

**DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE**

2 December 2013

Report of the Acting Strategic Director – Environmental Services

**3 PROPOSED SECTION 73 APPLICATION TO NOT COMPLY
WITH CONDITION 3 OF PLANNING PERMISSION
CW9/1097/69 TO AMEND THE RESTORATION
MASTERPLAN AT BRETBY LANDFILL SITE, MAIN
STREET, NEWHALL, SWADLINCOTE
APPLICANT: FCC ENVIRONMENT
CODE NO: CW9/0913/93**

9.493.24

Introductory Summary This Section 73 application seeks permission not to comply with Condition 3 (for restoration) of planning permission CW9/1097/69 relating to Bretby landfill site and includes plans to amend the site restoration by not re-forming the two water management lagoons at the site into a single naturalistic pond.

The lagoons, as built, have developed into a habitat that has been colonised by Great Crested Newts (GCN), a species which is protected under European Union law, and Habitats Regulations which apply it. Re-forming the lagoons in accordance with the approved scheme would have an unacceptable impact on the colony of GCN.

I consider that the retention of the existing lagoons, for the protection of GCN, is justified. Consequently, it is recommended that the application is approved, subject to an appropriate new set of conditions being attached to the new permission.

(1) **Purpose of the Report** To enable the Committee to determine the application.

(2) **Information and Analysis**

Planning Background

The Bretby Brick and Stoneware Company occupied the site until 1970 when planning permission was granted for the tipping of domestic waste on the original (northern) part of the site (known as Bretby One). Bretby Two was

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granted permission in 1991; this was for a southern extension for opencast coal extraction and landfilling which was in operation until 2003. An electricity generating facility utilising landfill gas, has been developed at the site and a civic amenity site on a restored area of Bretby One has also been developed, each under separate permissions. Schemes for the restoration and landscaping were first developed for particular areas of the site but were eventually merged into a single scheme covering the whole site.

The approved restoration scheme contains details of landscaping, as well as setting out the landform to be achieved in the final restoration of the site including the creation of pastureland for grazing with traditional fence and hedgerow field enclosures, as well as blocks of woodland in keeping with the character of the local landscape. These areas have been now been restored and are managed and monitored in terms of landfill gas.

The remaining element of the restoration masterplan, which has not been achieved, relates to the part of the site reserved for the single pond. It still contains two surface water collection lagoons which were used as part of opencast coal operations and subsequently for surface water management for the landfill site.

Site and Surroundings

The Bretby Landfill site covers approximately 23 hectares north-west of Newhall, Swadlincote. The site is accessed from the B5353 via a 300 metres long access road which is shared with the civic amenity site. The nearest residential properties are located approximately 100 metres south-east of the site boundary, close to the access road on the B5353 at the edge of Newhall. Away from this area, the site has the appearance of a rolling hillside within an open farmland landscape. There are a number of public footpaths around the periphery of the site with a disused railway line running along the length of the western boundary. The lagoons are located in the south of the site, within the Bretby Two area, and are adjacent to Swadlincote Public Footpath 90.

The Proposals

This application is made under Section 73 of the Town and Country Planning Act 1990. It seeks to enable the restoration of the site to be completed with the retention of the existing configuration of the established and matured two surface water collection lagoons associated with the restoration of Bretby landfill site.

The main variation between the approved one lagoon scheme and the two lagoon scheme is the retention of a vegetated grass rise separating the two lagoons. A duct is contained within the grass rise which allows water with lesser amounts of suspended solids to pass into the second lagoon, where it is then discharged off site.

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An application for a similar planning permission was submitted in May 2012 and refused in October 2012, under application reference CW9/0512/12. The application was refused on the following grounds:

1. The approved restoration scheme could not be implemented because a European Protected Species (EPS) licence relating to Great Crested Newts (GCN) could not be obtained.
2. The works required by the approved scheme would lead to an acceptable short term impact and the reforming of the lagoons would be likely to be beneficial for ecological interests, including GCN, in the longer term. The presence of GCN does not present an unassailable barrier to the completion of the approved scheme.
3. Retention of the lagoons in their current form does not represent a satisfactory alternative to the approved restoration scheme.
4. The restoration of the lagoons into a single naturalistic pond represents a better outcome for the enhancement of ecology and biodiversity.
5. The proposed changes to the restoration of the site do not accord with Waste Local Plan policies W5: Identified Interests of Environmental Importance and W7: Landscape and Other Visual Impacts."

Since the refusal of application CW9/0512/12, the applicant has commissioned further surveys regarding the presence of flora and fauna. The surveys conclude that the flora and fauna present in and around the two current lagoons has become significantly ecologically established, and that invertebrate populations and other associated ecology have progressed to the extent that the approved restoration would be detrimental to the enhancement of bio-diverse landscapes. As such, the applicant contends that any work required to provide a surface water management system with one sole lagoon (as the existing restoration masterplan requires) would have a significant adverse impact on ecology as well as on restored areas of the site (which would be required for access for carrying out works).

The proposal therefore seeks to retain the existing two surface water lagoons as opposed to the currently approved single lagoon, and seeks to amend the approved restoration scheme drawing 1115-RS-01_RevD with drawing 303R078A revA.

Consultations

Local Member

Councillor Bambrick has been consulted with a request to make any comments by 11 October 2013.

South Derbyshire Dales District Council

No objections.

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Environment Agency and Derbyshire Wildlife Trust

Any comments were requested by 11 October 2013.

Natural England

Natural England raises no objections but makes the following comments:

“This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application... The proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement... Natural England would encourage the incorporation of green infrastructure into this development...”

Derbyshire Wildlife Trust

The Trust raises no objections but makes the following comments:

“We are of the view the work required to re-instate a single water body would significantly impact upon the nature conservation interest that has become established on the site.....from an ecological perspective, it would be preferable to retain the surface water lagoons in the current configuration. The Trust has recommended the submission of a habitat management plan and management of adjoining woodland and shrubs.”

Publicity

The application has been advertised by site notice and in the Burton Mail with a request for observations by 11 October 2013. As a result of the publicity, one letter of objection has been received raising the following points.

1. These lagoons and the surrounding area should be landscaped as per the present planning conditions. This will then enhance this site to create and encourage a greater variety of wildlife.
2. Should the original plans not be adhered to, there will still need to be considerable excavations and remedial work carried out to these lagoons to rectify any future problems.
3. These lagoons have for some years had a problem with water overflowing onto the public footpath.
4. The alternative is to just leave the lagoons which will eventually overflow, and create a swamp area with serious environmental health and safety issues.

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5. The Bretby Landfill Liaison Committee, together with the land owner and W.R.G as the then operator, agreed this to be carried out. This was then included within the restoration and planning conditions.
6. I would request that I be allowed to address the Committee in respect of these and other planning issues. This area is low lying within the site plus the fact that the lagoons have never been cleaned out.

Comment: The points raised from the consultation which are valid planning considerations are considered below.

Planning Considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In relation to this application, the relevant policies of the development plan are contained in the saved policies of the adopted South Derbyshire Local Plan (2005), the Derby and Derbyshire Waste Local Plan (2000) and the National Planning Policy Framework (March 2012). The policies of the South Derbyshire Draft Local Plan (September 2013) are also a material consideration.

The National Planning Policy Framework (NPPF) states that local authorities taking decisions on planning applications should consider issues relating to good design, and conserving and enhancing the natural environment.

Policies

The principal planning policies relevant to this grant of planning permission are:

The National Planning Policy Framework

Chapter 12: Conserving and enhancing the natural environment.

Derby and Derbyshire Waste Local Plan

W7: Landscape and Other Visual Impacts.

W9: Protection of Other Interests.

W12: Reclamation and Restoration.

Adopted South Derbyshire Local Plan

EV9: Protection of Trees and Woodland.

South Derbyshire Draft Local Plan

BNL3: Biodiversity.

BNL4: Landscape Character and Local Distinctiveness.

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Having assessed the key development plan policies, I consider the central planning considerations for this application relate to:

- Need for development.
- Ecology.
- Landscape.
- Public Footpaths and Highways.

Need for Development

The application states that the retention of the current configuration of two lagoons has a vast array and diversity of established species of flora and fauna, including GCN which is European Protected Species. In order to undertake any restoration works, a licence must be obtained from Natural England which requires that (amongst others) it must be proven that there is a clear over-riding public interest in disturbing the species and that there is no other satisfactory alternative to the proposed development. The adverse impacts involved and resulting from the reinstatement of a single lagoon system, as opposed to retaining the two lagoon system, far outweigh the minor impacts on landscape and character.

Ecology

The current application is supported by an ecology report which identifies that the site contains a significant population of GCN. This means that the baseline conditions appertaining to this application are significantly different to the conditions previously considered under application CW9/0512/12 which was subsequently refused.

I note the objections above which state that the lagoons and the surrounding area should be landscaped as per the present (approved) planning conditions because such a restoration would enhance the site and create, and encourage, a greater variety of wildlife. However, I consider that any excavations and remedial work carried out to the lagoons would have an adverse effect on a protected species. Furthermore, the extent of the population of GCN also means that the applicant would not be able to secure the necessary EPS licence from Natural England to enable it to carry out the approved restoration. Consequently, I am satisfied that there is a need to retain the two lagoon system in their current configuration.

However, I further consider that although the retention of the two lagoon system is more satisfactory from an ecological perspective. The current habitat around the lagoons is not as optimal as it could be from this perspective and I consider that some specific habitat enhancement, as well as aftercare management is needed in the interest of GCN protection. I note that drawing numbers 303R078A revA and 303R039A revA both show 'Indicative Naturally Regenerated Woodland around ponds', as well as regenerating shrubs around both water bodies. I consider that trees in this vegetation should not be allowed to grow, so as to overshadow the pond, and that

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vegetation (especially trees) should also be maintained so as to avoid leaf litter entering the pond, as both overshadowing and build up of debris would be detrimental to these water bodies and their ecological value. The recommendation therefore includes a draft planning condition for an ecological scheme for the inclusion of hibernacula structures, as well as habitat management and maintenance works, to encourage retention of a habitat suited to GCN.

Landscape

The original restoration scheme plan (1115-RS-01) shows the lagoons as being 'profiled to safe banks', implying that the form of the two lagoons was not previously considered acceptable in terms of safety. Swadlincote Public Footpath FP90 adjoins the lagoons but it has been subject to temporary diversion. When the path is reinstated onto its definitive alignment, it will encourage the public to walk in close proximity to the lagoons, which appear to have been identified as a potential safety hazard due to the depth and the profiles of their banks. Since the banks would not be profiled to 'safe banks' as previously approved, I consider that to ensure the proposal accords with Policy W9 of the Derby and Derbyshire Waste Local Plan, there should be some further landscape and safety features incorporated into the area of the lagoons, to improve public safety as well to further incorporate the lagoons within the existing green infrastructure.

In relation to the objection relating to the lagoons overflowing onto the existing public footpath (FP90), which currently creates a swamp area, I have recommended a planning condition for a scheme to improve the existing drainage on the site of Bretby Two, particularly to reduce the possibility of flooding onto the adjoining public footpath.

Finally, although much of the existing site has been restored to approved contours, some areas have subsided and consequently become terrestrial habitats for GCN. I consider that re-grading of these areas, although desirable in other respects, is precluded because of the presence of GCN, which would be using available habitats in the vicinity of the ponds as terrestrial habitat for most of the year. Their presence would constrain any re-grading of these areas, in the same way that it prevents works to the ponds.

I am satisfied that with the imposition of the above recommended planning conditions the proposal would accord with policies W7 and W12 of the Derby and Derbyshire Waste Local Plan.

Conclusion

Subject to the recommended conditions, I am satisfied that the proposal would not adversely affect the existing landscape character and would not have an adverse impact on local amenity. The proposal conforms to national and local

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planning policies identified above and consequently, it is recommended for approval, subject to a new set of conditions.

(3) **Financial Considerations** The correct fee of £195 has been received.

(4) **Legal Considerations** This is an application which has been submitted to the County Council under the provisions of Part III of the Town and Country Planning Act 1990.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers** File No 9.493.24
Application form and supporting documents received from FCC Environment dated 9 September 2013, including Covering Letter dated 5 September 2013, amended surface water lagoon configuration drawing no 303R039A, final restoration scheme drawing no 303R078A, current restoration scheme drawing no 1115-RS-01 Rev D, pond area regarding proposal drawing no BR654-D1A, and Marches Ecology Statement dated June 2013.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission is **granted** subject to the inclusion of a set of conditions substantially based on the following draft conditions:

- 1) Subject to the requirements of the conditions below, the development hereby approved shall be in accordance with the details submitted in respect of the planning application CW9/1097/69 dated 10 October 1997 (including the restoration scheme plan drawing no. 1115-RS-01RevD), subject to the amendments provided by the application for this permission CW9/0913/93.

Reason: To clarify the details approved.

- 2) Except in emergencies, for reasons of safety (which shall be notified to the Planning Authority as soon as practicable), no operations shall be carried out except within the following hours:

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0700 hours – 1900 hours Monday to Friday;
0700 hours – 1300 hours on normal Saturdays;
0700 hours – 1700 hours on Saturdays closest to a Bank Holiday; and
0700 hours – 1700 hours on Bank Holidays (except Christmas Day and Boxing Day when there shall be no working).

Reason: To protect the amenities of local residents.

- 3) 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 shall be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, gauges and sight glasses must 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 should be located above ground and protected from accidental damage. All filling points and tank overflow outlets shall be detailed to discharge downwards into the bund.

Reason: To prevent pollution of the water environment.

- 4) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways.

Reason: To prevent pollution of the water environment.

- 5) All machinery shall be operated and maintained in accordance with the manufacturers' specifications at all times. Efficient silencers shall be fitted to, used and maintained on all vehicles, plant and machinery employed on the site. Save for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

Reason: To protect local amenity.

- 6) The level of noise emitted from the site shall not exceed 55 dB Laeq, 1 hour during the approved hours of operation, as measured at the gates to the landfill site.

Reason: To protect local amenity.

- 7) The operator shall take all measures as necessary to minimise the emission of dust from the site. For the purposes of this condition, the satisfactory suppression of dust shall be taken to mean that no dust

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escapes from the site and can be seen to be passing over or settling on properties to the east and south of the site.

Reason: To protect local amenity.

- 8) No commercial vehicles shall enter the public highway unless their wheels and chassis have been cleaned to prevent material being deposited on the highway.

Reason: In the interests of highway safety.

- 9) All the existing boundary hedges and security fencing shall be maintained and protected from damage until the restoration of the site has been completed and the land returned to the owner.

Reason: To maintain safety and security.

- 10) The restoration contours for the entire landfill site (Bretby One and Two) shall be in accordance with drawing number 303R078A revA and 303R039A.

Reason: To clarify the details approved and to control the operation of the site in order to maintain the amenity of the area.

- 11) The restoration aftercare measures provided by the scheme, which was approved on 17 November 2003 with respect to the requirements of planning permission code reference CW9/1097/69, shall be carried out with respect to the restoration to be approved under this permission (including the surface water lagoon configuration shown in Drawing 303R039RevA, and the restorative works to be carried out pursuant to conditions 12, 13, 14 and 15 below) throughout the 5 year period from completion of restoration.

Reason: To ensure that the reclaimed land is correctly husbanded to bring the land to the standard required for agriculture (pasture) with appropriate marginal areas for amenity (ecology).

- 12) Within three months of the date of this permission, an ecological scheme maintain and enhance the value of the habitat provided in the site for Great Crested Newt shall be submitted to for approval in writing by the Planning Authority and shall thereafter be implemented as approved. The scheme shall include:

- a) Construction of hibernacula structures.
- b) Habitat management.
- c) A programme including a completion date.

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Reason: In the interests of ecology and European Protected Species protection.

- 13) Within three months of the date of this permission, a landscaping scheme for the adjoining banks of the existing lagoons shall be submitted to for approval in writing by the Planning Authority and thereafter implemented as approved. The scheme shall include:
- a. retention of the existing fence nearby the banks;
 - b. landscaping features designed to reduce the visual impact of the fencing and deter unauthorised entry into the lagoons; and
 - c. a programme including a completion date.

Reason: In the interests of public protection, visual amenity and improved green infrastructure.

- 14) Within three months of the date of this permission, a suitable scheme for supplemental drainage shall be submitted to ensure satisfactory drainage from the existing lagoons for approval in writing by the Planning Authority and thereafter implemented as approved. The scheme shall include:
- i. A design to prevent water overflowing from the lagoons onto Swadlincote Public Footpath FP90.
 - ii. A programme for construction including a completion date.
 - iii. An inspection and maintenance regime.

Reason: In the interests of flood prevention and landscape amenity.

- 15) Within three months of the date of this permission, a landscaping scheme for the existing site access adjoining the Civic Waste Amenity Site shall be submitted to for approval in writing by the Planning Authority and thereafter implemented as approved. The scheme shall include:
- a. landscaping features;
 - b. a programme including a completion date.

Reason: In the interests of visual amenity.

Footnotes

- 1) The application site is affected by a Public Right of Way Footpath FP 90 (on the Derbyshire Definitive Map) which crosses the southern section of the area outlined in red on the Site Location Plan (drawing No. 303T012A) provided in an east/west direction. Swadlincote Public Footpath 89 crosses through the eastern boundary of the site in a northerly direction before abutting the north-eastern boundary as shown

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in the same plan. These routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 08456 058058 and asking for the Rights of Way Duty Officer.

- Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.
- If it is necessary to temporarily obstruct a right of way, to undertake development works, then a temporary closure is obtainable from the County Council. Please contact 08456 058058 for further information and an application form.
- If a right of way is required to be permanently diverted, then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a Diversion Order.
- Any development insofar as it will permanently affect a public right of way must not commence until a Diversion Order (obtainable from the Planning Authority) has been confirmed and brought into effect. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.
- To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.

Mike Ashworth
Acting Strategic Director – Environmental Services

