

**KIRKLEES COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78**

**APPEAL BY: MR ROBERT BEAN**

**AGAINST THE REFUSAL OF KIRKLEES COUNCIL AS LOCAL PLANNING  
AUTHORITY TO GRANT PLANNING PERMISSION FOR:  
DEPOSIT OF INERT WASTE ON AGRICULTURAL LAND TO IMPROVE  
SURFACE WATER DRAINAGE  
AT: LANDS FARM, CLIFFE LANE, CLECKHEATON, BD194EU**

**L.P.A. REF: 2016/62/92321/E0**

**REF: PLANNING INSPECTORATE REF: APP/Z4718/W/17/3172570**

## 1. INTRODUCTION

- 1.1 The application to which this appeal relates was submitted to the local planning authority on 17 August 2016. The application sought planning permission for the deposit of inert waste on agricultural land to improve surface water drainage. The application was refused at the Huddersfield planning sub-committee on 01 December 2016 for the following reason:

*“The use of land for the deposit of inert waste is inappropriate development within the Green Belt. The development proposed also would be harmful to the openness of the Green Belt, to the purposes of including land with it and to character and visual amenity of the local landscape. The applicant has not demonstrated that there are very special circumstances that would outweigh the harm, as such the development would be contrary to Section 9 of the National Planning Policy Framework.”*

- 1.2 The decision notice pertaining to this refusal was subsequently issued on 08 January 2017, a copy of which has already been provided.

## **2. SITE DESCRIPTION AND LOCATION**

2.1 The application site is currently agricultural pasture land, off Cliffe Lane Gomersal and comprises two fields occupying an area of approximately 3.1ha. The site extends north eastwards from the proposed access point on Cliffe Lane and is bounded to the north by a dismantled railway line. The topography of the site sees the land generally fall to the north and towards the west with level changes of approximately 15 metres across the site. Public Right of Way (PROW) SPE/46/20, which links Cliffe Lane with PROW SPE/47/10, crosses the site. The area surrounding the site is agricultural in character with a small number of residential properties located to the south at Round Hill. Larger concentrations of residential properties are located approximately 500m to the west on the periphery of Cleckheaton and a similar distance to the east at Gomersal.

## **3. RELEVANT DEVELOPMENT PLAN POLICIES AND NATIONAL POLICY**

3.1 The statutory development plan comprises the Unitary Development Plan (UDP). This statement will refer only to those policies of the UDP 'saved' under the direction of the Secretary of State beyond September 2007. However, as the saved policies do not include specific policies relating to development within the Green Belt this statement will rely on guidance provided in section 9 of the National Planning Policy Framework (NPF) with regard to this issue.

3.2 The site is located within the Green Belt on the Unitary Development Plan Proposals Map and it is considered that the following UDP policies are therefore relevant:

**WD1** which indicates the Council will make land available for the management of waste within the district

**WD4** which indicates that the disposal of waste on agricultural land will not be allowed if it would divert waste away from the restoration of mineral sites and derelict land

**WD5** which specifically deals with the disposal of waste to landfill

**EP4** which requires consideration of the impact of noise generating development

**EP6** which requires the consideration of projected noise levels

**R13** which deals with development affecting a public right of way

**T10** which requires consideration of the impact of a development on highway safety

3.3 National Planning Policies are set out in the National Planning Policy Framework (NPPF) and the National Planning Policy for Waste. It is considered that the following sections of the NPPF are relevant to this appeal: Section 9 – Protecting Green Belt Land and Section 11 – Conserving and Enhancing the Natural Environment.

#### **4. THE CASE FOR THE COUNCIL**

4.1 It is considered by the council that the key issues upon which this case hinges are first whether the proposed development is appropriate development within the Green Belt and if not whether there are very special circumstances to allow it and second the development's likely impact on visual amenity and the intrinsic character of the local area and whether this impact is acceptable in terms of its effect on the Green Belt.

4.2 Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

4.3 Paragraph 87 confirms that inappropriate development within the Green belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

4.4 Paragraph 88 goes on say that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

4.5 The NPPF sets out a number of core planning principles, one of which indicates that planning should contribute to conserving and enhancing the natural environment.

4.6 Para 109 of the NPPF goes on to state that "The planning system should contribute to and enhance the natural and local environment by;

- Protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land stability and

- remediating and mitigating deposited, degraded, derelict, contaminated and unstable land, where appropriate.”

4.7 In order to form a judgement about the harm caused, it is best to consider firstly whether harm is caused to any of the purposes of including land in the Green Belt as set out in paragraph 80 of NPPF.

These are:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.8 The character of the landscape in this area is considered to be that of Rural Fringe. The landscape in this part of the district acts to separate more urban environments and provides open areas which can be readily accessed from those urban settings. Generally this type of landscape has an open rural character comprising small fields separated by wooded areas, hedge rows and copses. Whilst this type of landscape is relatively close to more urbanised locations such as Cleckheaton and Batley the landscape retains a rural quality and provides an important rural buffer between the developed centres of Cleckheaton to the west, Gomersal to the east and Liversedge to the

south. Although containing evidence of manmade structures and activities, the quality of the landscape in this area is generally good and, in the vicinity of the appeal site, has a managed but tranquil character.

4.9 It is the Council's view that, due to its nature, this proposal would conflict with two of the five purposes for including land in the Green Belt in that it would represent urban sprawl and encroachment into the countryside.

4.10 Notwithstanding that this development would be temporary in nature, the associated disturbance to the landscape is likely to be evident for several years. The development would be perceived as a significant man made element within this natural landscape which would detract from openness. Furthermore the proposal would require a significant number of heavy vehicle movements to and from the site which would impinge on the current setting of this part of Gomersal. It is therefore the Council's contention these issues combined would result in a distinct and clearly perceived reduction in the openness of the Green Belt. This conflicts with the NPPF which indicates that the fundamental aim of Green Belts is to prevent urban sprawl by keeping land permanently open.

4.11 Consequently it is considered that this proposal would cause harm to the Green Belt in this locality and therefore constitutes inappropriate

development. As explained in the NPPF, very special circumstances therefore need to be demonstrated to outweigh this harm.

4.12 The appeal site does not sit in an area which benefits from any formal landscape designation. However, it is attractive and, as previously indicated, provides a green buffer between surrounding urban areas. The character of the landscape in the vicinity of the appeal site is that of gently undulating managed pasture and scrub with pockets of woodland and intermittent residential elements.

4.13 Public right of way (PROW) SPE/46/20 crosses the site from north to south and links with the surrounding PROW network and therefore allows walkers' unhindered views of the site at close quarters. Anecdotal evidence suggests that this particular PROW is well used and it is considered by the council that the surrounding landscape enhances the experience of users of this route and therefore acts to attract walkers and visitors from the more urban areas of Batley and Cleckheaton and therefore provides an attractive recreational facility which nearby urban populations can use. The photographs included in Appendix no.1 show views of the site typically gained by users of the Public Right of Way (SPE/46/20).

4.14 Although this proposal represents a temporary operation the works involved would take place over a period of approximately 3 years. This would involve significant operations involving the removal of existing

hedges and trees the stripping and stockpiling of top soil and importing and working of approximately 85,000 tonnes of inert waste using heavy machinery.

4.15 Users of the aforementioned footpath would overlook this site and would have unhindered views of the land raising operations. There would be a significant impact on the visual experience of the area for this group. It is therefore the Council's contention that the experience of the users of this route would be adversely affected by this development.

4.16 Whilst paragraph 90 of the NPPF indicates that engineering operations may not be inappropriate development within the Green Belt. It makes clear that this is subject to such development preserving the openness of Green Belt and not conflicting with the purposes of including land in the Green Belt. As previously indicated, the Council considers that these works would have an inevitable detrimental impact on the openness of this part of the Green Belt and conflict with the purposes for including land within the Green Belt and the council therefore contends that this proposal would constitute inappropriate development.

4.17 With regard to very special circumstances, the proposal would see the reuse of a significant quantity of waste material which may otherwise be disposed of via landfill. It can therefore be argued that this proposal

would see the management of this waste being moved up the waste Hierarchy which accords with national policy contained within the National Planning Policy for Waste. However, when weighed against the significant impact that would result from this development, the Council considers that this in itself would not constitute very special circumstances.

4.18 Whilst it is accepted that the proposed works could improve drainage at the site, it is the Council's view that land drainage improvements could be secured without the need to import the quantities of inert waste proposed. The proposed development would raise the current level of the land in some places by up to 3m and result in the current landform being remodelled and the natural rolling and undulating topography of this site being replaced by a much more even slope. It is considered that this would create a more engineered appearance which would detract from the existing landscape character of the area. It is the Council's view that land drainage improvements could be secured without the need to import the quantities of inert waste proposed.

4.19 Whilst the Council does accept that there would be benefits associated with this proposal, the Council is of the view that these benefits are not sufficient to constitute very special circumstances which would outweigh the significant harm this development would cause to the Green Belt.

## **5.0 COMMENTS ON THE APPELLANT'S STATEMENT**

5.1 In summary the appellant argues that the current topography of the site causes significant drainage problems which makes farming parts of the site difficult and in some circumstances unsafe. The appellant's view is that the by re-profiling the land using inert waste and incorporating a new land drainage systems, the land could be more efficiently farmed and that as such very special circumstances have been demonstrated to allow this development within the green Belt.

5.2 Whilst it is acknowledged that parts of the site to the east show evidence of poor drainage, the majority of the site appears to be adequately drained. The Council contends that a drainage system could be designed to provide satisfactory drainage without the need to import of the quantities of waste proposed and as the land is used for grazing, it is not necessary to re-profile the land to the extent proposed. Consequently it is the Council's view that very special circumstances have not been satisfactorily demonstrated which would outweigh the considerable harm which this proposal would cause.

## **6. CONCLUSION**

6.1 For the reasons outlined above the council contends that the development would not preserve the visual amenity and intrinsic character of the area and as a consequence would adversely affect the openness of the Green Belt. Furthermore the Council considers that

there are no other material considerations that outweigh the unacceptability of this proposal. It is therefore respectfully requested that the Inspector dismiss this appeal.

- 6.2 Should the Inspector allow the appeal the Council has prepared a set of conditions in appendix 2 which it considers should be included with any subsequent grant of planning permission

## Appendix 1 – Photographs of the site



1. View of site looking west from PROW SPE/46/20



2. View of site looking north west from PROW SPE/46/20

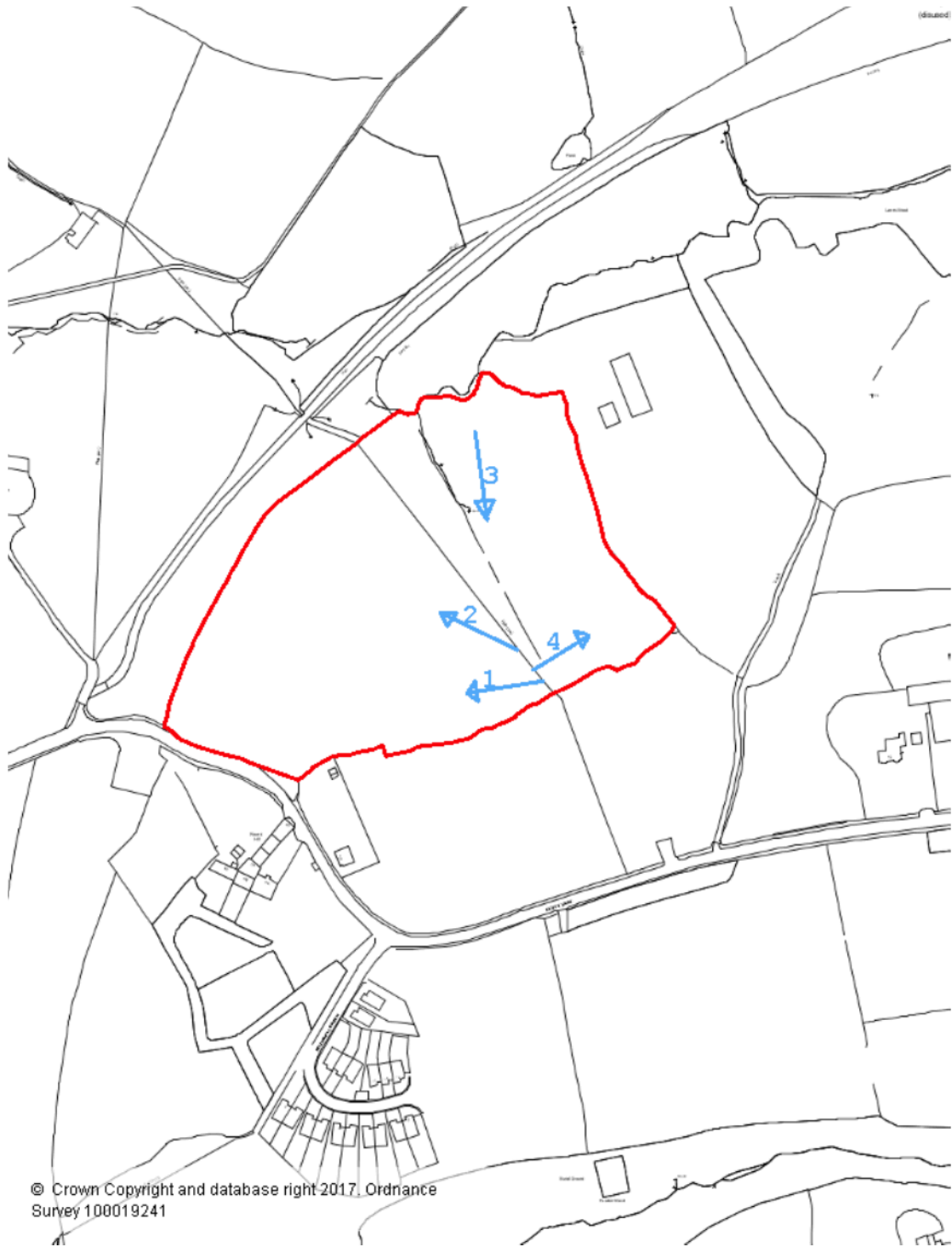


3. View of the site looking north west close to PROW SPE/46/20



4. View of the site looking east from PROW SPE/46/20

Photograph view points



Not to scale

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 Site Boundary

## Appendix 2

### **SUGGESTED PLANNING CONDITIONS**

#### **FOR: DEPOSIT OF INERT WASTE ON AGRICULTURAL LAND TO IMPROVE SURFACE WATER DRAINAGE**

**AT: LANDS FARM, CLIFFE LANE, CLECKHEATON, BD194EU**

**L.P.A. REF: 2016/62/92321/E0**

**REF: PLANNING INSPECTORATE REF: APP/Z4718/W/17/3172570**

#### Commencement

1. The development shall be begun not later than the expiration of three years beginning with the date on which permission is granted.

2. The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.

#### Time Limits

3. The import of waste to the site shall cease by 31 December 2019 and the site shall be fully restored in accordance with conditions 33 – 36 below by 30 April 2020.

#### Prior Cessation

4. In the event of prior cessation of landfilling operations in excess of a period of six months the haul road and any part of the permitted site which has been subject to landfilling but has not been restored in accordance with the terms of this conditional planning permission shall be restored to use for agriculture/nature conservation and woodland within twelve months of the date of cessation and in accordance with a restoration scheme to be submitted for the prior approval of the Local Planning Authority. The scheme shall provide for:

- i. The removal of plant and equipment from the site
- ii. The remodelling of the land using available materials
- iii. Plans indicating post restoration ground levels on the site by contour and cross section, areas to be restored to agricultural/nature conservation or woodland, and any hedges, walls or enclosure to be created on the site

- iv. Details for soil replacement including depths of subsoil and topsoil to be replaced.
- v. Relief of compaction and drainage arrangements
- vi. Details for the establishment of a grass sward on areas to be restored for agricultural use
- vii. Details for tree planting on areas to be restored to woodland including species of which at least 50% should be broadleaf, size of sapling, spacing, method of planting and means of protection and weed control.

#### Access and Protection of the Public Highway

- 5. The sole means of vehicular access to and egress from the site shall be as indicated on approved plan no 15/228 Rev. A.
- 6. No commercial vehicles shall enter the public highway unless their wheels and chassis have been cleaned to prevent material being deposited on the access road or highway.
- 7. All Heavy Goods Vehicles importing waste to or exporting waste from the site shall have their loads sheeted prior to delivery/dispatch.
- 8. No more than 24 HGV movements (12 in 12 out) per day shall take place at the site.
- 9. No development shall commence until the 2.4m x 70m sight lines indicated on plan no. 15/228 Rev. A have been formed and all obstructions above 1m cleared within the site lines. The site lines shall be retained for the duration of this development.
- 10. No development shall commence until a highways condition survey has been carried out along the route to be used by Heavy Goods Vehicles between the A638 Bradford Road and the site access and the results of the survey verified in writing by the Local Planning Authority.
- 11. No development shall commence until a vehicle management plan has been submitted to and approved in writing by the Local Planning Authority which provides the following information:
  - (a) Vehicle routeing arrangements to and from the site
  - (b) On and off site vehicle/driver protocols
  - (c) Monitoring arrangements
  - (d) Incident/action procedures

The approved scheme shall be fully implemented prior to development commencing and shall be retained for the duration of this planning permission.

### Protection of local water regimes and existing trees

12. No development shall commence until a scheme detailing land drainage arrangements during backfilling and land forming works, (managing of springs and ordinary watercourses and any temporary drainage requirements) has been submitted to and approved in writing by the Local Planning Authority.

13. Notwithstanding the information submitted with this application no waste material shall be deposited within 5 metres of any tree on the northern and eastern boundaries of the site.

14. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of the interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses shall be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipes outlets shall be detailed to discharge downwards into the bund.

### Soil Stripping and Storage

15. All available topsoil covering areas to be landfilled shall be stripped from the site and stored in 3 metre high screen bunds along the perimeter of the site in locations which have received the prior written approval of the Local Planning Authority.

16. No plant or vehicles shall cross any areas of unstripped topsoil on the site except for the purposes of stripping operations authorised by condition 14.

17. The soils on site shall not be stripped or moved except when the materials to be moved are dry and it would not be damaged by heavy vehicles and machinery passing over it.

18. The surface and slopes of soil storage mounds shall be evenly graded, seeded, a grass sward established and thereafter regularly mown to control the growth of weeds and rank vegetation.

19. The site shall be progressively landfilled in accordance with a detailed scheme submitted to and approved in writing by the local Planning Authority prior to development commencing on site. The scheme shall provide for:

(a) The phasing and direction of the backfilling of the site with imported waste.

b) spreading a minimum depth of 500mm of subsoil or clean excavation material and 200mm of top soil over landfilled areas to be restored to grassland/agriculture

(c) the ripping of any compacted layers of final cover on the backfilled waste deposit to ensure adequate drainage and aeration before the spreading of topsoil.

(d) spreading a minimum depth of 500mm of subsoil over areas to be restored by tree planting

20. Only inert wastes, as defined by the Landfill (England and Wales) Regulations 2002, shall be imported into the site for landfill.

### Land Stability

21. Should any coal workings be identified during the development of the site, satisfactory mitigation shall be carried out in accordance with the Coal Mining Risk Assessment (Ref. No. 3652) submitted in support of this application. Such mitigation measures shall thereafter be retained.

### Replacement Soils

22. Soil shall only be respread when it is dry, and the ground onto which it is to be spread is firm and supportive and the material can be handled without undue compaction and structural damage.

23. The Local Planning Authority shall be notified upon the completion of the works required by condition 18 and shall be given the opportunity to inspect the completed works before further restoration work is carried out.

24. Imported soil or soil making materials shall be made available on request for inspection by the Local Planning Authority prior to use in the restoration of the site.

25. Wherever topsoil is re-spread it shall be cross-ripped to alleviate compaction and any stone larger than 100mm in any dimension shall be removed from the site

26. The Local Planning Authority shall be notified in writing within 7 days of the works required by condition 18 having been completed.

27. A grass sward shall be developed in the first available sowing season on all parts of the site which are not to be planted with trees as indicated in the restoration scheme required by either condition 4 or 18.

### Restoration

28. Following the completion of backfilling operations in any phase, the site shall be progressively restored to agriculture/ woodland/nature conservation in

accordance with a detailed scheme to be submitted to and approved in writing by the Local Planning Authority within 3 months of the date of this permission. The submitted scheme shall include:

- a) the removal of plant, machinery and haul roads
- b) details of cultivation techniques and the plant and equipment to be used
- c) grass seeding of any areas not to be planted with trees including seed mixture
- d) tree species, spacing and planting methods
- e) methods of protecting planted species
- f) maintenance and weed control
- g) details of gates and fences
- h) The provision of specific wildlife habitat areas within the site
- i) programme of works & timescales

The approved scheme shall be implemented within the agreed timescales and maintained for the duration of 5 year aftercare period.

29. All tree/hedge planting at the site shall be carried out only during the period between 1 November and 31 March.

30. Any tree or shrub which becomes damaged, diseased or fails within the first 5 years after planting shall be replaced in the next available tree planting season.

31. The restoration of the land shall include a land drainage system the details of which shall be approved in writing by the Local Planning Authority prior to its installation.

#### Aftercare

32. An outline aftercare scheme requiring such steps as may be necessary over the aftercare period of five years to bring each restoration phase of the site reclaimed to the required standard for use for agriculture/nature conservation and woodland shall be submitted to and approved in writing by the Local Planning Authority at least 3 months prior to the completion of replacement of all restoration soils on any phase of the permitted development site and thereafter fully implemented.

33. The aftercare scheme submitted in accordance with Condition no.31 above shall provide an outline strategy which shall identify who is responsible for carrying out the aftercare, broadly outline the steps to be carried out in the

aftercare period and their timing within the overall programme, include all areas subject to aftercare on an accompanying map with separate demarcation of any areas having different aftercare periods or management proposals.

34. Following compliance with Condition 32 above a detailed annual aftercare programme shall be submitted to the Local Planning Authority before 31 August of each year during the remainder of the aftercare period. The programme submitted shall amplify the outline strategy for aftercare work to be carried out in the forthcoming year, include any modifications to the original proposals.

35. Every year during the aftercare period, the developer shall arrange a site meeting to be held before 30th November to discuss the report prepared in accordance with Conditions no 33 above to which the following parties shall be invited:

- (a) The Local Planning Authority
- (b) All owners of land within the site
- (c) DEFRA
- (d) Natural England

#### Protection of Amenity

36. No activities, including the import of waste to the site, shall take place outside the hours of:

Monday to Friday 07:30 to 18:30 hours

Saturday 08:30 to 13:00 hours

With no working on Sundays or Public/ Bank Holidays.

37. The development shall be carried out in accordance with the dust suppression measures specified in the dust suppression statement submitted in support of this application.

38. There shall be no processing of waste materials at the site including the use of any mechanical screening or crushing equipment.

39. Vehicles or plant travelling on internal haul roads shall not at any time exceed a maximum speed limit of 10 mph.

40. Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order amending, replacing or re-enacting that Order) no fixed plant or machinery, buildings or structures and erections, or private ways shall be erected, extended, installed or replaced at the site, without the prior agreement in writing of the Local Planning Authority.

