

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

9 October 2017

Report of the Strategic Director – Economy, Transport and Communities

- 5 PROPOSED CHANGE OF USE TO AN INERT WASTE AND WOOD WASTE TRANSFER STATION AND SKIP STORAGE AT THE FORMER COAL YARD OFF CADLEY HILL ROAD AND BURTON ROAD, SWADLINCOTE**
APPLICANT: WILLSHEE'S SKIP HIRE LTD
CODE NO: CW9/0816/45

9.1561.2

Introductory Summary

The proposal is for a change of use of the land from a former coal stocking yard to an inert waste and wood waste transfer and skip storage operation. The recycling facilities would provide a facility which would result in the recycling of waste locally, instead of it being sent to landfill or transported for recycling further afield. This complies with Government policy and helps achieve the targets for landfill diversion. However, a South Derbyshire District Local Plan policy includes the site as part of an area of land reserved as a potential site for a rail transfer facility.

Having considered all the issues in the planning balance, including economic, social and environmental, it is recommended that permission is granted with appropriate conditions for mitigation on residential amenity, ecology, and a 10 year time limit on the development, to protect potential use of the site for rail freight purposes in the longer term. A 10 year limit would respect South Derbyshire District Local Plan Policy INF2 D iii).

It is considered that, subject to conditions including such a limitation, the development would be in accordance with national and local planning policy contained in the National Planning Policy Framework, Derby and Derbyshire Waste Local Plan and the South Derbyshire District Local Plan.

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

(2) **Information and Analysis**

The Site

The application site is located on previously developed land which is now vacant. The site is located adjacent to the A444 Burton Road, to the west of

Swadlincote. The site has been cleared of structures apart from a concrete access road and concrete pad, and has, in part, self-regenerated with trees and vegetation. The land is crossed by a culvert and has some ponds within the wider blue land area. Adjoining the site to the north is a disused rail siding. Access to the site is now via a road under a road bridge near to Tetron Point Industrial Estate which is accessed off Cadley Hill Road. Residential properties lie to the south and north of the site, as well as a waste water treatment plant to the north. To the east is Tetron Business Park.

Whilst the site is not affected by any heritage designations, it adjoins to the north the Green Belt land and is identified as a Local Wildlife Site (LWS).

Proposed Development

This planning application proposes a change of use of the land from the existing authorised use (as part of the former Nadins Open Cast Coal site coal stocking yard) to use as a waste facility, comprising inert waste and wood waste transfer and skip storage.

The development is summarised by the following:

- The importation of approximately 70,000 tonnes of inert construction and demolition (C&D) and Commercial and Industrial (C&I) waste per annum (tpa).
- The use of screening, crushing and shredding equipment.
- A 3 metres (m) high concrete wall noise barrier along the northern edge of the concrete pad.
- The construction of a weighbridge and portacabin office.
- Up to 120 heavy goods waste vehicle (HGV) movements (60 in/60 out) per week. This equates to on average 22 movements per day. In addition to this there would be movements associated with skip storage of up to 40 movements per day during the busier summer periods. This reduces during the winter period.
- Operating hours stated as 0700 hours to 1800 hours Mondays to Fridays; 0800 hours to 1400 hours on Saturdays at the Skip storage area (up to 10 stacked skips up to 6m tall)
- Stockpiles of processed and unprocessed waste materials.
- Creation of 8 permanent jobs.

The waste imported would be a combination of wood waste and inert C&D/ C&I waste (including soils, bricks and concrete), which would be sorted, crushed, screened or chipped before being exported from the site. It is not proposed to import any hazardous, contaminated, organic or green waste to the site.

It is proposed to treat up to 30,000 tpa of wood waste by sorting into grades and chipping to produce woodchip for use as biomass fuel and animal bedding, and up to 40,000 tpa of inert waste by crushing and screening to

produce secondary aggregate and soils for use in construction projects. The site is expected to operate under a bespoke Environment Permit to be granted and administered by the Environment Agency (EA).

No office structures or buildings are proposed apart from a weighbridge and portacabin at the site entrance.

Site Planning Application History

The site is known to have been used as a former coal stocking yard.

Consultations

Local Member

The local Member, Councillor Sean Bambrick (Swadlincote North), has been consulted.

Castle Gresley Parish Council

The Parish Council has been consulted.

South Derbyshire District Council (Planning)

South Derbyshire District Council (SDDC) responded (October 2016) stating that it had some concerns as to the principle of the proposed development. It strongly urged that the following material considerations be taken into account in the determination of the application.

The application site is identified within the 2016 South Derbyshire Local Plan Part 1 (Policy INF2) as “Land at Tetron Point and the associated rail siding connecting to the Burton to Leicester railway line” and is protected from development that would compromise the capacity of the site to be used for freight rail purposes. SDDC requests that the County Council is satisfied that the application proposal would not compromise the capacity of the site to be used for freight rail purposes. Although SDDC has suggested that investigation of this issue would be assisted by amendments to the extent and layout of the site to enable multi-track access to the remaining brownfield land to the east and/or a feasibility study to ascertain the likely scope for a rail freight interchange in this location and consider the land necessary to make this viable, no such amendments or detailed study have been provided.

SDDC identifies that the land falls within the National Forest where major schemes should contribute towards on-site woodland planting, in line with Policy INF8 of the South Derbyshire District Local Plan Part 1 (SDDLPPt1). It states that as the site is greater than 1ha the expectation of the National Forest planting requirements is that 20% of the site would be woodland planting and landscaping. It states the applicant should commit to such planting on land surrounding the proposed facility, in turn assisting in its assimilation into the countryside.

SDDC also notes that the site has not been the subject of an ecological survey which it is surprised at given the nature of the site and its surroundings, as well as historical knowledge of protected species being present.

The applicant provided a commentary regarding SDDL P Pt1 Policy INF2 Policy and ecological information and further ecological information in August 2017. Upon re-consultation, SDDC responded stating

“Following the receipt of further information in respect of the business operation, the wider need for waste transfer facilities in the near to medium term future, and the long term intentions of the applicant to utilise the railhead for transport of material to/from the site if feasible; it is considered that the proposal may not compromise the capacity of the site to be used for rail freight purposes (as might have originally been the concern). Indeed, it is also now apparent that the National Forest line between Leicester and Burton upon Trent requires considerable investment which may go some way to demonstrate that conventional rail freight usage may be limited without a development coming forward which might fund these improvements. Whilst the position of the intended structures and uses on the site is less than ideal, as it limits the effective unobstructed length of the siding to 300m; it is accepted that should the opportunity arise for freight as envisaged, there are means in which the land could be obtained to facilitate such development – such as mutual agreement to displace the applicant’s business elsewhere within the wider site. The Council would ask that, going forward, any further applications seeking erection of buildings, etc. bear the potential of the site in mind such that any structures which would be costly to obtain, demolish and re-site are positioned well away from the rail siding itself.

It is understood that matters pertaining to ecology and National Forest requirements are either addressed or in hand, and I have no further comments to make in these respects.

Accordingly, the above commentary is provided in order to assist your Authority in reaching a balanced assessment of the proposal. However, I can confirm that this Council’s Planning Service has no objection to the proposed development as described in the submitted details.”

South Derbyshire District Council Environmental Health Officer

The Environmental Health Officer (EHO) has commented regarding contaminated land and has identified that the site is on and within proximity of several potential sources of ground contamination as a result of the area’s historical industrial uses, which have a potential to present risks to site workers, end users and ecological receptors as a result of development.

The EHO has reviewed the ground condition assessments submitted with the application and supports the investigatory approach and conclusions reached,

and confirms that the assessment delivers a suitable scheme to identify and control any contamination of land, or pollution of controlled waters.

The EHO does identify outstanding issues which require further investigatory or validation evidence to be submitted to ensure that the land affected by contamination is at an acceptable level. These include assessment of buried concrete from sulphate attack and appropriate disposal of existing soil materials on site.

To address, this the EHO has recommended planning conditions relating to the submission of an independent verification report and appropriate control should further contamination be identified during the course of the development.

SDDC EHO does not raise any concerns subject to adherence to noise and dust planning conditions.

Coal Authority

The Coal Authority advise that whilst part of the site lies within the defined Development High Risk Area, nothing is proposed in this area and the planning application is either for an application type or the nature of development which is listed as exempt from the requirement (under Section 3.3 of The Coal Authority's *Resources for Local Planning Authorities*, version 2, 2013).

Accordingly, there is no requirement under the risk based approach that has been agreed with the Local Planning Authority for a Coal Mining Risk Assessment to be submitted or for The Coal Authority to be consulted on the proposal.

Environment Agency

The EA has responded on three occasions. Initially (October 2016), the EA objected to the development because of the absence of a Flood Risk Assessment (FRA) given the fact that the site is located in Flood Zone 3, at a high probability of flooding.

Following the submission of further information by the applicant, the EA again objected (November 2016) based on the unsatisfactory FRA information submitted.

Following further information being submitted (June 2017), the EA withdrew its objection, subject to conditions relating to the improvement/protection and maintenance of culverts crossing the site, identification of a safe route into and out of the site to an appropriate safe haven, finished floor level of portacabin, and the submission of an unidentified contamination remediation strategy.

The EA has also confirmed that a bespoke Environmental Permit is most likely to be required.

Derbyshire Wildlife Trust

Derbyshire Wildlife Trust (DWT) acknowledges that the application is supported by an Ecological Appraisal dated August 2017, prepared by the applicant's ecology consultants, which presents the results of a site survey in April 2016 followed by an update in July 2017.

Having considered the information in the ecology reports, DWT has found that protected species issues can be resolved by subjecting the development to appropriately worded planning conditions to secure measures (including those already proposed in the ecology reports, etc) for reptiles, amphibians, badgers and birds. DWT also has requested that a planning condition, to secure implementation of an appropriately detailed habitat management scheme, forms part of any decision notice to approve.

Notwithstanding the above, DWT has raised the following concerns:

- The applicant's ecology consultants have used Warwickshire County Council's Biodiversity Impact Assessment Calculator, rather than the Department for Environment, Food and Rural Affairs (Defra) Biodiversity Accounting Metrics calculator in assessing biodiversity "net loss" on the site.
- In the appraisal of the value of some of the existing habitats, the grasslands should be considered 'unimproved' (and hence more valuable), rather than 'semi-improved' as the ecology consultants have suggested; and that the grasslands still merit designation as a LWS (county)
- The grasslands are thus of high distinctiveness. DWT notes that these seemingly minor issues do affect the value ascribed to habitats when using the biodiversity calculator.
- High distinctiveness habitats should be compensated for like-for-like, and that therefore it is inappropriate to compensate for grassland loss with woodland management.
- It does not believe that the skip storage activities cannot be located to a less sensitive part of the site.

Overall, DWT considers that the current proposals for habitat mitigation and compensation are inappropriate and insufficient, and that the proposals therefore lead to a significant loss of biodiversity which would merit refusal of planning permission.

Highway Authority

Derbyshire County Council, in its statutory role as Highway Authority, has raised no objection, provided that the access to the site from the public highway is at Cadley Hill Road. The junction layout is considered to be

adequate to accommodate the traffic generated by the proposal given the site's previous industrial coal yard use.

Lead Local Flood Authority

Derbyshire County Council, in its statutory role as Lead Local Flood Authority (LLFA) initially issued a holding objection pending further information.

Following further information and consideration, the LLFA is satisfied that the applicant has demonstrated that it has sufficiently considered flood risk and surface water drainage, given the nature of the proposals, and the site location and parameters. Therefore the LLFA has removed the initial holding objection and no further comments are needed.

Publicity

The application has been advertised by site notices, which were posted on 30 September 2006. A press advert was placed in the Burton Mail on 7 October 2016.

Five representations have been received as a result of the publicity raising the following concerns:

The application has received a number of comments from neighbours on the Cadley Hill Estate. No objections or comments have been received from other neighbouring properties. The representations received are summarised below.

- Noise impact.
- Vehicular traffic impact.
- Visual impact.
- Wildlife impact.
- Future expansion impact.
- Operating hours.
- Access to site for walkers.
- Effect on house property values.

Planning Considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In respect of this proposal, the relevant policies of the development plan are contained in the saved policies of the Derby and Derbyshire Waste Local Plan (adopted 2005) (DDWLP), and the saved policies of the South Derbyshire District Local Plan 1998 (1998 SDDL) and the adopted policies of the South Derbyshire District Local Plan Part 1 (2016) (SDDL Pt1). Other material considerations include such statements of Government policy as are set out in the National Planning Policy Framework (NPPF), the National Waste

Management Plan for England (NWMP) (2013), the National Planning Policy for Waste (NPPW) (2014) and the Planning Practice Guidance (PPG).

Both the DDWLP and the 1998 SDDLPP predate the NPPF and therefore the weight attributed to the relevant saved policies may need to be moderated, in line with their degree of consistency with the NPPF and NPPW. The policies within the SDDLPP Pt1 are up to date.

The proposal has to be considered against key planning documents. At the local level, the development plan comprises:

- the saved policies contained within the DDWLP;
- the saved policies of the 1998 SDDLPP;
- and the SDDLPP Pt1.

The SDDLPP Pt1 was adopted by SDDC on 13 June 2016. The SDDLPP Pt1 has replaced 35 policies in the 1998 SDDLPP and a list of the policies replaced can be found at Appendix 1 in the SDDLPP Pt1. Policies not listed there will continue to be saved from the 1998 SDDLPP. The SDDLPP Pt1 sets the long-term vision, objectives and strategy for the spatial development of South Derbyshire and provides a framework for promoting and controlling development. The SDDLPP Pt2 will accompany the SDDLPP Pt1, and work on its preparation is well advanced having passed through hearings and a consultation on the modifications is expected soon, ahead of adoption later in the year. This will replace all remaining policies of the 1998 SDDLPP.

National Planning Policy Framework

The NPPF states that local authorities taking decisions on waste applications should have regard to policies in the NPPF, so far as relevant. The NPPF does not change the statutory status of the development plan as the policy base for decision making. Planning applications must still be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development and adds that there should be a presumption in favour of sustainable development. The most relevant NPPF content for this application is found in Chapter 4: Promoting sustainable transport, Chapter 7: Requiring good design, and Chapter 11: Conserving and enhancing the natural environment.

National Waste Management Plan for England

Although this document, published in 2013, contains Government guidance, the most relevant statements of Government waste policy on the issues raised by this proposal are contained within the NPPW.

National Planning Policy for Waste

The NPPW sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management, and

states that positive planning plays a pivotal role in delivering this country's waste ambitions through the delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy. Annex B: Locational Criteria is relevant and a key objective of this Policy includes securing the re-use, recovery and disposal of waste without endangering human health and without harming the environment and states that the concerns and interests of communities and business should also be reflected.

Development Plan Compliance

I consider that the most relevant development plan policies against which to assess the proposal are:

Derby and Derbyshire Waste Local Plan Policies

W1b: Need for the Development.
W2: Transport Principles.
W5: Identified Interests of Environmental Importance.
W6: Pollution and Related Nuisances.
W7: Landscape and Other Visual Impacts.
W8: Impact of the Transport of Waste.
W9: Protection of Other Interests.
W10: Cumulative Impacts.
W13: Sorting of Waste Before Disposal.

South Derbyshire District Local Plan

Within the SDDLDP, the relevant policies are:

S1: Sustainable Growth Strategy.
S2: Presumption in Favour of Sustainable Development.
SD1: Amenity and Environmental Quality.
SD2: Flood Risk.
BNE3: Biodiversity.
INF2: Sustainable Transport.
INF8: The National Forest.

The key planning considerations for this application are:

- Need for the development.
- Development Plan compliance.
- Ecological Impact.
- Environmental Impact.

Need for the Development

The NPPW emphasises the need to divert as much waste as possible away from landfill so that society can manage its waste in a more sustainable manner. In order to achieve this, the movement of waste up the 'Waste Hierarchy', by promoting the recycling and reuse of waste, rather than sending

it to landfill, is essential. There is an acknowledged growing need for facilities that reduce landfill.

DDWLP Policy W1b states that “Waste development will be permitted if the development would help cater for the needs of the local area, in terms of quantity, variety and quality, as part of an integrated approach to waste management...”

Data collected as the evidence base for the emerging DDWLP indicates that the future need for waste facilities will predominantly be focused around the mid-section of the waste hierarchy, specifically transfer, treatment and reprocessing in driving the sector up the waste hierarchy. In that simple “need” context, this application fits with that provision requirement.

The facility would contribute to moving waste up through the waste hierarchy. I am satisfied that there is a need for such facilities and that the proposals would accord with DDWLP Policy W1b, SDDLPPt1 policies S1 and S2, and the sustainable waste management objectives of the NPPW.

South Derbyshire Development Plan Policy INF2D iii)

Whilst several development plan policies contained in the DDWLP and the SDDLPPt1 are relevant to this application, SDDLPPt1 Policy INF2 D iii) requires particular consideration, since it is specific to an area of land which includes this application site. It states:

iii) Land at Tetron Point and the associated rail siding connecting to the Burton to Leicester railway line, is protected from development that would compromise its capacity to be used for rail freight purposes.

The supporting text states at Paragraph 9.24 that the “*transfer of freight from road to rail can help to relieve road congestion and improve highway safety. The site of a former rail head at Cadley Hill, Swadlincote offers rail freight opportunities on adjacent land, which is in employment use. This policy seeks to ensure that this opportunity is not lost by protecting the railway sidings and their connections onto the running lines. The protection of the site for rail freight shall not apply if it can be demonstrated that rail freight use is not feasible or deliverable.*”

The applicant was requested to provide information to demonstrate that the development proposed would not compromise the capacity of this land and this siding to be used for freight rail purposes, or demonstrate that rail freight use is not feasible or deliverable (as referred to above).

The applicant, in response, has produced a written commentary, which points out the large extent (in terms of area) to which the land protected by the policy would not be taken up by the proposed development. The commentary expresses the view that the land will therefore remain capable of satisfying

any potential rail freight opportunities if the proposed development proceeds. It also indicates that if the proposed development proceeds the applicant could help to protect the railway siding on the land and its connection onto the running lines by seeking to utilise them for its own transport requirements from the site at some point in future. Whilst this future possibility is noted, there is no proposal for any rail freight utilisation within the current application. The applicant considers that the remaining capacity of the land not being used for waste purposes provides sufficient land available outside the red line application boundary that would enable any future rail freight facility to be developed.

A further response from SDDC Planning, following consultation on the applicant's rail freight capacity commentary, clarifies that its Planning Officer does not raise objection to the proposal; whilst it expands on the earlier (October 2016) SDDC comments, it stops short of expressing a firm view as to whether or not a granting of permission for the proposal would conflict with Policy INF2D iii), whilst recognising that this remains an issue for the County Council to address in determining the application.

In these circumstances, it is considered that the proposed development raises conflict to some extent with Policy INF2D iii).

There is an absence of any substantial independent expert analysis to support the view that a waste development on the application site as proposed would not compromise the capacity of the land and siding to be used for rail freight (i.e. would not necessarily be contrary to SDDLPP Pt1 Policy INF2D iii). Therefore there appears to be little justification for the County Council taking such a view in general terms. However it is also considered that such a view can be taken on the exceptional basis of a permission for the development being time limited by imposition of conditioning on the grant of permission. A grant of permission subject to a condition which caps the duration of the development under the permission to a timescale well within the plan period, would respect the potential for a subsequent rail development to take place using the full extent of the land which is protected under this development plan policy.

Bearing in mind that SDDC does not object to the proposal, the time span of the period of the SDDLPP, and that the time scales for any significant rail freight proposals to evolve to fruition might well be in the order of more than 5-10 years or so, it is considered that significant and unacceptable conflict with the protection for rail freight that is afforded by Policy INF2D can be avoided by imposition of conditions to which permission would be subject, requiring the use under the permission to end at a date no later than 10 years from the date of planning permission being granted, and removal of all plant and equipment associated with development under the permission from the site by no later than three months from that date.

A 10 year limit by condition would not appear to be unreasonable or excessively onerous in the circumstances, and would allow this use of the site on a temporary basis for as long as is now felt to be acceptable.

Permitting the development under this application for a longer period or indefinitely would appear to raise a more substantial risk of compromising the capacity for future rail freight development, which would be in direct conflict with INF2D. It is considered that granting permission on a longer term or permanent basis would therefore be contrary to the development plan, and that overall the ongoing material benefits that would be associated with a longer term continuation of the development are not sufficient to justify a grant of permission contrary to the development plan.

Ecological Impact

The site is located on a former coal yard stocking site. The land has therefore been previously developed. The remains of its previous use are seen through the remaining concrete access road and concrete pad, as well as some ponds. The site, as a whole, has regenerated with trees and other vegetation.

The site is identified as having the potential for significant ecological interest. The whole application area lies within a LWS (SD304 – Cadley Hill Railway Area), a site identified as of county-level ecological significance, particularly for the habitat mosaic present, and the amphibian assemblage known to occur on site.

The LWS designation records that this site supports a number of ponds created in 1991, as a receptor site for species translocated from the nearby Nadins Open Cast Coal site. It is assumed that these translocations were of Great Crested Newts (GCNs), and there are indeed several records of GCNs from within the LWS area.

There are also records for reptiles (grass snake) and notable plant species (the 'Locally Scarce/Declining' species blunt-leaved pondweed (*Potamogeton obtusifolius*)) from within the LWS, and the apparent presence of water bodies within (and in the vicinity of) the LWS would support the potential presence of these species.

Within the surrounding area, even within 1km of the site, there are numerous additional records for GCNs and grass snake, and even otter. As such, the applicant was requested to provide a Preliminary Ecological Appraisal report. Ecological reports were submitted for consideration in August 2017. These reports were considered by the Council's Conservation and Design team and the DWT.

In considering the latest reports, DWT disagrees with the assertion that the site no longer qualifies as a LWS under Habitat Mosaic criterion and is concerned at the loss of the grassland habitat mosaic on land proposed for

skip storage to the east and west of the concrete pad. DWT considers the loss to be a significant impact requiring avoidance, mitigation and/or compensation to ensure there will be no net loss of biodiversity as a result of the proposed development to meet the environmental dimension of sustainable development in line with NPPF Paragraph 118, which states “ *If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*”

DWT is not convinced that the proposed mitigation and compensation, including long term management, achieves a “no net loss” of biodiversity. DWT also disagrees that the site has no ecological interest. It advises that although there are unlikely to be any ecology issues with the treatment and storage of waste on the hardstanding, the use of the land to the east and the west of the concrete pad for skip storage will result in habitat loss that is a component of the LWS. The site is considered to contribute to the local “ecological network” by connecting with other areas of semi-natural habitat along the stream valley to the east and west. It forms part of the green corridor of semi-natural habitats with biodiversity value that extends from Eureka Park in Swadlincote, passing alongside the golf course and planned Country Park before reaching Cadley Hill.

DWT recommends relocating the skip storage areas to the less ecologically sensitive areas to the east near the weighbridge, as well as long term management of retained and created habitats.

Overall, DWT considers that the current proposals for habitat mitigation and compensation are inappropriate and insufficient, and that the proposals therefore lead to a significant loss of biodiversity which would merit refusal of planning permission.

Whilst the approach taken does not necessarily follow the acknowledged ecological mitigation hierarchy, the mitigation hierarchy is an approach embedded in biodiversity standards and in planning, in which ecological impacts should be avoided wherever possible, unavoidable impacts should be mitigated so far as is possible, and only then should compensation be offered to address any unavoidable residual impacts that remain after avoidance and mitigation measures. Finally, ecological enhancement measures should provide a net biodiversity gain.

In this case, the applicant’s ecology consultants have chosen to use woodland management as part of the mitigation and compensation to demonstrate no biodiversity net loss, as well as a non-conventional metrics methodology. Whilst this is acknowledged as a gain, it is not a like-for-like gain as DWT has emphasised in its consultation response.

The applicant's ecology consultants have provided further comments in response to DWT's latest advice to the Waste Planning Authority. The applicant's ecology consultants defend their position re-stating that the metrics they used are up to date and appropriate. Their position is that overall there would be a net biodiversity gain with the mitigation and compensation proposed on behalf of the applicant. Clearly, there is a difference in professional opinion between DWT and the applicant's ecology consultants. Similarly, the weight and interpretation to be attached to paragraphs 109 and 118 of the NPPF is a subjective matter which is considered in the overall planning balance.

It is considered, however, that in overall ecology terms, as well as in the overall planning balance, the mitigation and compensation which is proposed would offer an acceptable outcome, even though the lack of like-for-like compensation for loss of some county significant mosaic grassland habitat would be regrettable. This is not considered lightly and is a matter of overall planning judgement.

General Environmental Impacts

DDWLP Policy W6: Pollution and Related Nuisances seeks to avoid any material harm caused by contamination, pollution or other adverse environmental or health effects to people or communities: the site of the development; nearby land uses; or the wider environment. In so doing, it recognises the role the EA has and its controls through the permitting system. The EA has confirmed that a bespoke Environmental Permit is likely to be required for this site.

The applicant in response to concerns raised by consultees produced further information regarding flood management, ecology, INF2D iii) development plan policy consideration and responded to the representations made by residents at Cadley Hill Farm to the south of the site. This information has been considered by consultees and it is noted that the EA and the SDDC Planning and Environmental Health Officer have not raised any further objections, subject to planning conditions and mitigation measures.

Noise and Vibration

The application is supported by a noise survey. The information considered noise impacts using similar equipment at the applicant's Wharf Road waste site and at sensitive properties near to the development. The assessment factored in noise using the proposed 3m concrete noise barrier along the northern edge of the concrete pad, as well as the traffic movements, and use of the screen and crusher to produce a forecast noise level for the proposed operations. The report concluded that increase in noise would be "just audible on occasion" at the noise sensitive properties to the north.

In response to the comments raised by the objectors, the applicant stated "*The noise assessment looked at noise levels likely to be achieved at the*

nearest receptor which is the farm to the north of the site which is significantly nearer to the proposed operating area than the Cadley Hill development.

As the site is not operational it is not possible to make actual noise readings and so readings from similar plant operating in a similar manner were used. This is the best means of calculating noise levels we have at this stage. Manufacturers data, whilst useful, is not always an indicator of noise levels in real world conditions.

The noise assessment looked at the potential for screening of the site. However, screening is only effective if a barrier can be erected close to the source of the noise or receptor that blocks a direct line of sight from source to receptor. The topography of the site means that this is only practical for the northern edge of the operating area. However, the greater distance from Cadley Hill to the site is such that noise levels are reduced by attenuation by distance and soft ground.

We fully understand the concerns regarding future expansion of the site. It should be made clear that any future expansion would be subject to another planning application and that any new application would require a new noise survey which would take into account actual noise levels from the site at that time. This means that any future applications would find it more difficult to achieve the noise levels required by BS4142 and WHO standards and would likely require operations to be contained within buildings.

At the client's other sites, there is a planning requirement for ongoing monitoring to ensure that actual noise levels are not significantly different to those calculated, which allows the Council to require remedial action to be taken in the event that there is a difference. We would expect that should permission be granted a similar condition would be imposed."

The concerns of neighbours were brought to the attention of the SDDC EHO. Having considered the consultant noise report and information submitted, as well as the existing noise climate and mitigation measures proposed, the SDDC EHO has raised no objections, subject to the imposition of planning conditions.

I am therefore satisfied that impacts associated with noise/vibration could be managed accordingly and that the concerns raised by residents can be satisfactorily addressed through compliance with planning condition(s). As such, the development is considered to be in accordance with NPPW 2014 Annex B and DDWLP Policy 6.

Dust

The application is supported by dust information in the form of a dust management plan. In response to the concerns raised by the objectors, the agent has provided the following response.

“Dusts from inert and wood waste recycling sites are obviously a concern and a key issue for neighbours. It is known that dusts from aggregates/soils etc are largely deposited within 100m of workings and so this is not likely to be a source of nuisance for neighbours. However, it is accepted that wood wastes can create dusts which can travel significantly further.

It is for this reason that the applicant has produced a Dust Management Plan which clearly sets out when operations are allowed and when operations will cease, in response to wind conditions. The plan also sets out the routine management which will seek to minimise the potential for dusts to be created. The plan also sets out a complaints procedure which will ensure that the Council and the applicant work together to review and amend the plan in the event of any complaints being received.

We would expect that the Dust Management Plan will be referenced within any planning permission which may be granted and that this would therefore provide the Council with a means of ensuring compliance with the plan and also ensure that operations on site are modified in the event that dusts do become an issue and not just a concern.”

The SDDC EHO, having considered the dust information submitted and mitigation measures proposed, has raised no objections subject to the imposition of planning conditions.

Whilst the objectors raised relevant dust considerations which have been considered, officers are satisfied that impacts associated with dust from operation of the waste processes on site could be managed accordingly and that the concerns raised by residents can be satisfactorily addressed through compliance with planning condition(s).

A planning condition for limiting the dust impact for complying with a dust management scheme controlled is accordingly considered to be in accordance with NPPW 2014 Annex B and DDWLP Policy 6.

Design and Visual Impact

The NPPF, at Paragraph 56 of Chapter 7: Requiring good design, states that good design is a key aspect of sustainable development and should contribute positively to making places better for people.

Policy W7: Landscape and Other Visual Impacts of the DDWLP seeks to permit waste development where its appearance would not materially harm local landscape or townscape, and would respect the character and local distinctiveness of the area.

When determining applications, the Waste Planning Authority should ensure that waste management facilities are well designed so that they contribute

positively to the character of the area in which they are located. In this case, the location of the proposed development is such that views into the site are not readily available apart from glimpsing views from the public highway bridge, which runs over the site entrance. The site is located at a lower level than the surrounding land form and is well screened by natural vegetation from open views into the site. Outside storage of the processed materials within bays is considered acceptable and the previous use as a coal stocking yard would not appear to be dissimilar to the proposed use. It is recommended that some form of screening be considered to minimise views into the development site from the A444 road.

It is noted that the site adjoins the Green Belt to the north but is not considered to adversely impact upon its openness.

Other issues raised by objectors relate to operating hours, traffic, access, house prices and lighting.

Traffic

Objectors' comments about traffic relate to the effect of traffic in producing noise. Comments have been made about reversing "bleepers". The applicant has stated that reversing bleepers are not now commonly used but rather white noise reversing alarms are used which are designed so that the noise of the alarm does not carry beyond the site boundary.

The applicant has committed to the use of white noise alarms rather than bleepers at his other sites and will continue their use at this site should permission be granted. This is something that can be controlled via condition.

Operating Hours

The proposed operating hours are stated to be 07:00 hours – 18:00 hours Monday to Friday and 07:00 hours – 14:00 hours on Saturdays. No times are indicated for Sundays and bank holidays. Normally, Sundays and bank holidays are controlled via planning condition to be non-operational days apart from essential maintenance which may need to take place.

Neighbours have commented that 07:00 hours starts and operations on Saturday mornings are not acceptable and are not a normal working day. The applicant in response states *"It is understood that normal working hours in an office setting does not include Saturday mornings but for many industries including the waste and recycling industry the hours proposed are the norm, not the exception."*

Several waste planning permissions allow Saturday working with an earlier finish than a normal working day. Officers consider that a 13:00 hours finish on a Saturday afternoon to be in line with other similar planning permissions and recommend that a condition to this effect is considered.

Lighting

The applicant notes that *“One comment raised a concern over the effect of floodlighting on wildlife. No floodlighting is proposed in this application.”* This is a concern in that, in winter months, the site at a 07:00 hours start and 18:00 hours finish will require some form of artificial lighting as it will be dark. It is proposed that a lighting scheme, for approval by the planning authority, is attached to any planning permission that may be forthcoming.

Such control would allow any lighting necessary to be appropriately controlled so that impacts are minimised.

Future Expansion

Several comments relate to the environmental impacts associated with this proposal being magnified by a future expansion of activities in adjacent areas of the site.

The applicant understands this concern and states in response that *“...any future activities would be subject to a new planning application and any new planning application would take into account the effect of the currently proposed activities. The cumulative effects of the activities would mean that any addition application would face higher hurdles, and have to build in effective mitigation measures, in order to ensure that neighbours were not subject to nuisance from dust, noise etc.”*

The applicant is broadly correct in this comment. Any future expansion would be the subject of a planning application when the cumulative impacts of any proposed development would be considered. Under the officer recommendation in this report, a draft condition is proposed that would restrict certain permitted development rights. This would mean that such development on the site would also require formal consideration.

House Prices

Residents concern has been expressed about the effect on future house prices.

The past industrial use and future use of the site for rail freight purposes is identified in the SDDL. The site is not a green field site and its earlier industrial use was in existence before the newer residential properties were built. In this case, it is not clear that property values would be particularly affected. In any event, any effects on property values are not in themselves to be regarded as material planning considerations.

Access

Informal use of the site appears to be taking place and concern has been expressed regarding impact on rights of way. There are no known rights of way in the area affected by the proposed development. The land is privately

owned and the applicant's agent considers that access is unauthorised, stating:

"One comment relates to unauthorised access over the land, in particular to the woodland areas. It should be noted that there is no public right of way over the land or the application area.

It should also be noted that the application area has been chosen to ensure that the wooded areas and ponds are unaffected and no works are proposed in these areas. The applicant has stated that he is happy to work with Derbyshire Wildlife Trust to better manage these areas."

It is welcomed that the applicant is willing to work with DWT to manage the wooded and pond areas. Having said this, the land accessed by individuals are not along recognised rights of way. Use of the land can pose health and safety risks to individuals/animals which, should planning permission be approved and the ownership of the site is acquired by the applicant, is unlikely to be considered acceptable for health and safety reasons alone. Any use of the land is therefore informal and at the users own risk.

Conclusion

The recycling facilities would provide a facility which will result in the recycling of waste locally instead of it being sent to landfill or transported for recycling further afield. Taking into account all the economic, social, environmental and planning policy factors, the recycling facility is considered an acceptable development in this area of previously developed land, subject to being controlled by appropriately worded planning conditions based on the draft conditions set out under the officer recommendation below.

The benefits of delivering the recycling facilities are considered, on balance, to outweigh such negative impacts as may be experienced (provided that any permission is granted with appropriate conditions for mitigation) on residential amenity, and ecology. The potential for the site to contribute to a development of a wider land area for rail freight purposes, which is promoted by the SDDLPPt1 Policy INF2 at D iii) , would be supported for the longer term through the imposition of the 10 year use limit and clearance conditions which form part of these draft conditions. A condition restricting permitted development rights for other uses and buildings and structures is also considered necessary so that future rail freight needs that may come to fruition are not impeded by permanent buildings affecting the site's capacity for potential freight use needs.

The proposal moves waste up the waste hierarchy, thereby avoiding the need for landfill. This complies with Government policy and helps achieve the targets for landfill diversion.

Subject to such conditions and other appropriately worded planning conditions, it is considered that the development is in accordance with national and local planning policy contained in the NPPF, DDWLP and the SDDLDP.

(3) **Financial Considerations** The correct fee of £2,730 has been received.

(4) **Legal Considerations** This is an application under Part III of the Town and Country Planning Act 1990 which falls to this Authority to determine as Waste Planning Authority.

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, social value and transport considerations.

(6) **Background Papers** File No. 9.1561.2
The application documents submitted under application reference CW9/0816/45, consultation responses and planning file correspondence.

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

Conditions

Commencement

- 1) The development hereby permitted shall be begun before the expiry of three years from the date of this permission. Written notification of the date of commencement of development shall be sent to the Waste Planning Authority within seven days of such commencement.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

Duration of Use, and Clearance

- 2) The use and all waste operations under this permission shall cease no later than the date which is the tenth anniversary of the date of the commencement of the development and the site shall be cleared of all waste, recyclable materials, recycled materials including wood,

aggregates and soils, structures, plant, machinery, vehicles and equipment associated with the operations hereby permitted by no later than 3 months from that cessation of use date.

Reason: In order that the site remains available for rail freight terminal use in accordance with Policy INF2D iii) in the South Derbyshire District Local Plan Part 1 2016.

Permitted Development Rights

- 3) Notwithstanding the provisions of Part 7, Class L of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no buildings, plant structures or erections other than those hereby permitted shall be brought onto the Site without the prior written approval of the Waste Planning Authority.

Reason: To enable the Waste Planning Authority to adequately control, monitor and minimise the impacts on the amenities of the local area and in order that any development considers the need not to compromise the capacity of the site to be used for future rail head purposes in accordance with Policy INF2D iii) in the South Derbyshire District Local Plan Part 1 2016.

- 4) A copy of this permission shall be kept available for inspection at the site offices during the prescribed working hours for the duration of the development.

Reason: To ensure that the site operators are fully aware of the requirements of these conditions throughout the period of development.

Approved Plans

- 5) The development shall be carried out in accordance with the following plans and documents:
- 1 App form and certificates dated 18 August 2016
 - Site Location Plan (revised) – dated 19 September 2017
 - Design and Access Statement – ref 160801W1001- AC Environmental
 - Supporting Statement –ref 160801W1004 – AC Environmental
 - Ecology Surveys and Reports - (fpcr, 2016 and 2017)
 - Dust Management Scheme
 - Noise Impact Assessment
 - Flood Risk Assessment and Surface Water Drainage Assessment - GSG - Ref 510 - July 2016
 - Phase 1 and Phase 2 Investigation – GSG ref 509-R-01 August 2016

Except in so far as the approved documents and plans listed above are amended by the conditions specified below.

Reason: To ensure that the development is carried out in accordance with the details in the submitted planning application.

Land Contamination

- 6) Prior to the commencement of the development site (or parts thereof) for the development an independent verification report must be submitted, which meets the requirements given in box 2 of Section 3.1 in South Derbyshire District Council's "Guidance on submitting planning applications for land that may be contaminated", and is consistent with the recommendations contained within CSG Consulting Engineers Ltd's *Report on Phase 1 and Phase 2 Investigation For A Proposed Waste Recycling Facility, at the Former Coal Yard William Nadin Way Swadlincote DE11 0BB*, Report No 509-R-01, August 2016.

Reason: To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risks to site workers, end users and ecological receptors.

It is considered that compliance with these requirements would only be effective if the scheme is found to be acceptable and approved as such, prior to the commencement of the development.

- 7) If during the development any contamination or evidence of likely contamination of land is identified that has not previously been identified or considered, then the applicant shall as soon as is reasonably practicable submit to the Waste Planning Authority for its approval a written scheme to identify and control that contamination, which shall include a phased risk assessment, and appropriate remediation proposals, and be in accordance with the relevant guidance of the Environment Agency on the Environmental Protection Act 1990 Part 2A. Any scheme approved under this condition shall be implemented in accordance with the relevant guidance of the Environment Agency on the Environmental Protection Act 1990 Part 2A and to the satisfaction of the Waste Planning Authority.

Reason: To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risks to site workers, end users and ecological receptors.

Scope of Development

- 8) No waste or recyclable materials, other than inert construction and demolition waste, and wood waste shall be imported onto the Site. Only those inert waste materials defined in the Supporting Statement and Application Form shall be imported, processed and stored within the

site, and no additional processes for the management of waste shall be carried out at any time on the site.

Reason: To define the scope of the development in the interests of safeguarding the amenity of neighbouring occupiers/residents and monitoring purposes.

- 9) No development shall take place until drawings detailing a layout for use of the site, including specific import and export waste storage areas, parking spaces, operational equipment areas and skip storage areas have been submitted to and approved in writing by the Waste Planning Authority.

All use of the site under this permission shall be in accordance with the layout detailed under the drawings as approved and the parking spaces and storage areas shall be maintained as such for the duration of the development. No waste storage or parking which is outside the relevant space or area under the drawings as approved shall take place at any time.

Reason: In the interests of safeguarding the amenity of occupiers of neighbouring properties and the ecology in the area.

It is considered that compliance with these requirements would only be effective if the scheme is found to be acceptable and approved as such, prior to the commencement of the development.

Import Limit

- 10) The total quantity of waste material imported and handled at the site shall not exceed 70,000 tonnes in any yearly period from 1 June until 1 June in the next year.

Reason: In the interests of safeguarding the amenity of neighbouring occupiers/ residents, ecology in the area, highway safety and for the avoidance of any unacceptable impacts on the highway network.

- 11) The operator shall keep accurate records of the amount of inert and wood waste arriving at the site, and this record shall be submitted to the Waste Planning Authority every six months and made available for inspection by the Waste Planning Authority on request.

Reason: In order to monitor compliance with the authorised waste input tonnage.

Highways

- 12) The total number of Heavy Goods Vehicle movements (HGV movements) associated with the delivery or removal of waste,

recyclable materials, recycled materials to/from the Site shall not exceed an average of 30 HGV movements per working day calculated over a full working week (Monday to Saturday).

Reason: To maintain control over the site and in the interest of highway safety.

- 13) All waste, recyclable materials, recycled materials in HGVs entering or leaving the Site shall be netted, sheeted, or placed within containerised vehicles.

Reason: To minimise dust and spillage in the interests of amenity and highway safety.

- 14) No vehicles associated with the development hereby permitted shall leave the Site in a condition whereby mud, dirt or other deleterious materials may be deposited on the private access road or public highway.

Reason: In the interests of highway safety and to prevent mud and dust being deposited on the highway.

Lighting

- 15) No external lighting shall be installed except in accordance with a scheme that has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include precise details of the lighting proposals including lux levels. The scheme shall then be implemented as approved.

Reason: To minimise the nuisance and disturbances to neighbours, the surrounding area and the ecology of the area.

- 16) There shall be no burning of waste on the site.

Reason: In the interest of amenity.

- 17) All rubbish, debris, scrap and other waste material generated on the Site shall be regularly collected and stored in a suitable container until disposed of off-site in a suitable facility.

Reason: In the interests of amenity of the area and of the environment.

Dust

- 18) Within two months of the date of commencement of development, a scheme to minimise dust emissions shall be submitted for the approval in writing of the Waste Planning Authority. The scheme shall include details of all dust suppression measures and the methods to monitor

emissions of dust arising from the development. The scheme shall then be implemented as approved with the approved dust suppression measures being retained and maintained in a fully functional condition for the duration of the development hereby permitted.

Reason: To reduce the impacts of dust disturbance from the site on the local environment.

Waste

- 19) Non-conforming wastes shall be stored in a sealed container or skip and removed from Site within seven days

Reason: In the interests of amenity and management of waste not authorised to be received and processed at the Site.

- 20) No development shall commence until a scheme providing details of the construction of the finished surface and datum level of the land, where unprocessed and processed waste is stored, access road and skip storage areas shall be submitted in writing for approval by the Waste Planning Authority.

Reason: In order to minimise any pollution of the ground and to monitor stockpile and skip heights in the interest of visual amenity.

It is considered that compliance with these requirements would only be effective if the scheme is found to be acceptable and approved as such, prior to the commencement of the development.

- 21) The maximum heights of any storage bays or stockpiles shall not exceed 5 metres in height.

Reason: In the interests of visual amenity as the site is located near to a public highway.

Noise

- 22) Noise monitoring shall be undertaken in accordance with an updated noise scheme which has been submitted to and agreed in writing by the Waste Planning Authority. The noise scheme shall be submitted for approval within two months of the date of commencement of development. The approved scheme shall then be fully implemented throughout the use under this planning permission.

Reason: In the interest of the amenity of the area.

- 23) All vehicles, plant and machinery operated on the site shall be maintained in accordance with the manufacturers' specifications at all times and shall be fitted with and use effective silencers.

Reason: To control the impact of noise generated by the development in the interests of amenity of the area.

- 24) All reversing warning systems used on plant and vehicles on the site shall either be non-audible, ambient related or low tone devices.

Reason: To control the impact of noise generated by the development in the interests of the amenity of the area.

Ecology

- 25) The construction works under this permission shall be carried out in strict accordance with the mitigation, compensation and enhancement measures submitted in support of the application for the duration of the development. In particular:
- Badger – those measures set out in Section 5 of the Badger Survey and Method Statement (FPCR, August 2017)
 - Breeding birds – those mitigation and enhancement measures set out in section 6.8 – 6.11 of the Breeding Bird Report (FPCR, August 2017)
 - The general mitigation and enhancement measures set out in sections 4.14, 4.18, 4.20, 4.22 and 4.24-4.27 of the Ecological Appraisal report (FPCR, August 2017), notwithstanding any modifications or amendments required under Condition 26 below.

Reason: In the interests of ecology and protected species.

- 26) No development shall commence until the applicant has submitted for approval a revised scheme of proposed mitigation measures in relation to reptiles and amphibians. This scheme shall be based substantially upon the Good Practice Working Methods, Replacement Habitat Provisions and Management Considerations as set out in the Mitigation Strategy (Section 5 of the Herpetofauna Report and Method Statement, FPCR August 2017), but with revision to include measures for the protection of amphibians and reptiles during the use of the site under this permission (including for prevention of use of stockpiled material for shelter, hibernation and egg laying). The scheme shall then be implemented as approved for the duration of the development.

Reason: In the interests of ecology, protected species and reptiles and amphibians.

It is considered that compliance with these requirements would only be effective if the scheme is found to be acceptable and approved as such, prior to the commencement of the development.

- 27) No development shall commence until the applicant has submitted for approval a detailed ecological management plan for the application site area, and the wider area encompassing all habitats which are proposed for management as part of the mitigation and compensation proposals, as outlined in the Ecological Appraisal (FPCR, August 2017) and the Biodiversity Impact Assessment calculator exercise (dated 12 September 2017). The management plan, as approved by the Waste Planning Authority, shall be fully implemented throughout the lifetime of the permission.

Reason: In the interests of ecological mitigation and compensation for loss of grassland mosaic habitat impacted by the development.

It is considered that compliance with the requirements will only be effective if the plan is found to be acceptable and approved as such, prior to the commencement of the development.

Landscaping

- 28) Within two months of the date of this permission, an ecological landscaping and landscaping maintenance scheme shall be submitted to and approved in writing by the Waste Planning Authority.

The scheme shall include details of:

- planting species, size of plants, density of planting and means of protection; and
- ground preparation.

Maintenance for a period of three years (including cutting, trimming, watering, protection from pest damage and weed control and replacement).

The planning under the approved scheme shall be implemented in the first planting and growing season following the written approval of the scheme.

Any tree or plant, or any replacement of it, that is removed, uprooted, destroyed or dies within five years of the date of planting shall be replaced with the same or similar species in the same location.

Reason: To minimise the visual impact of the development and to compensate for loss of any grassland mosaic habitat impacted by the development.

Restoration

- 29) A written scheme for the restoration of the site within two months following the cessation of use and clearance as provided by Condition 2 above shall be submitted to the Waste Planning Authority for its approval in writing within six months of the commencement of the use. The scheme as approved shall be fully implemented within that period of two months.

Reason: In the interest of the amenity of the area and of the environment.

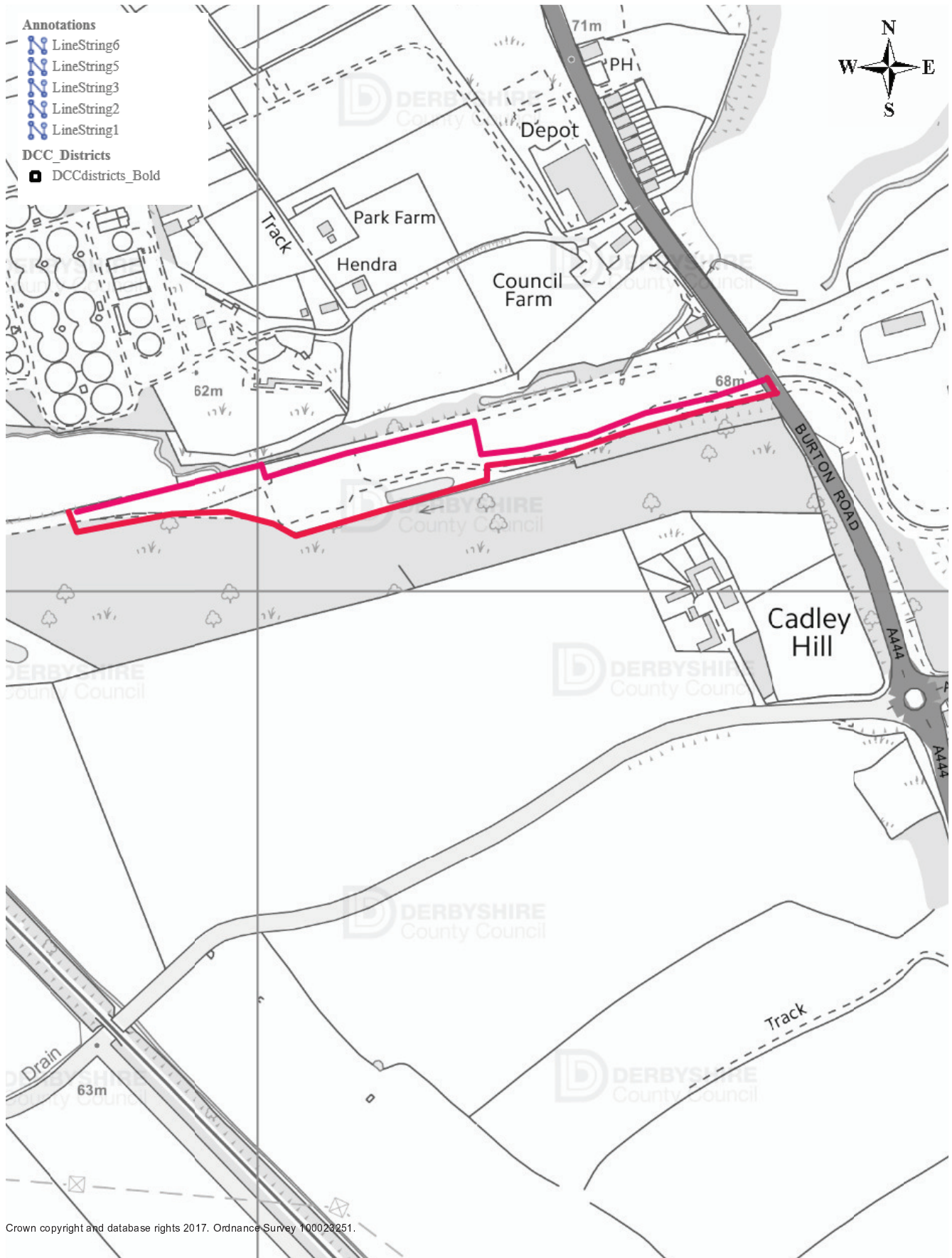
Informative note on land contamination:

For further assistance in complying with planning conditions and other legal requirements developers should consult "*Developing Land in Derbyshire – Guidance on submitting applications for land that may be contaminated*" This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp

Statement of Compliance with Article 35 of the Town and Country (Development Management Procedure) (England) Order 2015

The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article. The applicant had engaged in post application discussions and meetings with relevant officers in the Authority during the consideration of the application.

Mike Ashworth
Strategic Director – Economy, Transport and Communities



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