1990 (the Act) to vary or remove planning conditions on an existing planning permission; the Act requires the local planning authority to consider only the question of the conditions subject to which planning permission should be granted. In this case the applicant is seeking to extend the operational hours of the site. Only impacts associated with the proposed increase in operational hours can be considered in the determination of these applications.

8.2 The key planning issues relevant to the proposed schemes are considered to be:

- 1) *Would the operation of the site outside of existing operational hours have an unacceptable impact upon residential amenity?*
- 2) *Would the night-time operation of the site have an unacceptable landscape and visual impact?*

8.3 Other material considerations relevant to the determination of this application are

the proposals potential to impact upon local users of the Public Rights of Way Network and to cause disturbance to species.

Residential Amenity: Would the operation of the site outside of existing operational hours have an unacceptable impact upon residential amenity?

- 8.4 Policy DM1 of the South Lakeland Development Management Policies Development Plan Document (SL-DMP-DPD) seeks to ensure that applications ensure the delivery of acceptable levels of amenity. Policy DM7 of the SL-DMP-DPD sets out that proposals will be permitted, where the direct, indirect and cumulative effects of pollution (including, but not restricted to air, noise, light, dust, odour, smoke, fumes, gases, steam, smell, vibration and water) will not have a negative impact on health, the environment (including wildlife and tranquillity) and general amenity of existing or future occupiers and users or any sensitive receptor. It continues that to comply with the above, developers must be able to show as part of their proposal that any impacts are at or below acceptable levels, if necessary by use of appropriate and proportionate mitigating measures and application of limiting conditions to permissions to control impacts (both on and off-site). CMWLP Policy DC3 sets out that Sunday, public/bank holiday and night-time working near noise sensitive properties/receptors should be avoided where practicable.
- 8.5 There are no residential dwellings in the immediate vicinity of the site. The nearest dwelling is located 700m to the north-west of the application site. The next nearest dwellings are over 1.4km from the site. Given this distance and intervening topography I consider that noise and dust generated by on-site operations would be highly unlikely to affect residential amenity. No complaints have been received in respect of noise or vibration emanating from this site during its operational life. It is also noted that there are no properties in close proximity to the A684 within 1km of the site.
- 8.6 It is noted that since the temporary trial time period was introduced, the applicant has undertaken 4 periods/episodes of night time working – with these generally being for periods of 2 to 4 nights to allow the deposit of waste materials from infrastructure projects (road planings and excavation arisings). Operations generally took place from 9pm to 2am or 10pm to 3am. No complaints have been received by the County Council or South Lakeland District Councils' Environmental Health Department in respect of these night time operations. However I am mindful that the operations that have taken place at night have been limited in scope (not including noisier activities such as mineral extraction, earthworks or crushing of waste) and in duration. In light of the above I consider it reasonable to allow for limited operational working outside of the sites' normal working hours for up to 30 days in any calendar year. As such I am minded to impose a condition to application reference 5/19/9012 (main site) to prohibit the winning or working of minerals, landfill engineering, earthworks, restoration or waste crushing operations outside of 07.00 to 19.00 hours Mondays to Saturdays; and 08.00 to 17.00 hours on Sundays or Public or Bank Holidays; but to allow for the following activities to take place outside of these hours for up to 30 days in any calendar year:
- a) Importation, sorting and deposit (stockpiling and tipping) of inert wastes;
 - b) Loading and export of minerals, secondary aggregates and other processed wastes from stockpiles.
- 8.7 I consider a 30 day limit provides an appropriate balance, reflecting the amount

of working that took place during the trial period whilst also providing a reasonable degree of space for growth and flexibility in light of bank holiday patterns of working for infrastructure maintenance projects and the scope for increased activity in light of decreased Brexit uncertainty. Moreover it would limit out-of-hours working to 8% of any given year, ensuring such activity remains occasional and does not become a prevailing feature in this reasonably sensitive remote rural landscape characterised by dark skies.

- 8.8 In respect of planning application reference 5/19/9013 concerning the site access, I am satisfied that the access area can be used for little other than accessing the site and some minor ancillary storage. In light of no complaints being received during the trial period and the comments of the Highway Authority I consider that there is no significant potential for unacceptable adverse impacts from the removal of the operational hours restrictions on its use.
- 8.9 In respect of planning application reference 5/19/9014, I note that the Wash Plant is not yet operational, so therefore the council has not been afforded the opportunity to appraise its impacts as the trial condition intended. It is noted that the operator has previously highlighted that the plant will be predominantly electrically powered, with only the screener reliant on a diesel engine motor. It is considered that the two year temporary trial period should be reapplied so as to allow for full appraisal of its impact. In light of the conditions proposed above, I considered that the proposals would comply with the policies of the development plan concerning residential amenity.

Landscape and Visual Impact: Would the night-time operation of the site have an unacceptable landscape and visual impact?

- 8.10 The relaxation of operational hours sought would not alter the overall visual appearance of the site. However, increased night-time working in a remote rural setting does have the potential to have an adverse visual and landscape effects through the extended operational use of artificial lighting sources.
- 8.11 Policy DC18 of the CMWLP seeks proposals to be compatible with the distinctive characteristics and features of their host landscape and for Landscape Character Assessment to be used to reach a view on the capacity of landscapes to accept scale and character of development proposals. Policy DM1 of the SL-DMP-DPD seeks to ensure the conservation and enhancement of the special qualities and settings of the Yorkshire Dales National Park, including views into and out of it. Policy DM2 of the SL-DMP-DPD seeks development to use the minimum level of illumination required to undertake the task and for lighting to be designed in a manner that avoids glare and erosion of tranquillity and dark skies. Policy DM7 seeks to limit the direct, indirect and cumulative effects of light pollution. Paragraph 180 of the NPPF sets out that planning decisions should ensure they limit the impact of light pollution. Paragraph 170 seeks to protect valued landscapes while paragraph 172 specifies that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks.
- 8.12 The application site is not located within a statutorily designated protected landscape area however the site is in relatively close proximity to the boundary of the Yorkshire Dales National Park which is just under 1 mile east of the application site. [The Cumbria Landscape Character Guidance and Toolkit](#) (CLCGT), which was published in March 2011, considers the site and its immediate surrounds to fall within landscape character type 11b: Upland Fringe – Low Fells. This type in this area is characterised by rolling low fells with open

moorland and rocky outcrops in higher parts and open improved pasture in lower parts. The CLCGT describes this landscape as one which '*...is still generally seen as open place to enjoy the countryside, with wide and largely unspoilt panoramic views.*' It notes that despite proximity to the M6 motorway and main roads that this landscape type is generally peaceful and lightly settled. CLCGT development guidelines for this type include '*...ensuring that developments take advantage of the natural containment offered by intermediate ridges and horizons, avoiding sites on prominent edges of the plateau.*'

- 8.13 The approved scheme for the site includes a lighting scheme and plan. This concentrates and limits fixed lighting to the northern part of the site so as to cover the main yard area and wash plant. This area benefits from screening bunds to its north and east and neighbouring higher land levels to their west and south. As such the fixed lighting is generally visually contained and the lighting scheme commits to orientating lighting downward where possible and the hooding of lighting to concentrate the light at lower levels and to reduce the night sky glow effect. Mobile lighting is used within the continually changing quarry and landfill working areas.
- 8.14 I consider that unrestricted yearlong night-time working would not be acceptable as this has the potential to cause unavoidable light pollution / night sky glow that would have an unacceptable impact on the fundamentally dark night sky environment and landscape character of this rural area that is distant from settlements. In respect of this, the protection of dark skies and views of dark skies from and toward the Yorkshire Dales National Park is considered to be an important factor. Consequently I consider that limiting the type of night operations and amount of night time working is an appropriate and reasonable approach, providing the operator with the flexibility sought whilst helping ensure that the dark sky characteristics of the landscape are retained for the majority of the year.

Other Material Considerations

- 8.15 Public Rights of Way: The public rights of way in the area are lightly trafficked and not associated with any long distance routes that might encourage evening/night-time usage. For the nearest public rights of way the site would be experienced in the context of occasional night-time traffic on the M6. As such I consider that the approach in respect of the conditions suggested would not adversely effect the amenity of users of the local public rights of way network.
- 8.16 Ecology: There are no features on or immediately adjacent to the site that are likely to be used as commuting corridors by nocturnal species such as Bats and Owls. Land around the site provides habitat that is suitable for breeding birds, however this habitat type is plentiful in the area, so I do not believe breeding birds would be unduly disadvantaged. I do not believe the limited night time working proposed would cause any undue disturbance to nearby species, especially in light of the proximity of the site to the M6.
- 8.17 Driver distraction: Lighting from the site should generally not be visible from the M6 or A684. There may be occasions when working at higher levels that mobile plant may be visible. This would generally be limited.
- 8.18 Socio-economic benefits: Paragraph 80 of the NPPF sets out that planning decisions should help create the conditions in which businesses can invest, expand and adapt; and directs that significant weight should be placed on the need to support economic growth and productivity, taking into account local

business needs. The proposal would facilitate the efficient undertaking of infrastructure projects at night so as to minimise inconvenience and increase the waste re-processing capacity of the site. It would help a local business to be more responsive to market demands and thus help secure existing employment. Consequently the proposals are considered to provide some economic benefit by helping to safeguard jobs and supporting wider supply chains. The proposals are therefore considered to accord with CMWLP Policy SP14.

Other Matters

- 8.19 In respect of New Hutton Parish Council's objection on the grounds of the adverse landscape and visual impact of the current stockpile mounds and potential adverse effects of the operation of the site on the water environment – I do not believe that these issues are relevant to the determination of these specific applications for changes to the operational hours of the site.
- 8.20 In respect of the height of stockpiles on the site, I would draw members' attention to paragraphs 5.4 and 5.5 of this report. The current situation is clearly not acceptable. The Council has recently escalated its approach in respect of this issue and will seek to bring this site into a compliant state.
- 8.21 In respect of the alleged derogation of flows of the watercourse to the west of the site (i.e. tributaries to St Sunday's Beck); surface water flows from the vicinity of Cemex's Roan Edge Quarry and the application site go in different directions – that from Cemex's Roan Edge Quarry area heads north and west to St Sunday's Beck and that from the application site heads east and south into Peasey beck and eventually end up in Killington Lake. As such it is considered unlikely that the alleged derogation of flows to the tributaries of St Sundays Beck is connected to the application site. The Environment Agency have been asked to investigate their records to see if any recorded data can substantiate the alleged derogation of flows to the tributaries of St Sundays Beck.
- 8.22 In respect of the parish council's comments about silt wastes from the wash plant, the wash plant is not yet operational. The Environment Agency are currently awaiting an action plan from the applicant for silt management arrangements for the wash plant going forward. The operator has existing balancing ponds in place to manage silt and the Environment Agency monitor the quality of water discharging from the site.
- 8.23 A number of the conditions attached to the existing planning permissions have been partly discharged. Consequently these partly discharged conditions have been updated as a matter of good administration.

9.0 CONCLUSION

- 9.1 The site is remote from residential receptors and no complaints were received in connection with night works undertaken during the two year temporary trial period. However I am mindful that the operations that have taken place at night have been limited in scope (not including noisier activities such as mineral extraction, earthworks or crushing of waste) and in duration.
- 9.2 In respect of planning application 5/19/9012 (main site), I consider it reasonable to allow for limited operational working outside of the sites' normal working hours for up to 30 days in any calendar year so as to protect the amenity of the local area and limit the erosion of night time tranquillity and adverse impact upon dark

skies in a rural area in relative proximity to a national park. On the evidence and case provided I believe 30 days strikes an appropriate balance between the protection of the environment and the socio-economic benefits night time working would confer.

- 9.3 In respect of planning application reference 5/19/9013 concerning the site access, I am satisfied that the access area can be used for little other than accessing the site and some minor ancillary storage. In light of no complaints being received during the trial period and the comments of the Highway Authority I consider that there is not any potential for unacceptable adverse impacts from the removal of operational hours restrictions on its use.
- 9.4 In respect of planning application reference 5/19/9014, the Wash Plant is not yet operational, so therefore the council has not been afforded the opportunity to appraise its impacts as the trial condition intended. It is therefore considered that the temporary trial period should be reapplied so as to allow for full appraisal of its impact.
- 9.5 In summary, it is considered that the proposed applications are in accordance with the development plan, there are no material considerations that indicate the decision should be made otherwise and with the planning conditions proposed, any potential harm would reasonably be mitigated. It is therefore recommended that these planning applications be granted subject to conditions.

Human Rights

- 9.6 Given the nature and purpose of the proposed development no Convention Rights as set out in the Human Rights Act 1998 would be affected.

Angela Jones
Executive Director for Economy and Infrastructure

Contact: Mr Edward Page

Electoral Division Identification: Upper Kent ED

Development Control and Regulation Committee – 22 January 2020

Appendix 1 - PROPOSED PLANNING CONDITIONS FOR 5/19/9012 (Main Site)

Time Limit

1. This permission shall be for a limited period only expiring on 01 November 2031 or upon cessation of inert landfilling operations (whichever is the sooner); by which date the operations hereby permitted shall have ceased, all buildings, plant and machinery, including foundations and hardstanding shall have been removed from the site, and the site shall have been restored in accordance with the approved scheme.

Reason: To secure the proper restoration of the site in accordance with the approved period of this temporary development, in accordance with Section 72(1)(b) of the Town and Country Planning Act 1990, Policies SP16 and DC22 of the Cumbria Minerals and Waste Local Plan 2015-2030 (CMWLP) and Paragraph 144 of the National Planning Policy Framework (NPPF).

Restoration in event of early cessation

2. In the event that inert landfilling operations permanently cease prior to the expiry date of this permission and the implementation of the full approved scheme; the Mineral and Waste Planning Authority shall be notified in writing of the date of such cessation of inert landfilling operations within 2 weeks of cessation occurring and a revised scheme for the restoration and aftercare of the site shall be submitted to the Mineral and Waste Planning Authority for approval in writing within three months of the notified cessation date. The scheme shall include details of the timetable for restoration. The scheme shall thereafter be implemented as approved.

Reason: To secure the proper restoration of the site in the event that operations cease prior to the full implementation of the approved scheme in accordance with policy DC22 of the CMWLP.

Approved Scheme

3. The development hereby permitted shall be carried out in accordance with the following:
 - a. Planning Statement – dated December 2016;
 - b. Figure 1B - Location Plan (Permitted Working Area Ref:5/06/9008);
 - c. Figure 4 - End of Phase A – Rev.C;
 - d. Figure 5 - End of Phase 1 – Rev.C;
 - e. Figure 6 - End of Phase 2 – Rev.C;
 - f. Figure 7 - Restoration Plan – Rev.C;
 - g. Figure 8 - Sections A-B – Rev.C;
 - h. Figure 9 - Sections C-D – Rev.C;
 - i. Aftercare Scheme – dated December 2016;
 - j. Groundwater Monitoring Scheme and Surface Water Drainage Scheme - Report Reference 2183/PC - Version F2 - dated May 2018
 - k. Lighting Scheme – dated December 2016 and Figure 11 – Rev.C;
 - l. Noise, Dust and Vibration Monitoring Scheme – dated December 2016;

- m. Stockpile Management Plan (Figure 4 – Rev.C – dated May 2018);
- n. Soil Replacement Scheme – dated December 2016;
- o. The details or schemes approved in accordance with the conditions attached to this permission.

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.

- 4. A copy of this permission (*i.e. this decision notice and the approved documents*) shall always be available on site for inspection. Their existence and content shall be made known to all operatives likely to be affected by matters covered by them.

Reason: To ensure the development is carried out in accordance with the approved scheme.

Topographic Surveys

- 5. An up-to-date topographical survey of the full site shall be submitted quadrennially to the Mineral and Waste Planning Authority prior to 30 September of the respective year for the duration of this permission. The first such survey shall be submitted by 30 September 2023. Such surveys shall clearly:
 - a. show the areas of the site that have been infilled to final levels;
 - b. show the active areas of waste deposition;
 - c. confirm the height of all screening embankments and mounds;
 - d. show the height of all stockpiles of material on the day of the survey.

In the event that Minerals and Waste Planning Authority require a topographic survey of any element or parts of the site to demonstrate compliance with the approved scheme this shall be provided by the operator within one month of a written request setting out justification for such.

Reason: To enable the planning authority to monitor the sites' compliance with the planning conditions and progress in terms of progressive restoration of the site.

Limitation of Development

- 6. Notwithstanding the provisions of Parts 4, 7 or 17 of Schedule 2 of [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (or any other revoking and re-enacting of that order) no buildings, fixed plant, or machinery shall be erected altered or extended without planning permission on any part of the site.

Reason: To maintain control over additional built development and activities on the site in the interest of minimising the visual and landscape impact of the site which is in an elevated location and is visible from the Yorkshire Dales National Park in accordance with CMWLP policy DC18 and to prevent any further intensification of activity and traffic at this site in accordance with CMWLP policies DC1 and DC6.

OPERATIONAL RESTRICTIONS & REQUIREMENTS

Hours

7. No winning or working of minerals, engineering works, earthworks, restoration or crushing or screening operations shall take place on the site outside the hours:
07.00 to 19.00 hours Mondays to Saturdays
08.00 to 17.00 hours on Sundays or Public or Bank Holidays.

Outside of these hours the following activities shall only take place for a maximum of 30 days in any calendar year:

- a. Importation and deposit (stockpiling and tipping) of inert wastes;
- b. Export of minerals, secondary aggregates and waste;

A written record of the dates and times when all loads are imported/exported shall be kept by the operator. A copy of this record shall be sent to the Mineral and Waste Planning Authority within seven calendar days of a written request for them. The records shall be retained by the operator for a period of at least 12 months.

This condition shall not operate so as to prevent the use of pumping equipment or carrying out of essential maintenance to plant and machinery at any time.

Reason: In the interests of limiting the effects of the development on local amenity and the night sky in order comply with CMWLP policies DC2, DC3, DC6 and DC18.

Maintenance of Screening Bunds

8. All the screening bunds shall be maintained in a grassed condition and shall be kept free from noxious agricultural weeds with steps being taken to destroy such weeds at early stages of growth to prevent seeding.

Reason: In the interests of visual amenity and to limit the surface water run-off and reduce the washing away of soils required for restoration in accordance with CMWLP policies DC18, DC21 and DC22.

Stockpiles

9. No materials shall be stored above the maximum stockpile height limits set out on the Stockpile Management Plan (Figure 4 – Rev.C – dated May 2018).

Reason: To minimise the visual impact of the development in accordance with CMWLP policy DC18 and to prevent dust migrating off site in accordance with CMWLP policy DC2.

Control of Dust

10. The Dust Mitigation Measures contained within the “Noise, Dust and Vibration Monitoring Scheme – dated December 2016” shall be adhered to throughout the operational life of the site so as to prevent the emission of dust outside the site boundaries.

Reason: To safeguard the amenity of adjacent land and users of the public rights of way network by ensuring that dust does not constitute a nuisance outside the boundaries of the site in accordance with CMWLP Policy DC2.

Extraction Depth Limit

11. No mineral extraction shall take place below 263m Ordnance Datum.

Reason: To protect groundwater resource in accordance CMWLP Policy DC20.

Protection of Groundwater

- 12.** The monitoring of groundwater levels shall be undertaken in line with the *Groundwater Monitoring Scheme and Surface Water Drainage Scheme - Report Reference 2183/PC - Version F2 - dated May 2018.*

The above scheme shall be implemented in full and monitoring undertaken for the duration of operations.

Reason: To protect the groundwater environment and minimise risk of derogation to Pickthall's Spring in accordance with CMWLP policy DC20.

Water Environment

- 13.** Throughout the period of this permission and the restoration of the site provision shall be made for the collection, settlement and disposal of all water entering or arising on the site.

Reason: To ensure that there shall be no pollution of watercourses, adjoining land or groundwater resource in accordance CMWLP Policy DC20.

Blasting

- 14.** No blasting shall take place unless at least two days prior notification of any proposed blasting has been made in writing to the Minerals and Waste Planning Authority.

Reason: To enable the Minerals and Waste Planning Authority to monitor blasting.

- 15.** All blasting shall be monitored in accordance with the "Noise, Dust and Vibration Monitoring Scheme – dated December 2016".

Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with CMWLP Policy DC4.

Blasting – Ground Vibration

- 16.** Ground vibration as a result of blasting operations shall not exceed a peak particle velocity of 6 mm/sec in 95% of all blasts measured over any period of 2 years and no individual blast shall exceed a peak particle velocity of 9 mm/sec as measured at vibration sensitive buildings.

Reason: To ensure that, in the event blasting becomes necessary to engineer void space and extract mineral, the site does not give rise to nuisance and an unacceptable level of ground vibration in accordance with CMWLP Policy DC4.

Control of Noise

- 17.** All plant, machinery and vehicles used on site including those hired or contracted in on a short term basis that are equipped with audible reversing alarms shall only use 'white noise' type systems.

Reason: To safeguard local amenity by ensuring that the noise generated in the sites operation is minimised so that it does not constitute a nuisance outside the boundaries of the site and cause undue nuisance to users of

the nearby public rights of way network. In accordance with Policy DC2 of the CMWLP GDCP.

- 18.** Noise shall be monitored and reported in accordance with the “Noise, Dust and Vibration Monitoring Scheme – dated December 2016”.

Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with CMWLP Policy DC3.

Vehicular Traffic

- 19.** No vehicle shall leave the site in a condition that would deposit mud, slurry or other material on the public highway.

Reason: To prevent vehicles tracking material on to the public highway in the interests of highway safety. In accordance with CMWLP Policy DC1.

- 20.** No loaded heavy goods vehicles shall leave the site unless their load is fully sheeted or otherwise contained to prevent spillage of material or emissions of dust.

Reason: To ensure that material is not released into the air or deposited upon the highway in the interest of local amenity and highway safety and in accordance with CMWLP Policy DC1.

Boundary Fences

- 21.** The operator shall maintain and make stockproof the existing fences on and around the perimeter of the site throughout the period of operations until the restoration and aftercare of the site has been completed.

Reason: To secure the perimeter boundary of the site and to ensure that stock do not enter the working areas in the interests of safety in accordance with CMWLP Policy DC2.

Soil Handling

- 22.** The movement and respreading of top soils and subsoils shall be restricted to occasions when the soil is in a suitable dry and friable condition and the ground is sufficiently dry to allow the passage of heavy vehicles and machinery over it without damage to the soils and topsoil can be separated from the subsoil without difficulty. Soil handling and movement should not be carried out between the months of November to February inclusive, unless otherwise agreed in writing by the Mineral and Waste Planning Authority.

Soil replacement shall be carried out in accordance with the Soil Replacement Scheme – dated December 2016 and the methods set out in Sheets 3,4,14,15, 16,17,18,19 of the [MAFF \(2000\), Good Practice Guide for Handling Soils \(version 04/00\). FRCA, Cambridge.](#)

Reason: To safeguard soil resources in accordance with CMWLP Policy DC21.

- 23.** Written notification shall be provided to the Mineral and Waste Planning Authority not less than 24 hours prior to the intended date of commencement of soil replacement restoration operations. This notification shall include an estimated duration of each phase of the soil replacement operations.

Reason: To allow the Planning Authority to monitor the soil handling operations in order to safeguard soil resources in accordance with CMWLP Policy DC21.

Restoration

24. The site shall be progressively restored in accordance with the approved scheme as shown on 'Figure 5 - End of Phase 1 – Rev.C', 'Figure 6 - End of Phase 2 – Rev.C' and 'Figure 7 - Restoration Plan – Rev.C'.

Reason: To secure the progressive and proper restoration of the site in accordance with CMWLP Policy DC22.

25. Upon completion of the spreading of subsoils, but prior to sowing of seed, a topographic survey of the site shall be undertaken to demonstrate compliance with the approved levels. This survey shall be overlain on the a drawing of the approved contours and submitted to the Mineral and Waste Planning Authority within 2 weeks of completion. Any areas that are above the approved contours shall have the soils stripped back and surplus deposited material removed from site within 3 months of the completion of survey, and the soils replaced and grass seed sown.

Reason: To enable the restoration of the site to be monitored so as to ensure compliance with this planning permission and to conform with CMWLP Policy DC22.

Aftercare

26. Upon agreement in writing by the Minerals and Waste Planning Authority that restoration has been completed to approved levels and to an acceptable standard, the site shall be subject to aftercare under the provisions of Section 72(5) of the Town and Country Planning Act 1990 for a period of 5 years. Aftercare of the site shall ensure that the site is left in an acceptable condition for the proposed agricultural afteruse. Aftercare must be undertaken in accordance with the following:

- a) The Aftercare Scheme – dated December 2016;
- b) In each year of the aftercare period, a meeting shall be held to review the aftercare of the site. The review meeting shall include representatives of the Planning Authority, the site operator, their agent, the landowner (or their agent) and any other specialist advisors considered necessary by these parties.
- c) 3 weeks before the date of each review of the aftercare the site operator shall provide the Planning Authority with a report detailing the management and operations carried out during the preceeding 12 months; including an assessment of the establishment of the grass sward; details of any soil testing to inform the application of fertiliser or other ameliorants such as manure or lime; and a proposed programme of management for the coming year. Within one month of the meeting being held, a schedule of aftercare works and management measures to be undertaken to the site in the following year shall be submitted to the Planning Authority for approval in writing. Once approved these works and measures shall be carried out by the operator.

Reason: To secure the progressive and proper restoration of the site in

accordance with CMWLP Policy DC22.

Development Control and Regulation Committee – 22 January 2020

Appendix 2 - PROPOSED PLANNING CONDITIONS FOR 5/19/9013 (Access)

Time Limit and Approved Documents

1. This permission shall be for a limited period only expiring on 01 November 2031 or upon cessation of landfilling operations (whichever is the sooner); by which date the access shall have been removed and the land restored in accordance with the following:
 - a. Figure 1C – Location Plan;
 - b. Figure 7 – Restoration Plan – Rev.C;
 - c. Soil Replacement Scheme – dated December 2016;
 - d. The Aftercare Scheme – dated December 2016.

Reason: To secure the proper restoration of the site in accordance with the approved period of this temporary development, in accordance with Section 72(1)(b) of the Town and Country Planning Act 1990, and Policy DC22 of the Cumbria Minerals and Waste Local Plan 2015-2030 (CMWLP).

Condition of Access

2. The access shall be maintained free of pot-holes and kept clean from mud for the life of the operations hereby permitted.

Reason: In the interest of visual amenity and highway safety.

Vehicular Traffic

3. A written record shall be maintained at the site office of all movements in and out of the site by Heavy Goods Vehicles. The record will include the vehicle's weight, registration number, direction of travel (to and from the site) and date of the movement and shall be made available for inspection by the Mineral or Waste Planning Authority following a written request for such and shall be provided and no later than seven calendar days from the date of the written request. The records shall be retained by the operator for a period of at least 12 months.

Reason: To enable the HGV traffic associated with the range of operations at the site to be monitored in accordance with CMWLP Policies DC1 and DC6.

4. No vehicle shall leave the site in a condition that would deposit mud, slurry or other material on the public highway.

Reason: To prevent vehicles tracking material on to the public highway in the interests of highway safety. In accordance with CMWLP Policy DC1.

5. No loaded heavy goods vehicles shall leave the site unless their load is fully sheeted or otherwise contained to prevent spillage of material or emissions of dust.

Reason: To ensure that material is not released into the air or deposited upon the highway in the interest of local amenity and highway safety and in

accordance with CMWLP Policy DC1.

Surface Water Drainage

6. No surface water from the site shall be discharged onto the public highway.

Reason: In the interest of highway safety in accordance with CMWLP Policy DC1.

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Appendix 3 - PROPOSED PLANNING CONDITIONS FOR 5/19/9014 (Wash Plant)

Time Limit

1. This permission shall be for a limited period only expiring on 01 November 2031 or upon cessation of landfilling operations (whichever is the sooner); by which date the wash plant and associated infrastructure, including foundations and hardstandings, shall have been removed from the site, and the site shall have been restored in accordance with the approved scheme.

Reason: To secure the proper restoration of the site in accordance with the approved period of this temporary development, in accordance with Section 72(1)(b) of the Town and Country Planning Act 1990 and Policies SP16 and DC22 of the Cumbria Minerals and Waste Local Plan 2015-2030 (CMWLP).

Approved Scheme

2. The development hereby permitted shall be carried out in accordance with the following:
 - a. Supporting Statement - The `Wash Plant and Associated Infrastructure Roan Edge Landfill and Recycling Centre - dated July 2012;
 - b. Planning Statement – dated December 2016;
 - c. Figure 1D - Location Plan - Washing Plant Permission Boundary Ref. 5/12/9009 – dated November 2016;
 - d. Figure 4 - End of Phase A – Rev.C – dated October 2017;
 - e. Figure 5 - End of Phase 1 – Rev.C – dated October 2017;
 - f. Figure 6 - End of Phase 2 – Rev.C – dated October 2017;
 - g. Figure 7 - Restoration Plan – Rev.C – dated October 2017;
 - h. Lighting Scheme – dated December 2016 and Figure 11 – Rev.C – dated October 2017;
 - i. Noise, Dust and Vibration Monitoring Scheme – dated December 2016;
 - j. Stockpile Management Plan (Figure 4 – Rev.C – dated May 2018)
 - k. Soil Replacement Scheme – dated December 2016;
 - l. Aftercare Scheme – dated December 2016;
 - m. The details or schemes approved in accordance with the conditions attached to this permission.

Reason: To ensure the development is operated to an appropriate standard and to avoid confusion as to what comprises the approved scheme.

3. A copy of this permission (*i.e. this decision notice and the approved documents*) shall always be available on site for inspection. Their existence and content shall be made known to all operatives likely to be affected by matters covered by them.

Reason: To ensure the development is carried out in accordance with the approved scheme.

OPERATIONAL RESTRICTIONS & REQUIREMENTS

Hours of Working

4. Notwithstanding the temporary exception set out in Condition 5 below, the wash plant shall not be used to process materials outside the hours:

07.00 to 19.00 hours Mondays to Saturdays

08.00 to 17.00 hours on Sundays or Public Holidays.

However this condition shall not operate so as to prevent the running of the wash plant with water only to prevent damage from freezing conditions or the carrying out of essential maintenance to this plant and machinery outside of these hours.

Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with CMWLP Policy DC2.

5. For a limited trial period of two years from the date of this permission, the wash plant shall be permitted to operate outside the hours specified in condition 4 above provided written prior notification of the commencement and anticipated duration of such periods of out of hours working has first been provided to the Waste Planning Authority.

A record of the dates upon which evening/night time working has occurred shall be maintained by the operator throughout this temporary trial period and access to this record shall be afforded to the Waste Planning Authority within 14 days of written request for such.

Reason: To enable the minerals and waste planning authority to establish the frequency of night working and assess its impacts and to provide the site the flexibility to service highways and rail contracts that take place at night-time and/or over bank holiday weekends whilst limiting the effects on local amenity and minimising light pollution so as to control the impacts of the development to limited periods and to comply with CMWLP policies DC2, DC16 and DC18.

Screening Bund

6. The grass cover of the eastern side of the screening bund to the east of the wash plant shall be maintained and kept free of injurious/noxious weeds. The bund shall remain in place for the duration of the presence of the wash plant.

Reason: To minimise the visual and landscape impact of the plant in accordance with CMWLP Policies DC 2 and DC18.

Stockpiles

7. No materials shall be stored above the maximum stockpile height limits set out on the Stockpile Management Plan (Figure 4 – Rev.C – dated May 2018).

Reason: To minimise the visual impact of the development in accordance with CMWLP Policy DC18 and to prevent dust migrating off site in accordance with CMWLP Policy DC2.

Control of Dust

8. The Dust Mitigation Measures contained within the “Noise, Dust and Vibration Monitoring Scheme – dated December 2016” shall be adhered to throughout the

operational life of the site so as to prevent the emission of dust outside the site boundaries.

Reason: To safeguard the amenity of adjacent land and users of the public rights of way network by ensuring that dust does not constitute a nuisance outside the boundaries of the site in accordance with CMWLP Policy DC2.

Control of Noise

9. The Wash Plant shall be maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenity of local residents by ensuring that the noise generated in the sites operation is minimised so that it does not constitute a nuisance outside the boundaries of the site. In accordance with CMWLP Policies DC2 and DC4.

10. Noise shall be monitored and reported in accordance with the "Noise, Dust and Vibration Monitoring Scheme – dated December 2016".

Reason: In the interests of limiting the effects on local amenity, to control the impacts of the development and to comply with CMWLP Policy DC3.

Appendix 4 - PLAN OF SITE LOCATIONS/EXTENTS

