

## Development Control Committee – 14<sup>th</sup> January 2019

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<b>Appeal Reference Number:</b>	<b>APP/P01430/W/18/320545 (Application CM/16/17)</b>
<b>Title:</b>	<b>A revised restoration landform to allow the development of a waste recovery and anaerobic digestion facility with associated vehicle parking, fuelling and washing, bin storage and staff welfare facilities together with the retention of the existing construction waste recycling facility and existing offices, parking, weighbridge and site access</b>
<b>Site Location:</b>	<b>Wapseys Wood Mineral Extraction &amp; Landfill Site, Oxford Road, Gerrards Cross</b>
<b>Appellant:</b>	<b>Veolia ES Landfill Limited The Old Paddocks New Works Telford Shropshire</b>
<b>Case Officer:</b>	<b>Emily Catcheside</b>
<b>Electoral divisions affected &amp; Local Member:</b>	<b>Gerrards Cross, Barbara Gibbs</b>
<b>Date Appeal Lodged:</b>	<b>8<sup>th</sup> June 2018</b>

### Summary Recommendation(s):

In the event that the Minerals and Waste Local Plan 2016-2036 has not been adopted before appeal **APP/P01430/W/18/320545** is heard by public inquiry, the Development Control Committee is invited to **DELEGATE AUTHORITY** to the Head of Planning and Environment to **RAISE PREMATURITY AS AN ADDITIONAL REASON FOR REFUSAL** for the reason that, in accordance with paragraphs 49 and 50 of the National Planning Policy Framework, the development would undermine the plan-making process by pre-determining decisions about scale, location or phasing of new development that are central to the emerging plan and that this would prejudice the outcome of the plan-making process.

### Appendix A: Buckinghamshire County Council's Statement of Case



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## Introduction

1. Planning application CM/16/17 was submitted to the County Council on 6<sup>th</sup> May 2016. The application sought permission for the erection and use of a waste recovery facility and anaerobic digestion plant, the permanent retention of the existing temporary recycling facility for construction, demolition and excavation waste, and ancillary development at Wapseys Wood mineral extraction and landfill site on the A40 between Gerrards Cross and Beaconsfield.
2. Members of the Development Control Committee received a report from officers for the meeting on 17<sup>th</sup> December 2017, which recommended that the application be refused and that authority be delegated to the Head of Planning and Environment to issue the decision notice following the adoption of a Habitats Regulation Screening Assessment. Members considered the application at the meeting and voted to accept the officer's recommendation. It was therefore resolved that planning permission should be refused for the following reasons:
  - i) *The development would be inappropriate in and would affect the openness of the Metropolitan Green Belt contrary to the provisions of policies CS20 of the Buckinghamshire Minerals and Waste Core Strategy, paragraphs 87 & 88 of the National Planning Policy Framework and policy GB1 of the South Bucks Local Plan. The applicant has not demonstrated that the potential harm to the Green Belt by reason of inappropriateness is clearly outweighed by other considerations nor have they demonstrated that no alternative sites are available outside of the Green Belt including through making provision for the individual waste streams proposed to be managed at smaller sites. Very special circumstances do not therefore exist to justify making an exception to these policies.*
  - ii) *The development would be on a green field site and would have an adverse effect on the restoration and aftercare of the existing mineral working and landfill site as required by planning permission no. 11/00223/CC. The applicant has not demonstrated that there are no alternative previously developed sites available. The application is therefore contrary to the provisions of policy CS23 of the Buckinghamshire Minerals and Waste Local Plan and section 4 of the National Planning Policy for Waste.*
  - iii) *The development is contrary to Policy CS16 of the Buckinghamshire Minerals and Waste Core Strategy as facilities for the management of imported waste, including those from London other than limited provision for landfill to 2026, are to be resisted.*
3. Following the adoption of a Habitats Regulation Screening Assessment, a decision notice was issued on 31<sup>st</sup> December 2017, which refused the application for the reasons listed above.
4. On 8<sup>th</sup> June 2018, the applicant exercised its right to appeal the decision of the County Council to refuse planning permission. The appeal will be heard by way of a Public Inquiry which is scheduled to take place between 26<sup>th</sup> and 29<sup>th</sup> March 2019 and, as part of the preparation for the public inquiry, the Council has submitted a Statement of Case which can be viewed at Appendix A.

## The Appeal Scheme, Site History & Site Location

5. A description of the site location, site history, and details of the appeal scheme are contained in paragraphs 1-3 of the council's Statement of Case at Appendix A of this report.

### **The Draft Minerals and Waste Local Plan 2016-2036**

6. The Minerals and Waste Local Plan 2016-2036, which will replace both the Minerals and Waste Core Strategy and the saved policies of the Minerals and Waste Local Plan 2004-2016, was submitted to the Secretary of State for Housing, Communities and Local Government on 1<sup>st</sup> June 2018. The examination hearings were held on 24<sup>th</sup> and 25<sup>th</sup> September 2018 and, subsequently, the Inspector wrote to the Council with post hearing advice on main modifications and related matters on 9<sup>th</sup> October 2018. On 10<sup>th</sup> December 2018, the Council commenced a period of public consultation on the proposed Main Modifications, which will close on 4<sup>th</sup> February 2019. Following the close of the consultation, the Inspector will consider the comments received and will provide a report setting out his consideration of the emerging plan.
7. In addition to the application for planning permission (CM/16/17), the appellant has also promoted the site for permanent waste management development through the plan-making process. In particular, the appeal site was promoted by the appellant for a Resource Recovery Park during the Issues and Options consultation for the draft Minerals and Waste Local Plan in 2015, the Preferred Options consultation in 2017, and the consultation on the proposed submission version of the plan earlier in 2018.
8. At all stages of the plan-making process, the appellant has argued that the proposed spatial strategy is too limiting to deliver the waste management capacity that is needed to meet Buckinghamshire's need, and that additional areas of focus will need to be identified, particularly in the south of the county where the appellant considers the greatest amount of waste is generated and where the need for new facilities is most needed.
9. The County Council has not accepted the view of the appellant and, as such, the appeal site has not been identified as an area of focus for permanent waste management facilities in the draft Minerals and Waste Local Plan.
10. The appellant was represented at the examination hearings, and specific sessions were held to address the appellant's objection to the spatial strategy set out within the plan. Until the Inspector's final report has been received, it is not known whether the spatial strategy in the submitted plan and as modified will be found sound. Granting planning permission for this proposal in advance of the conclusion of the examination would therefore predetermine matters that are due to be decided through the examination process.

### **Discussion**

11. A considerable period of time has passed since planning application CM/16/17 was determined on 31<sup>st</sup> December 2017. One consequence of this delay is that the draft Minerals and Waste Local Plan 2016-2036 has now been submitted to the Secretary of State for independent examination, and examination hearings have now closed. This represents a significant material change in circumstances since the application was considered, and the implications of that change will need to be taken into account by the Inspector presiding over this appeal inquiry, depending on the progression of the emerging plan.

12. Since the draft plan is now at an advanced stage of preparation, it is therefore necessary to consider whether the proposed development would be “premature” having regard to paragraphs 49 and 50 of the NPPF, which state as follows:

Paragraph 49:

*“However on the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in limited circumstances where both:*

- a) *The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan;*

*And*

- b) *The emerging plan is at an advanced stage but is not yet formally part of the development plan for the area”.*

Paragraph 50:

*“Refusal of planning permission on the grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process”.*

13. Given that the appeal scheme is a strategic proposal that is fundamentally inconsistent with the spatial strategy in the draft plan, it is considered that allowing the appeal (and thereby granting planning permission) for the development would undermine the plan-making process by pre-determining decisions about scale, location or phasing of new development that are central to the emerging plan and that this would prejudice the outcome of the plan-making process.
14. Members are advised that it is considered that, having regard to paragraphs 49 and 50 of the NPPF, it would be premature to allow the appeal and grant planning permission for this development before the conclusion of examination into the emerging plan. It is therefore recommended that authority is delegated to officers to raise prematurity as an additional reason for refusal at the inquiry in the event that the draft Minerals and Waste Local Plan has not yet been adopted by the time the inquiry is heard.

## **Conclusion**

15. Planning application CM/16/17 was resolved to be refused by the Development Control Committee in December 2017 and is now subject to appeal. The appeal will be heard by way of a public inquiry in March 2019.
16. Since the application was refused, the draft Minerals and Waste Local Plan 2016-2036 has been submitted to the Secretary of State of examination and the examination hearings have now closed.
17. As such, the emerging plan is now considered to be at an advanced stage of preparation which is a material change in circumstances since the application was refused. The

appeal scheme is considered to amount to a strategic development that would undermine the plan-making process by pre-determining decisions about scale, location or phasing that are central to the emerging plan and that this would prejudice the outcome of the plan-making process.

18. In the event that the Minerals and Waste Local Plan has not been adopted by the County Council prior to the public inquiry into the appeal, it is recommended that authority is delegated to officers to allow prematurity to be added as an additional reason for refusal of the application to be raised at the inquiry.