

**REGULATORY COMMITTEE
17th DECEMBER 2008**

**CHERHILL/CALNE WITHOUT: SECTION 73 APPLICATION - EXTENSION TO SAND
QUARRY AND INFILLING WITH WASTE WITHOUT COMPLIANCE WITH CONDITION 8 OF
PLANNING PERMISSION N/06/07008 DATED 19th JUNE 2007 (TO AMEND OPERATING
TIMES FOR MINERAL AND LANDFILL ACTIVITIES) LOWER COMPTON QUARRY AND
LANDFILL SITE, LOWER COMPTON NEAR CALNE
FOR HILLS WASTE SOLUTIONS LTD
Application No. N/08/07005**

Purpose of Report

1. To consider the above application and to recommend that planning permission be refused.

The Site

2. The site at Lower Compton has been used for sand extraction and landfilling since the late 1970s. The application site, which covers the existing landfill site and the Old Camp Farm extension to the east, lies approximately 3 km east of Calne, 2 km north of the A4 and is located just beyond the western extent of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
3. The centre of Compton Bassett lies around 1.3 km to the east. To the north of the application site is a bridleway and agricultural land, currently the subject of an accompanying application known as Low Lane (Application No. N/08/07006).
4. A location plan is attached at **Appendix 1**.

Planning History

5. In brief, the planning history of the site is as follows:

<u>N/01/2803</u>	Extension to sand quarry and infilling with waste and variation of condition to amend restoration scheme. Planning permission granted 24 th May 2002.
<u>N/04/3060</u>	Section 73: Extension to sand quarry and infilling with waste without complying with Condition 2 of planning permission N/01/2803. Planning permission granted 14 th April 2005.
<u>N/06/07021</u>	Section 73: Extension to sand quarry and infilling with waste without complying with Condition 8 of Planning Permission N/04/3060 (Operating Hours). Planning permission granted 10 th November 2006.
<u>N/06/07008</u>	Section 73 application for extension to a sand quarry and infilling with waste without complying with condition 3 (end date) and Condition 5 (phasing and restoration) of N/04/3060. Planning permission granted 19 th June 2007.

Proposal

6. This application seeks to continue development without complying with Condition 8 of planning permission N/06/07008.

7. Condition 8 restricts operation of the application site to the following hours:

Except in emergencies to maintain safe working (which shall be notified to the Mineral Planning Authority in writing within seven days) no operations shall be carried out and no plant shall be operated other than during the following hours:

07.00 - 20.00 Monday to Friday

07.00 - 13.00 Saturday

Operations shall not take place on Sunday or Bank or Public Holidays.

8. The applicant is seeking to revise condition 8 so as to extend the approved operating hours to the following:

Except in emergencies (which shall be notified to the Planning Authority as soon as practicable), no landfilling operations shall be carried out except between the following hours:

06.00 – 20.00 Mondays to Friday

06.00 – 18.00 Saturdays following a Bank Holiday (three consecutive Saturdays following Christmas and New Year period)

06.00 – 18.00 on Bank Holidays

The site may also be open for an additional eight Saturdays per calendar year, the date of which are to be notified to the Planning Authority in advance by 31st December in the proceeding year.

9. The applicant states that the need for the extended operating hours arises from the four District Councils which bring household waste to Lower Compton, operating two different systems for waste collections over Bank/Public Holidays.
10. Two Councils choose to collect waste as normal on Bank/Public Holidays. The other two do not collect on Bank/Public Holidays, preferring to collect on the following Saturday (so called 'catch up Saturday'). As the collected waste would need to be landfilled on the day it is collected, the applicant states that the landfill site needs to be open to accommodate both approaches.
11. In addition, the extended operating hours are requested to allow for landfilling of household waste collected at Household Recycling Centres (HRCs) on Bank/Public Holidays and Saturdays following Bank holidays.

Planning Policy

12. The following planning policies are considered relevant to this proposal:

- Policy W4 of the Wiltshire and Swindon Structure Plan 2016 (WSSP).
- Policies 2 and 6 of the Wiltshire and Swindon Waste Local Plan 2011. (WSWLP)
- Policy 13 of the Wiltshire and Swindon Minerals Local Plan 2001.

These policies are set out in **Appendix 2**.

Consultations

13. **Local Member, Mrs. N. Bryant** – no comments received.
14. **North Wiltshire District Council** – recognises that the requested hours of operation do appear to extend quite late into the evening and as such it is necessary for the County Council to ensure that the additional hours of operation would not pose an unacceptable impact upon the amenities of those nearest residents. It would appear that there is insufficient information relating to noise submitted as part of the application that would allow for such an assessment to be made. Beyond this general point, no objection is raised.
15. **North Wiltshire District Council (Environmental Health Officer)** – considers the proposed hours have the potential to cause loss of amenity to nearby residents due to noise from the site. Recommends that operating hours are limited to current planning restrictions.
16. **Cherhill Parish Council** – no objection.
17. **Compton Bassett Parish Council** – no comments received.
18. **Calne Without Parish Council** - considers the application should be rejected as the current 7.00 a.m. start time produces enough feedback from residents about noise. Start time of 6.00 a.m. will only produce more reaction. Main problem is noise from lorries driving to and leaving the site. Local Councillors can hear tipping in recycling centre – noise for those living much closer must be much worse.
19. **Environment Agency** – confirms that the proposal falls outside the scope of matters with which the Environment Agency is concerned.
20. **Local Highway Authority** – no objection.
21. Copies of the consultation responses are available in the **Members' Room**.

Publicity

22. The application has been advertised in the local press and by site notice. A neighbour notification exercise has also been undertaken. One letter of representation has been received. The concerns expressed relate to:
 - The company is already causing noise, odour and rubbish pollution in the area
 - To start noise pollution one hour earlier at 06.00 am would be intolerable, as would the additional hours on Saturdays and Bank Holidays.
23. Representations have also been received from the following Groups:

Friends of Compton and Surrounds (FOCAS) – considers the whole issue of hours of operation across the Lower Compton site somewhat confused and consider the piecemeal amendment of hours unsatisfactory. Infringements of operating hours have been recorded by residents thus have little confidence that amended hours will be observed. Approval would lead to even earlier occurrences of noise and nuisance from vehicles accessing the site early in morning and evenings, adding to burden of local residents. Believe extended hours are completely unnecessary and give freedom to Hills which would not be accorded to other normal industrial companies.

Applicant is somewhat vague as to why the current hours and days of opening fail to meet the authorities' requirements. It is unclear as to why so many additional days are required following specific Bank Holidays. The request for additional Saturdays following a Bank Holiday and for full Bank Holiday operations would appear excessive – surely requirement should be either/or, rather than both?

Campaign to Protect Rural England (CPRE) – considers the application extremely thin on detail and confusing as there are several permissions with different conditions regarding operating times. A local resident has informed of lorries leaving the site at 5.00 a.m. Is there any guarantee that departures will not start at 4.00 a.m. if amendment is approved? The application fails to explain why the imposition of the present hours fails to reflect the needs of the collection authorities and without this it is impossible to make a balanced and rational judgement. Principle problem for Hills appears to be it has no waste management licence to leave waste in containers over holiday periods and weekends. Suggest WCC look into and seek to resolve this thereby managing the site to best advantage and with least disruption to the public service and local residents. Believe site being open Bank Holidays and Saturdays following Bank Holidays is excessive. Object to application and seek much more detailed information on collection patterns from all four districts and an explanation on the issue of storing containers on site over holidays and weekends.

24. Copies of the representations are available in the **Members' Room**.

Planning Considerations

25. This planning application must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
26. Applications to vary or modify conditions attached to a planning permission are properly known as Section 73 applications. The procedure for such applications requires the planning authority to consider only the question of the condition(s) subject to which planning permission should be granted.
27. If it is decided permission should be granted subject to conditions differing from the previous permission, the planning authority may grant permission accordingly. Alternatively, if the planning authority decides that the permission should be granted subject to the same conditions as in the previous permission, then it should refuse the application.
28. The main issue associated with this application is the balance between the need for the proposed extended hours to accommodate waste collection requirements and the impact on local residents.
29. It is stated in the Adopted Waste Local Plan that the Council will do all in its power to ensure that the adverse effects of waste management facilities do not impinge on the quality of life of people in the area. Policy 6 of the Waste Local Plan requires that proposals for extended waste management facilities will only be permitted where it can be demonstrated that there will be no significant adverse impact on the environment, human health or amenity.

30. The restraint on working hours at the Lower Compton site was imposed to ensure that local residents enjoyed the quieter period of Saturday afternoons, Sundays and Bank Holidays. This is common practice at all mineral extraction/landfill sites and this restriction provides some relief from operations and associated traffic for those living near sites, at the times they are most likely to wish to enjoy the amenities of their homes and gardens. When considering applications at Lower Compton, the Waste Local Plan directs that the proximity of any waste development to housing at Spreckley Road, Lower Compton, and to populations of Calne, Compton Bassett and the surrounding area is a material consideration.
31. The hours and days of operations of a number of facilities at the Lower Compton site were the subject of five separate applications in November 2006 when the Applicant sought permission to extend the opening hours in order to accommodate waste from kerbside collections and Household Recycling Centres. The Committee determined at that time it was reasonable to allow working hours to be extended to cater for waste from HRCs at peak times and to allow general waste lorries to enter the site on Saturday afternoon immediately preceding or following a Bank/Public Holiday, but rejected any additional hours.
32. The Applicant has stated the extended hours are sought primarily to provide flexibility to accommodate the District Council's residual waste collections and waste generated at Household Recycling Centres. It is understood the changes to the hours are to deal with decisions made by the District Councils concerning occasional loads, unforeseen circumstances and collection, which are outside the Applicant's control.
33. It would seem therefore that the basis of the request to extend operating hours is simply to reduce the risk of a situation arising where commercial decisions made by other parties might have the knock-on effect of causing the applicant to breach the current planning condition if they chose to accede to those decisions. Officers do not consider this way of thinking to represent a robust land-use planning reason to extend the opening hours. It is considered important that the restraint be maintained and officers are concerned that extending the hours in the manner proposed might set a precedent for other waste and mineral sites in the plan area. There is, at present, no clear justification for the extended hours and it is notable that neither the waste disposal authority nor any of the waste collection authorities have confirmed any support for this application for extending working hours.
34. Even if there is a requirement to accommodate a varied pattern of service, officers would draw attention to the long-standing advice on the issue given by the Planning Officers' Society. This suggests that in areas where the hours of operation in waste collection contracts fail to reflect the proper hours at which landfill or other waste management facilities are available the real solutions to commercial pressure to vary hours of opening at landfill sites lie:
- (a) In ensuring that waste collection authorities make adequate and acceptable provision of capacity for holding/storing waste over these periods and/or
 - (b) In having civic amenity (HRC) sites available which can satisfactorily operate on weekends and public holidays, rather than seeking to shift the problem onto those responsible for the hours when waste disposal facilities are open.
35. Objectors have raised concerns that the proposed extended hours are unnecessary and excessive and the rationale for the hours is incomplete and confusing. As highlighted by the District Council, the Applicant has made no attempt to demonstrate that the additional hours proposed would not cause an adverse impact on local amenity. The Environmental Health Officer recommends the current restriction on working hours remains given the potential for loss of local amenity. Officers concur that these factors have not been satisfactorily addressed by the Applicant.

36. It should also be noted that the current condition 8 restricts working hours for both mineral extraction and landfill operations, but the sought revised condition relates only to landfill operations. It is not clear what the Applicant's intentions are in respect of extraction operations. Whilst officers have been willing to explore with the Applicant a set of working hours that satisfactorily balance the perceived waste collection requirements with the protection of residential and local amenity, the Applicant has insisted that the application be determined as it stands.

Conclusion

37. Officers recommend that in the absence of any clearly demonstrated need, the flexibility and comfort the Applicant seeks in extending the stated opening hours is not a sufficiently exceptional reason as to outweigh the normal practice of not generally permitting tipping operations at Lower Compton on Saturday afternoons, Sundays and Bank Holidays. It is considered that insufficient details have been submitted to enable the Council to assess the impact the proposed extended hours may have on the quality of life of people in the area. The need for the additional hours has not been demonstrated satisfactorily.

Recommendation

38. That permission be refused for the following reasons:-
1. In the opinion of the Waste Planning Authority, the need for the proposed extended hours of working has not been adequately demonstrated and in the absence of any need the permission should be granted subject to the same conditions as those subject to which the previous permission was granted. It is not considered that the notion of extending operating hours to reduce the risk of a potential future breach of the imposed condition is a valid reason to amend the condition which is necessary to protect local amenity. Accordingly the development would not be in accordance with Policy 2 of the Wiltshire and Swindon Waste Local Plan 2011.
 2. The proposed extension of opening hours to include Bank Holidays and every Saturday following a Bank Holiday and an additional eight Saturdays per year has the potential to generate an unacceptable level of activity at the site to the detriment of the amenity of the locality and neighbouring residential areas, contrary to Policy W4 of the Wiltshire and Swindon Structure Plan 2016, Policy 13 of the Wiltshire and Swindon Minerals Local Plan and Policy 6 of the Wiltshire and Swindon Waste Local Plan 2011.
 3. It is considered that insufficient details have been submitted to enable the Waste Planning Authority to fully assess the impact that the proposed extended hours might have on the environment and on residential and local amenity. Accordingly, the proposal is contrary to Policy W4 of the Wiltshire and Swindon Structure Plan 2016, Policy 13 of the Wiltshire and Swindon Minerals Local Plan and Policy 6 of the Wiltshire and Swindon Waste Local Plan 2011.

GEORGE BATTEN

Director of Environmental Services

Report Author

Jason Day

Planning Control Manager

The following unpublished documents have been relied on in the preparation of this Report:

Consultation replies and correspondence