

DEVELOPMENT CONTROL AND REGULATION COMMITTEE
A report by the Executive Director for Economy and Infrastructure
1st December 2022

Application Reference No. 5/22/9006

Application Type: Section 73 Application to Vary or Remove Planning Conditions

Proposal: Section 73 application to vary Condition 1 of Planning Permission 5/22/9004 to extend the permitted duration of operations.

Location: Land at Winder Moor, Willow Lane, Flookburgh, Grange-over-Sands, LA11 7LU

Applicant: Stephenson Halliday

Date Valid: 28 September 2022

Reason for Committee Level Decision: Objections received

1.0 RECOMMENDATION

1.1 That Planning Permission be granted subject to conditions as set out in Appendix 1 to this report

2.0 THE PROPOSAL

2.1 Planning permission is sought through a section 73 application to vary condition 1 of Planning Permission 5/22/9004 to extend the permitted duration of operations until 30 September 2023 with full restoration of the site to be achieved within six months of that date. The operations in question involve the importation of inert waste to the site to enable an agricultural improvement to the land.

2.2 Section 73 of the Town and Country Planning Act (as amended) allows applications to develop land without compliance with conditions previously attached, and;

“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application

2.3 As such, when considering an application under section 73, only the conditions can be considered

2.4 Condition 1 of the planning permission 5/22/9004 reads; ‘*This permission shall*

be for a limited period only expiring on 30 September 2022, by which date the operations hereby permitted shall have ceased and the site shall be restored within a further period of six months in accordance with the scheme submitted to the Local Planning Authority for restoration'

- 2.5 It is proposed in this application to amend this condition to read '*This permission shall be for a limited period only expiring on 30 September 2023, by which date the operations hereby permitted shall have ceased and the site shall be restored within a further period of six months in accordance with the scheme submitted to the Local Planning Authority for restoration'*
- 2.6 This would have the effect of extending the duration of the operations (importation of inert waste) at the site for one year.

3.0 SITE DESCRIPTION

- 3.1 Access to the application site is via Willow Lane, off Moor Lane. Moor Lane forms one of the main links to the centre of Flookburgh, which connects onto the main highway network of the B5278/B5277, which then link onto the A590(T). The application site is approximately 660 metres from the junction of Willow Lane with Moor Lane. Moor Lane is a main road providing direct access to a number of business uses, including a large leisure/caravan park, Cark Airfield, farm stead and industrial and commercial uses. Willow Lane is a single-track country lane with designated passing places. It provides access to Humphrey Head (shoreline), commercial businesses (including a caravan park, a car breaker's yard, farm steads and an outdoor activity centre) and dwellings. The closest dwellings to the site include a cluster of properties at Holme Farm, approximately 160 to 200 metres to the east and a further three properties at between 305 and 370 metres to the west.
- 3.2 The site lies approximately 1km to the north of the Morecambe Bay European designated sites (Morecambe Bay SPA, SAC and Ramsar Site) and SSSI and forms part of an area of priority habitat (Coastal and Floodplain Grazing Marsh) as listed in Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. The site also lies within Flood Zone 3a as defined by the Environment Agency and so the site and surrounding area is at high risk from flooding

4.0 SITE PLANNING HISTORY

- 4.1 Planning permission was first granted in 2013 (Planning Application 5/13/9002) to allow improvements to agricultural land through importation of inert material, which was approved by the Development Control and Regulation committee on 6 September 2013; members undertook a site visit prior to the application being reported to the committee.
- 4.2 A section 73 planning application was submitted in 2015 (Planning Application 5/15/9004) to amend conditions 9 (number of HGV's) and 18 (operating hours), this was approved by the Development Control and Regulation committee on 7 October 2015.
- 4.3 A further section 73 planning application was made in March 2019 (reference 5/19/9005) to vary the completion of the site to 29 March 2022 and was approved

by the Development Control and Regulation committee on 23 May 2019.

- 4.4 Another section 73 application was submitted in March 2022 (5/22/9004), which sought to vary condition 1 of planning permission 5/19/9005 to extend the period of operations at the site by six months until 30 September 2022. This application also sought to vary and/or remove conditions 2, 3, 4 and 12 of that planning permission (the condition containing the approved documents to delete the phasing plan, removal of the condition requiring the operations to be phased, removal of the condition requiring level markers to be placed on the site and removal of a condition requiring details of measures to control surface water runoff).
- 4.5 This application was considered and approved at the Development Control and Regulation committee on 15 July 2022.
- 4.6 The site has been subject to complaints relating to out of hours operations, and non-compliance with conditions. These have been investigated and resolved informally.

5.0 CONSULTATIONS AND REPRESENTATIONS

- 5.1 South Lakeland District Council Planning Department: No objections or comments in relation to the application
- 5.2 Cumbria County Council (CCC) Highway Authority: No objections
- 5.3 CCC Lead Local Flood Authority: No objections
- 5.4 South Lakeland District Council Environmental Health Department: No comments received
- 5.5 Natural England: No specific comments to make on the application
- 5.6 Environment Agency: No objections, the existing operations are regulated by the Environmental Permitting Regulations
- 5.7 Holker Lower Parish Council: No comments received at time of report writing
- 5.8 Cumbria CC - Ecology Consultee: No objections to the extension of the time periods for importation of inert waste to the site. In general, the site has low ecological value and the extension of time will not adversely impact sensitive species or sites.
- 5.9 Cartmel ED - Sue Sanderson: No comments received
- 5.10 Two representations have been received. One raises objection to the application in terms of the site not being properly completed and returned to agricultural use and that in its current form, the site detracts visually from the character of the area and is generally untidy. In addition, they go on to suggest that any future extensions of times to complete operations at the site are limited and a firm, final end date is agreed to reinstate the site to agricultural use.
- 5.11 The second representation concerns vehicle movements to and from the site by HGVs and the number and frequency of these and the effect they are having on the fabric of Willow Lane, a narrow, single-track highway, which is not well suited

to such vehicles. It also identifies issues of vibration affecting properties.

6.0 PLANNING POLICY

6.1 [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.

6.2 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 DC1 - Traffic and Transport
- Policy DC2 - General Criteria
- Policy DC6 - Cumulative Environmental Impacts
- Policy DC11 - Inert waste for agricultural improvement
- Policy DC16 - Biodiversity and Geodiversity
- Policy DC18 - Landscape and Visual Impact
- Policy DC19 - Flood Risk
- Policy DC20 - The Water Environment
- Policy DC22 - Restoration and Aftercare

6.3 South Lakeland Development Plan – adopted 28 March 2019, also includes policies relevant to the determination of this planning application;

- Policy DM1 – General requirement for all development
- Policy DM4 – Green and blue infrastructure, open spaces, trees and landscaping
- Policy DM6 – Flood Risk Management and sustainable drainage systems
- Policy DM7 – Addressing pollution, contamination impact and water

6.4 [The National Planning Policy Framework](#) (NPPF) was published in a revised and updated form in July 2021. 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
- Section 14 – meeting the challenge of climate change and flood risk

7.0 PLANNING ASSESSMENT

7.1 For the purposes of Environmental Impact Assessment (EIA) (in accordance with the EIA regulations 2017) the proposal amounts to an installation for the disposal of waste. As such, it falls within class 11b of Schedule 2 of the 2017 regulations.

The application also falls within class 13(b) of the regulations (changes to an existing project). The site exceeds the indicative threshold of 0.5ha. However, it does not propose disposal by incineration nor is it within 100m of controlled waters. Given the characteristics of the site and proposed short extension of time of operations, the small size of the site; lack of cumulative impacts with other existing and approved projects, the use of waste to produce an agricultural improvement, the low probability of causing nuisance and the low risk of causing major accident or harming human health, coupled with its location on agricultural land and lack of functional connection to any protected sites or landscapes of historic or cultural significance, I do not consider it necessary to formally screen the development in relation to the 2017 EIA regulations.

- 7.2 The key planning issues relevant to the proposed amendment to condition 1 are considered to be:
- 7.3 **What is the effect of the variation to condition 1 of planning permission 5/22/9004 to allow an extension of time of the operations for a further 12 months?**
- 7.4 Originally, when planning permission 5/13/9002 was granted, it was anticipated that the importation of material to the site would be completed within 2 years of implementation with full restoration within this time frame.
- 7.5 Small sites such as this tend to be filled only when there is suitable material arising within the local area. In this case there have been issues in sourcing material to bring to the site. This issue has been illustrated by the submission of the first section 73 application made in 2015 (planning application 5/15/9004) and subsequent section 73 planning applications to extend the period over which material can be brought to the site.
- 7.6 There was an expectation that the site would be completed by the end of September 2022, in line with the last planning permission granted under 5/22/9004. There are still concerns expressed by local residents that the site is currently unsuitable for agricultural use and has not yet been completed and is having a detrimental effect on the visual character of the area. There have also been complaints previously with regard to out of hours working, deposit of material on the highway and flooding onto adjoining land. However, it has not been possible to complete operations at the site within this extended timeframe, principally because importation of material to the site has been delayed whilst the necessary permit has been obtained from the Environment Agency to allow continuation of operations at the site. Furthermore, if the site is simply regraded and restored as it now stands, the agricultural improvement originally intended may not be achieved. Another extension of time for one year is considered appropriate and would continue to comply with the requirements of CMWLP policy DC11 (Inert Waste for agricultural improvement), as it would “*result in a material improvement to the grade or classification of agricultural land*” and would ultimately allow this improvement to be practically achieved on the site. The proposed extension of time of operations would also be supported by CMWLP policy DC22 (Restoration and aftercare) which sets out the expectation that waste sites will be restored to a beneficial after use and the extra time would allow this to occur.
- 7.7 **What additional impacts would result from extending the time period for importation of material for twelve months?**

7.8 By extending the time period for importation of material to the site by another twelve months, there would be a corresponding continuation of impacts at the site and surrounding area in terms of vehicle movements, dust, noise and vibration associated with this activity. However, these impacts would be for a relatively short additional period of time and would all be subject to control by the recommended conditions contained in Appendix 1, which it is considered should continue to apply if planning permission were to be granted for the extended timescale. I consider, therefore, that these impacts could continue to be adequately controlled by these conditions to acceptable levels to protect the amenity of local residents.

7.9 Representations received

7.10 As detailed earlier in the report, local residents raise some concerns in their representations in regard to the site and that a proposal to extend the time scale for completion of the site should be for a limited period and with a firm completion date. Concern is also raised in terms of the appearance of the site in the location and its untidy appearance. These concerns are considered and noted, the site is currently partly completed, with areas of material stored on the site in bunds and areas of the site not yet stripped. At the time of a site inspection, a vehicle was present on the site, along with a small number of items of plant and equipment and some apparent storage of materials. This serves to make the site appear untidy and unkept, but this effect is not significant in my opinion. The short extension of time of the operations would allow the completion of the site and its restoration back to agricultural use, resulting in the removing of the adverse visual impacts described above. If granted, this proposal would define a specific date by which operations at the site must be completed and a date for final restoration of the site. However, this does not guarantee that the site completion will occur by the specified date – the applicant could choose to apply for a further extension of time for the completion of the site and such an application would be considered on its merits and in accordance with relevant planning policies.

8.0 CONCLUSION

8.1 The site is still partially completed at present. I consider that a further extension of time would allow the final completion and restoration of the site to allow an agricultural improvement to be achieved as originally intended. If a further extension of time is not permitted, the site would need to be regraded and restored with material available on the site and, as previously indicated, this would not necessarily result in the agricultural improvement required and fail to comply with the objectives of policy DC11. There will be further additional short-term impacts as a result of this extension of time in terms of additional vehicles movements and potential for noise and dust generation, but these impacts can be controlled by the conditions and would not, in my view, outweigh the benefit of allowing the site to be properly restored.

8.2 There is support to be found for the extension of time in both policies DC11 and DC22 of the Cumbria Minerals and Waste Local Plan (CMWLP), both of which support full restoration of the site and agricultural improvement of the land – I consider it would be difficult to sustain a refusal of this application when considering these relevant policies and I cannot identify any significant adverse

impacts of allowing this short extension of time of operations at the site.

- 8.3 In summary, the proposed variation of condition 1 of planning permission 5/22/9004 is still in accordance with the development plan, and there are no material considerations that indicate the decision should be made otherwise. Continued impacts associated with the site operations can be reasonably mitigated by planning conditions, and on balance, I consider it justified to grant the extension of time to allow additional material to be brought to the site to allow the final restoration to take place. I therefore recommend that this application be granted subject to conditions.

Human Rights

- 8.4 The Human Rights Act 1998 requires the County Council to take into consideration the rights of the public under the European Convention on Human Rights. Article 8 of the Convention provides that everyone has the right to respect for his private life and home save for interference which is in accordance with the law and necessary in a democratic society in the interests of, amongst other things, public safety, the economic wellbeing of the country or the protection of the rights and freedoms of others. Article 1 of Protocol 1 provides that an individual's peaceful enjoyment of his property shall not be interfered with save as necessary in the public interest and subject to conditions provided for by law. For any interference with these rights to be justified the interference needs to be proportionate to the aims that are sought to be realised. The County Council has a duty to consider the policies of the development plan and to protect the amenities of residents as set out in those policies.
- 8.5 The proposed extension of time would have a limited impact on the visual amenity of the area and residential amenities in the area but it is considered that those impacts would be insufficient to interfere with the rights of the applicant and satisfactory controls could be imposed on the proposed development to protect the amenities of the most affected residents. The impacts on the rights of local property owners to a private and family life and peaceful enjoyment of their possessions (Article 8 and Article 1 of Protocol 1) would be minimal and proportionate to the wider social and economic interests of the community and could be satisfactorily controlled by planning conditions.

Angela Jones
Executive Director for Economy and Infrastructure

Contact: Mr Richard Cryer

Electoral Division Identification: Lower Holker

Development Control and Regulation Committee – 1 December 2022

Appendix 1 - PROPOSED PLANNING CONDITIONS

Time Limits

1. This permission shall be for a limited period only expiring on 30 September 2023, by which time all operations hereby permitted shall have ceased and the site shall be restored within a further period of six months in accordance with the scheme submitted to the Local Planning Authority for restoration.

Reason: The Local Planning Authority considers that the restricted time limit specified, having regard to Section 51 of the Planning & Compulsory Purchase Act 2004, is applicable in this instance.

Approved Scheme

2. The development hereby permitted shall be carried out in accordance with the approved documents, herein referred to as the Approved Scheme. The Approved Scheme shall comprise the following:
 - a. The submitted Application Form – dated 28 September 2022
 - b. Planning statement date November 2022
 - c. The submitted application form - dated 29 March 2019
 - d. The submitted statement entitled 'Willow Lane, Flookburgh s.73 extended duration'
 - e. The submitted application form dated 2 March 2015
 - f. The supporting statement entitled s73 application: increased vehicle movements and operation hours, Willow Lane, Flookburgh – dated March 2015
 - g. The submitted application form - date 6 September 2012
 - h. Email dated 24 July 2013 – agricultural grassland seed mix
 - i. Extended phase 1 habitat survey report – dated February 2013
 - j. Plans numbered and named:
 - i) Figure 1 – location plan -dated September 2012
 - ii) Figure 2 – existing site plan – dated September 2012
 - iii) Figure 4 – site entrance plan detail plan – September 2012
 - iv) Figure 5 – restoration plan – dated September 2012
 - v) Figure 6 -indicative sections A and B – dated September 2012
 - k. 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.

3. The finished levels of the site must conform with drawing no. figure 5 – restoration plan. For any areas where material is above the approved ground

level, any excess material shall be removed from the site, within one month of completion.

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

4. The number of HGVs entering the site shall not exceed 20 per day. No HGV shall leave the site within 10 minutes of another HGV leaving the site. A written record of the dates, times and types of all HGVs entering and leaving the site shall be maintained and provided on request to the Waste Planning Authority.

Reason: To manage traffic levels appropriate to the network capacity and highway safety, in accordance with CMWLP Policy DC1

5. No HGV shall enter or leave the site unless travelling via Moor Lane

Reason: To manage traffic levels appropriate to the network capacity and highway safety, in accordance with CMWLP Policy DC1.

6. The access road shall remain surfaced with bituminous or cement bound materials. This surfacing shall remain for a distance of at least 10 metres inside the site, as measured from the carriageway edge of the highway.

Reason: To ensure that no material from the access road is carried on to the public highway, in the interests of highway safety and in accordance with CMWLP Policy DC2.

7. No structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted so as to obstruct the visibility splays at the entrance to the site.

Reason: In the interests of highway safety and in accordance with CMWLP Policy DC2.

8. Plant, machinery and vehicles operated within the site, including any hired or contracted on a short term basis, shall be used and maintained at all times in accordance with the manufacturer's recommendations and fitted with silencers.

Reason: To safeguard the amenity of local residents by ensuring that the noise is minimised and so does not constitute a nuisance outside the boundaries of the site, in accordance with CMWLP Policy DC3.

9. Reversing alarms fitted to any vehicle used on site, including to any vehicles hired or contracted on a short term basis, shall be of white noise type only.

Reason: To safeguard the amenity of local residents by ensuring that the noise is minimised and so does not constitute a nuisance outside the boundaries

of the site, in accordance with CMWLP Policy DC3.

- 10.** The operator shall maintain on site at all times a water bowser or other dust suppression system, together with an adequate supply of water and during periods of dry weather shall spray the access road, haul roads and working areas with water to suppress dust in order that it does not constitute a nuisance outside the site.

Reason: To safeguard the amenity by ensuring that dust does not constitute a nuisance outside the boundaries of the site, in accordance with CMWLP Policy DC5.

- 11.** Throughout the period of construction, operation and restoration, provision shall be made for the collection, treatment and disposal of all surface water entering or arising from the development site to ensure there shall be no pollution of watercourses or adverse impacts on the wildlife habitats of the various water bodies within, or adjacent to, the application site.

Reason: To avoid pollution of watercourses and to protect wildlife habitats in accordance with CMWLP Policy DC20 and South Lakeland District Council Local Plan Development Management Policies (SLDCLPDMP) Policy DM7

- 12.** Throughout the period of working and restoration the operator shall protect and support any ditch, stream, watercourse or culvert passing through the permission area and shall not impair the flow or render less effective drainage onto and from land adjoining.

Reason: To prevent pollution of the water environment and in the interests of environmental management, in accordance with CMWLP Policy DC20 and SLDCLPDMP Policy DM7

- 13.** No operations hereby permitted shall take place outside the following hours:

08.00 – 18.00 hours Monday to Friday;

No operations hereby permitted on Saturdays, Sundays and Bank or Public Holidays.

However, this condition shall not prevent, outside of these hours, the delivery/collection of plant or machinery or the carrying out of essential maintenance of plant and machinery used on the site for this development

Reason: In the interests of highway safety and local and residential amenity, in accordance with CMWLP Policy DC2.

- 14.** The stable block shall not be demolished during the bird breeding season (March to August).

Reason: To ensure breeding birds are not disturbed, in accordance with CMWLP Policy DC16.

15. Upon completion of the development hereby permitted, a topographic survey shall be undertaken to demonstrate compliance with the approved levels. This survey shall be undertaken within 2 weeks of completion of the site and submitted to the Waste Planning Authority within 4 weeks of completion of the site. For any areas where material is recorded above the approved ground level, the soils shall be stripped back (and retained on the site) and the surplus material shall be removed from the site prior to the re-spreading of soils.

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

