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**Report of the Head of Planning and Development**

**STRATEGIC PLANNING COMMITTEE**

**Date: 31-Mar-2021**

**Subject: Planning Application 2018/93676 Infill of land and formation of access and turning facilities, temporary fence and restoration to agricultural use Land North West, Hog Close Lane, Holmfirth, HD9 7TE**

**APPLICANT**

P Turner

**DATE VALID**

04-Feb-2019

**TARGET DATE**

06-May-2019

**EXTENSION EXPIRY DATE**

15-Mar-2021

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Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

**LOCATION PLAN**



**Map not to scale – for identification purposes only**

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**Electoral wards affected: Holme Valley South**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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**RECOMMENDATION: REFUSE**

1. The Council has sufficient landfill capacity in the district for meeting the needs of Construction, Demolition and Excavation waste as set out in the Kirklees Waste Needs Assessment 2016.

The submitted information fails to demonstrate and justify:

- i) why the waste cannot be met by treatment higher in the waste hierarchy,
- ii) the use of allocated safeguarded waste sites shown on the Policies Map and all other options (restoration of any quarry void) and,
- iii) that there is a genuine justifiable proven need for additional landfill capacity.

The proposals for landfill at the application site are contrary to the requirements of Kirklees Local Plan Policies LP43(a) and LP46, the National Planning Policy for Waste 2014 and Kirklees Waste Needs Assessment 2016

**1.0 INTRODUCTION:**

- 1.1 This application is brought to the Strategic Planning Committee as the proposal involves development which is non-residential and the site exceeds 0.5ha in area.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site currently comprises agricultural pastureland, a void in the form of a gully which extends into two fields and an existing farm track comprising of approximately 1.93ha of land, stated to be in association with Martins Nest Farm. The site is bordered to the north, south and west by open land and to the east by Slack Top Lane. Access into the site is taken from the existing track, off Hog Close Lane.
- 2.2 The character of the area is predominantly rural with isolated residential properties and farmsteads, the nearest of which is a residential property on Grime Lane, approximately 200m to the south east, at Martins Nest Farm and Upper Woodroyd Barn which is a similar distance to the south. The site is immediately adjacent to the Barnsley Metropolitan district with Hog Close Lane and Slack Top Lane forming the boundary between the two districts.

**3.0 PROPOSAL:**

- 3.1 The proposals are submitted in full for landfill operations with inert and clean demolition material, realignment of approximately 25m length of the start of the existing farm track and for the provision of an on-site turning area for large vehicles which would consist of hard surfacing. The associated works will involve:

- Infill of a gully with a total volume of 29, 207 cubic metres, consisting of 19,258 cubic metres of inert waste, 7,106.5 cubic metres of clay cap and 2,843 cubic metres of topsoil
  - Widening and realignment of the entrance of the existing access track and provision of an on-site turning area
  - Erection of a temporary 1.2m high mesh perimeter fence and gates to secure the site during the fill and restoration phases.
  - Restoration of the site to agricultural use, after landfilling is complete
  - Compensatory works to replace the permanent loss of high value habitat, to encourage biodiversity on and off site
  - Diversion of a water course, and
  - a series of perforated pipes within the landfill area
- 3.2 The supporting statement states that the purpose of the development is to help diversify the income of the farm and provide additional revenue to invest in the overall agricultural business. The applicant asserts that by filling the void with inert and clean demolition waste material then restoring the land to integrate with levels of the surrounding farmland, it will help make the land more productive and usable for agricultural purposes.
- 3.3 Waste material is proposed to be brought to the site on 4 axel tipper trucks, capable of carrying 20t loads. Loads are proposed to be limited to approximately 8 per day (i.e. 8 in and 8 out. A total of 16 vehicle movements per day).
- 3.4 It is proposed to operate the site for 5.5 days per week (i.e. –8am –5pm weekdays and 8am –12 noon on Saturdays). The supporting information states that approximately 1245 deliveries will be required to infill the site and import sub-soil for the clay cap.
- 3.5 The application is accompanied with a number of reports/plans, most of which were submitted during the course of the application between May 2019 – February 2021, to address issues raised by a number of consultees, through the consultation process. These include:
- Private water supply surveys (x2)
  - Ecology impact assessments
  - Compensatory biodiversity net gain proposals
  - Maintenance & management plan (habitat enhancement)
  - Drainage assessments
  - Phase 1 Geotechnical report
  - Planning justification statement
  - Additional Planning justification statement

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

2013/91569 - Erection of 15kW wind turbine on a 15m mast (approved 13.2.14)

2015/91241 – Installation of 1 no.85kW wind turbine on a 24m monopole mast (approved 29.9.15)

2016/93948 - Formation of landfill incorporating access and turning facilities and erection of temporary fencing- Withdrawn

## **Enforcement:**

COMP/17/0051- the Alleged unauthorised material change of use to deposit waste material. The file was closed as it was found there was no evidence of a breach. Case officers notes on file state:

*'Small amount of tipped material consisting of largely scrap timber sheeting, general building debris and discarded timber adjacent wind turbine. Appearance of fly tipping rather than any attempt to infill the adjacent clough'*

No further complaints or recent complaints have been received since this file was closed.

## **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

- 5.1 Revisions requested to include reed bed within a wetland area. Also proposals to include compensatory replacement of Heathland and Woodland (high value habitat of importance) which would be lost within the application site, as a result of the proposed landfill operations. The replacement of these high important habitat features is to be provided (conditioned/S106) within an area shown in control of the applicant, within the blue line.
- 5.2 Revised biodiversity metric calculation and plan showing areas on and off site proposals to accord with biodiversity metric calculation - received 10/02/20.
- 5.3 Draft S106 agreement for the long term maintenance and management of the proposed on and off site biodiversity net gains - received 15/02/21
- 5.4 Additional statement requested by Officers, to set out consideration of Local Plan Policies LP43 and LP46.
- 5.5 Letter from PMW Quarries.co.uk stating local tipping facilities are required to reduce travel to sites outside Kirklees – received 18/03/21

## **6.0 PLANNING POLICY:**

- 6.1 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. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 LP21 – Highway Safety and Access
- LP28 – Drainage
- LP30 – Biodiversity and Geodiversity
- LP32 – Landscape
- LP33 – Trees
- LP37 – Site restoration and aftercare
- LP43 – Waste management hierarchy
- LP46 – Waste disposal
- LP52 - Protection and improvement of environmental quality
- LP53 – contaminated and unstable land

### 6.3 Supplementary Planning Guidance / Documents:

National Planning Policy for Waste 2014  
Kirklees Waste Needs Assessment 2016 (Growth Forecasts and Assessment of Future Capacity Requirements)

### 6.4 National Planning Policy Framework:

Section 6 - Building a strong, competitive economy  
Section 13 - Protecting Green Belt land  
Section 14 - Meeting the challenge of climate change, flooding and coastal change  
Section 15 Conserving and enhancing the natural environment

## 7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 The application was publicised by site notices in the vicinity of the site, neighbour letters and an advertisement in the local press. This resulted in the receipt of 10 representations being received from members of the public including the Peak & Northern Footpaths Society. The issues raised can be summarised as follows:

#### **Flooding/drainage private water supply:**

- Land adjacent to gully and drains are flooded in winter months
- Considerable water travels down the gully and collects within the site
- Proposed wetland area would be no different to current area of wetland on site
- Concerns, that water in the area could become contaminated and effect wildlife & humans including any properties served by natural spring water
- Could be disastrous if contaminants enter stream and rivers at Cat Clough

#### **Impact on amenity and character of area:**

- Removal of drystone walls & felling of considerable number of trees prior to submission of application
- Loss of habitat to birds
- The provision of small area of agricultural land does not outweigh the detrimental impact on local wildlife including included protected species and their habitat/foraging from the loss of this gully/feature
- Tipping has taken place on site for the last 2 years consisting of clean fill, top soil and white goods
- Will effect the natural environment of the area and the green belt “to allow this further desecration of green belt land should not even be considered”
- The site is visible from surrounding public rights of way (PROW) & would affect public enjoyment and the safety of PROW users
- Noise, dust, odour and heavy traffic associated with this development would be detrimental to the amenity of the area.
- A detailed restoration scheme should be submitted indicating finished land levels and landscaping.

**Highway/safety issues:**

- The local highway network does not have the capacity to cope with this proposal HGV's and access to site is on brow of hill could cause accidents.
- How will debris/mud on highway to be managed
- A new footpath or road widening the length of Hog Close Lane could help
- The proposed security arrangements (fence & signs) would be insufficient
- How will the infill operations, to ensure what is being deposited into landfill and vehicle trips be monitored?

**Other issues:**

- Concerns over accuracy of information within the private water supply report
- much development in our area; and this is another unacceptable commercial application being submitted
- Inconsistencies with the submitted information

Reference is also made to the reasoning given for a survey being undertaken by residents.

**Response:** Not aware of any survey undertaken by the Council.

Ward Councillors were advised of the proposals on receipt. To date, no comments or queries have been received.

**8.0 CONSULTATION RESPONSES:****8.1 Statutory:**

K.C. Highways DM – No objections subject to conditions

Environment Agency – No objections raised, although the EA advises an Environmental Permit would be required from the EA and that the proposed landfill activities must comply with the provisions of the Landfill Directive (99/31/EC). (A Footnote is to be included on the decision notice, providing a link to the website where full advice of the EA can be accessed)

Barnsley MBC – states that the proposed site is very close to several houses within the Barnsley Borough and asks the question “what proposals do the applicants have to mitigate the adverse effects from noise and dust from the development to the houses which are adjacent.  
(Addressed below under ‘Local amenity’)

**8.2 Non-statutory:**

K.C. Environmental Health – initial objection withdrawn, subject to restricting the hours of operation and conditioning the requirement of a reed bed along the course of the existing water course.

K.C. Biodiversity Officer – Support on the basis of biodiversity net gain is achieved and the long-term maintenance and management of such areas be secured by S106.

K.C. Lead Local Flood Authority – support subject to the suggested conditions.

## 9.0 MAIN ISSUES

- Principle of development (Green Belt & Waste Management/disposal)
- Supporting Rural Diversification
- Character and Appearance
- Ecological/biodiversity issues
- Local amenity
- Highway issues
- Private water supply
- Drainage/flood and ground stability issues
- Climate Change
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development - Green Belt

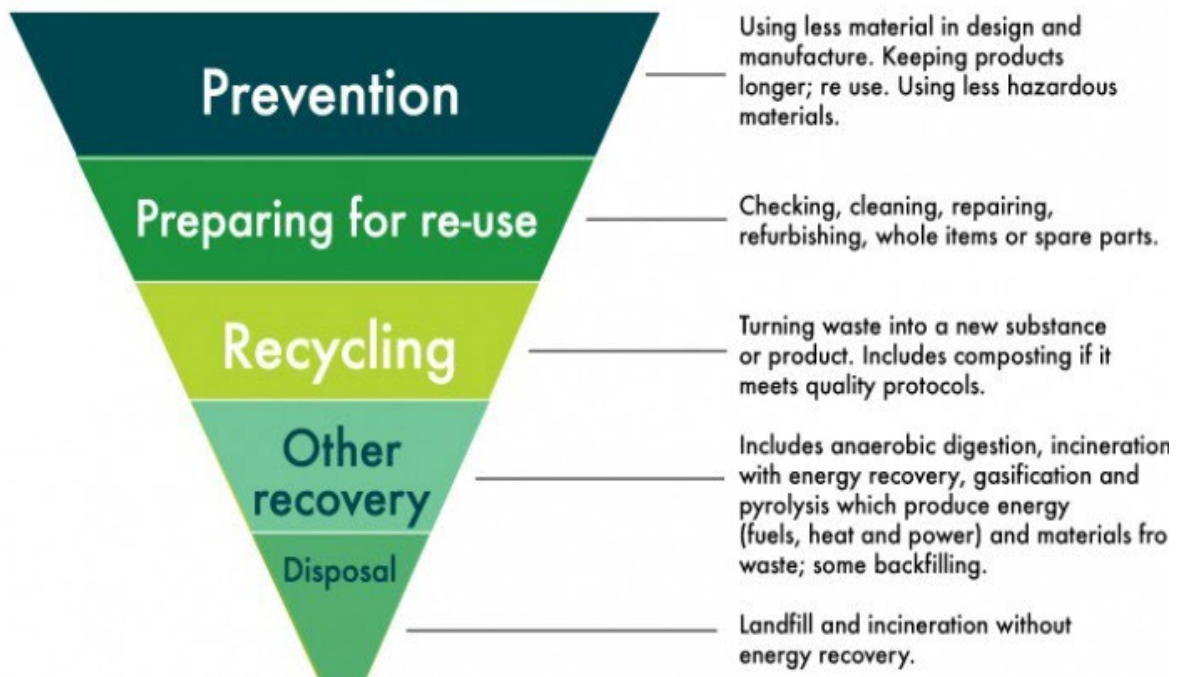
- 10.1 The application site comprises of agricultural pastureland and a void in the form of a gully with natural habitat of high importance. The landfill proposals can be considered as engineering operations which would involve the importation of approximately 29, 207 cubic metres of inert, clean demolition and topsoil (all waste) to re-profile and restore land to agricultural use.
- 10.2 It is not disputed, that due to the deep void and nature of the gully this prevents the full and proper working for agricultural use on this part of the site.
- 10.3 The starting point is paragraph 146 of the National Planning Policy Framework (NPPF) which sets out amongst other forms of development that engineering operations is not inappropriate in the Green Belt provided it preserves the openness of the Green Belt and do not conflict with the purpose of including land within it.
- 10.4 The sectional drawings accompanying the application indicate the extent of profiling required to form the desired land levels after completely filling in the gully with waste materials. On completion, it is considered whilst the proposals would take the effect of an engineered embankment at the northern end of the site, the final contouring after infilling would allow the site area to integrate with wider surrounding landscape of undulating fields. Views into the site from the north, looking back towards the site would, in time be mitigated by the off-site proposals to create an additional area of woodland which is proposed to compensate for the loss of biodiversity interests as a result of the proposals (discussed in more detail below).
- 10.5 The applicant states the landfill and restoration proposals are to be carried out no more than over a period of 3 years, 6 months of which to restore the site. As set out above, it is anticipated to generate an average of 96 HGV movements onto and off the site each week. The impact on highway safety is considered below, however it is important to assess the impact on the openness of the Green Belt from the length of time and level of activity to be carried out in association with the proposed development.

- 10.6 The NPPF indicates that openness and permanence are the essential characteristics of the green belt. There is no definition of openness in the NPPF in the green belt context. However, in a recent appeal decision (ref: 2018/94092, Emily Fields Liley Lane) which was reported at the Strategic Committee meeting on 23<sup>rd</sup> January 2020, the Inspector refers to, in the green belt context, *“it is generally held to refer to freedom from, or the absence of, development”*. Comparisons can be drawn with the appeal and application site proposals, in that both sites after engineering operations, are to be carried over short period of time. The Inspector, in coming to his conclusion also took into account that during the carrying out of the engineering works, it would result in disruption to the landform and there would inevitably be an increased level of activity at the site and surrounding highway network, as a consequence of the associated HGV's. Nonetheless, the inspector concluded that the openness of the green belt would be preserved following completion of works.
- 10.7 Similarly, the proposals before Members are stated to be carried out over a short period (3 years), includes engineering operations albeit after infilling the gully and on completion of restoration works is considered would remain open.
- 10.8 Turning to the works proposed to the existing track, should Members be minded to approve the proposals, this could be conditioned to be returned to its original state, on completion of land fill operations to ensure the openness of the Green Belt is preserved. Furthermore, in the interests of preserving the openness, it would be reasonable to condition that the waste fill material brought onto site, be used on arrival and not be stockpiled as was the case in the appeal.
- 10.9 To summarise on green belt matters, it is considered that the proposed development involves engineering operations over a short period of time and as the openness of the green belt (subject to conditions) would be preserved, it is therefore, not considered to be inappropriate development in the green belt nor would it conflict with the five purposes of the green belt. The site is currently open and free from development and this would continue on completion of the landfill, engineering and restoration works to be completed within a short period of time, in accordance with paragraph 146 of the NPPF.

#### **Principle of development - Waste Management & Disposal**

- 10.10 Turning to the management of waste, The National Planning Policy for Waste sets out its commitments to the aims for sustainable waste management which are summarised in the 'waste hierarchy' see figure below. Although this indicates that the most effective environmental solution to the generation of waste is waste prevention, it also indicates that the re-use and recycling of materials are the next best options, with the least desirable and unsustainable solution being landfill disposal. This is echoed in Local Plan Policies LP43 and LP46.
- 10.11 Waste Planning Authorities are therefore encouraged to take a positive approach towards dealing with waste in a way which moves its treatment up the hierarchy, by making provision for the management of various streams of waste, including inert and clean demolition waste material.





- 10.12 In order to inform the Council on the requirements of Kirklees with regard to the management of waste within the district over the plan period, a comprehensive Waste Needs Assessment (WNA) has been produced. This examines in detail the current quantities of waste generated and managed in the Kirklees district, the projected growth of waste to be managed over the plan period and the associated future capacity requirements, which forms the evidence base for Policy LP46
- 10.13 It should also be noted that Kirklees Council works collaboratively at both the regional and sub-regional level with the West Yorkshire Combined Authority (WYCA) to understand the relevant waste management needs. This is a regional matter therefore expected that waste can be imported and exported regionally throughout the neighbouring WY authorities and nationally when essential and necessary.
- 10.14 Currently the WNA identifies sufficient land capacity for demolition waste through the allocation of safeguarded waste sites in Kirklees for the plan period and beyond.
- 10.15 As the proposals would result in waste disposal, Local Plan Policy LP46 states:
- sites for disposal of waste will only be permitted where they cannot be met by treatment higher in the waste hierarchy
  - If it can be demonstrated that there is a proven need for additional landfill capacity because all other options are not suitable or feasible, this will be provided at existing or former quarry sites shown on the Policies Map.
  - If all of these quarry sites are unavailable, land raising using inert materials only, may be considered provided it can be demonstrated that this would not divert material away from the restoration of any quarry void.

10.16 A lot of waste can be re-used and re-purposed, it is a way of moving it up the waste hierarchy instead of putting it in landfill. In this case, it is proposed to dispose of into landfill which is at the bottom of the hierarchy.

10.17 With regards to these policies, **the applicant's case sets out:**

*"Policy LP46 also links to Policy LP20 (Sustainable Travel) in that the Council aims to reduce travel distances*

*Waste is defined as:*

*" a material, substance, or by-product eliminated or discarded as no longer useful or required after the completion of a process" It therefore suggests it has no future useful benefit in its current form. However, Waste that can be recycled or that can be put to another beneficial use ceases to become waste at this point."*

*this is not a commercial waste operation. The applicant is a farmer wishing to reclaim and restore a piece of land and return it to productive farmland. It will use inert fill to beneficial use and it is therefore not waste.*

*It is accepted that at the foot of the gully there is an area of shrub and small trees that will be lost through the engineering operations. However, this is a small element of the scheme and compensation measures through the creation of new heathland and tree planting have been agreed as acceptable compensation measures.*

*.....The gully (formed by previous mining activity) is unstable and suffers from erosion. It also poses a hazard to livestock and farm operatives.*

*The void will be filled with excavation waste, sourced locally where this is practically possible.*

*There is no designated waste site within 3km of the site. It is therefore argued that inert waste disposed at Hog Close Lane will help reduce transportation distances and thus meet Local Plan Policy LP20 (sustainable travel).*

*In addition, it should be recognised that the Government has announced that post Covid19 that there will be a significant increase in the level of investment in infrastructure projects and these will be accelerated to speed up economic recovery. Thus, there will be a greater demand for disposal sites for inert fill over and above the projections made in 2016."*

#### **RESPONSE TO THE APPLICANTS CASE:**

10.18 The primary aim of Policy LP20 is to ensure all new developments generating significant new vehicle trips, is located in accessible locations with convenient connections to public transport networks, cycling and walking routes. This is to ensure the need to travel is reduced and essential travel needs can be met by forms of sustainable transport other than private vehicles. Policy LP20 is not of relevance in this case as it is accepted that the management of waste would result in importation and exportation regionally and national when required, as stated in paragraph 10.12 above.

- 10.19 The use of inert and clean demolition waste to landfill disposal for the benefit of making the site area more productive to farmland, cannot simply be inferred that it is not waste. Furthermore, the meaning of re-use in the context of Policy LP43 means waste that has been checked and cleaned with the end result being a product that can be re-used (i.e aggregates from clean demolition waste). Crucially, in order to, adapt to and mitigate against, climate change impacts, the management of waste will need to be considered further up the waste hierarchy before consideration of disposal through landfill, which is not sustainable.
- 10.20 The submitted information states “*this is not a commercial waste operation*”, and it will enable the applicant “who is a farmer” to use the land for productive farmland. Although agricultural farmland takes many forms, it is not disputed that the end result will make the application site area more productive for farmland in comparison to its current form. However, despite requesting for details and evidence of the current farming operations/activities, none of have been forthcoming to demonstrate a real justifiable genuine need, to substantiate the applicant’s case, in that the proposals are critical to the applicant’s agricultural business needs. i.e. how will not obtaining permission for the proposed landfill operations be detrimental to the applicant’s existing agricultural business.
- 10.21 With respect to the applicant stating “*there is no designated waste site within 3km of the site, it is therefore argued that inert waste disposed at Hog Close Lane will help reduce transportation distances*”, as stated previously, consideration of the management and disposal of waste is a regional and national matter, whereby the importation and exportation of waste is expected. Therefore, the argument “*reduction of transportation distances*” together with the lack of evidence to support the genuine justifiable need for the applicant’s agricultural business, does not address the need for additional landfill sites, over and above the allocated safeguarded waste sites within the Kirklees Local Plan, for which there is sufficient remaining capacity for the plan period and beyond.
- 10.22 The submitted information states that “*the excavation waste will be sourced locally where this is practically possible*”. In support of this, the agent has also provided a letter from a contractor based in the Hepworth area, who states they are forced to travel to export inert waste outside of Kirklees, thereby increasing the carbon footprint and that local tipping facilities are required. The contractor refers to two sites within Kirklees which have been considered, one of which is a hazardous landfill site and the other, a mineral extraction site (a safeguarded waste site) which is stated to be discounted “*as it opens periodically and charges more than the marketplace will accept making pricing jobs difficult*”. These are not considered sufficient reasons to discount the mineral extraction area.
- 10.23 The nearest allocated safeguarded waste sites from the application site are Hillhouse Edge approximately 4.9km, north west of the site and Carr Hill Quarry 2.7km to north east. However, there are a number of active mineral workings in the area in the following locations:
- Ox Lee Quarry (1.5km south west)
  - Appleton Quarry (3.2 km north east)
  - Sovereign Quarry (3.5 km north east)

- 10.24 In summary with regard to Local Plan Policy LP46, the applicant has not demonstrated or justified why this waste cannot be met by treatment higher in the waste hierarchy, why all other options are not suitable or feasible and that this proposed landfill operation would not divert material away from the restoration of any quarry void. No genuine justifiable need has been evidenced to demonstrate that there is a proven need for additional landfill capacity in addition to the allocated safeguarded waste sites for this type of waste in the district. The proposals are therefore contrary to Kirklees Local Plan Policies LP43(a) and LP46, the National Planning Policy for Waste 2014 and Kirklees Waste Needs Assessment 2016
- 10.25 Finally, the Government's intention to speed up economic recovery is acknowledged, nevertheless, the need for additional landfill sites would need to be evidenced, in accordance with the Policies set out above.

### **Supporting rural diversification**

- 10.26 The additional statement received on 11<sup>th</sup> March 2021, introduces a case with reference to Local Plan Policy LP10 (f) which specifically relates to Supporting the rural economy. Point (f) of the Policy LP10 states:

*f. supporting farm diversification schemes, where the proposal would not adversely affect the management and viability of any farm holding, and in the case of farm shops, the goods to be sold are primarily those which are produced on the host farm or neighbouring farms.*

- 10.27 The NPPF and Local Plan Policy LP10 seeks to support a prosperous rural economy. The proposals would not adversely affect the management and viability of any farm holding, as on the contrary it would provide financial gain for the applicant. Whilst it could be argued that the proposal would allow diversification of the applicants' farm business, by utilising land that currently may have no useful purpose for agriculture and would represent a more efficient use of the land, it is not considered to be farm diversification in its true sense of this Policy.

### **Character and Appearance**

- 10.28 The site is located within an area which is largely rural in character consisting of wooded areas, in depressions and on varying contours, rolling fields of open farmland with pockets of residential and agricultural buildings. Whilst it can be argued that the gully within the site, is formed by previous colliery works, it has over time established landscaping and forms a distinguished feature which contributes to the rural setting of the area. The proposed contour levels as shown on drawing no. EWE/2078/01 Rev C would ensure a transitional slope and allow the continuation of rolling fields (which is only one form of agricultural land use) from one field to the next. In addition, the restoration proposals for the whole of the site, by returning it to grassland would ensure the site, over time, integrates with the wider surrounding character of rolling open fields, in accordance with Policy LP32 of the KLP.
- 10.29 To mitigate the potential effect of the proposed engineered operations, particularly when looking back at the site from the north, negotiations have resulted in the requirement of creating a new woodland area, immediately beyond the northern boundary. This is shown on drawing titled 'Fig A

Compensation Proposals' and would be on land in control of the applicant. The new woodland area would also contribute to the overall biodiversity net gains to be achieved (discussed further below). Should Members be minded to approve the application, this matter can be dealt with by condition and the long term maintenance and management of such areas will be secured through a S106 agreement.

### **Ecology/Biodiversity issues**

- 10.30 Policy LP30 of the KLP refers to Habitat of Principle Importance (those habitats listed under the provisions of Section 41 of the Natural Environment and Rural Communities Act 2006), which occur within the proposed footprint of works and will be lost as a result of the proposals. These habitats include the woodland within the site (marked as TN1 within the EclA report) and the heathland within the site (marked as TN8 within the report). Policy LP30 requires proposals to protect these habitats 'unless the benefits of the development clearly outweigh the importance of the biodiversity interest, in which case long term compensatory measures will need to be secured.
- 10.31 *Kirklees Wildlife Habitat Network* - The proposals would also result in the loss of approximately 0.6ha of the Kirklees Wildlife Habitat Network.
- 10.32 The Council seeks a net biodiversity gain of 10% on development sites. This can either be through the detailed landscaping scheme and/or off-site enhancement – on land owned by the developer.
- 10.33 The Biodiversity Metric calculation was submitted during the course of the application as the method to demonstrate a measurable biodiversity net gain in accordance with Policy LP30(ii) and NPPF. The information presented has now addressed previous objections raised by the Council's Ecology unit. The proposals as revised would include both on and off site habitats as set out in the metric and drawing titled 'Fig A Compensation Proposals', which indicates 0.75ha of Heathland restoration, 0.1ha reed bed filtration, creation of 0.14ha of woodland and on site restoration of neutral grassland.
- 10.34 In summary, the Council's Ecology unit, notwithstanding the loss of a 'small terminal section' of the KWHN, which is considered does not represent harm to the function and connectivity of the network, is satisfied on the basis that the revised proposals now put forward would provide a net biodiversity gain of 17.86%.
- 10.35 The compensatory measures are to be secured through a Section 106 agreement in accordance with Policy LP30. In this respect, a draft long term maintenance and management plan is received along with a draft S106 which is being considered by both the Council's Ecology Unit and Legal Officers. Subject to the long term maintenance and management plan demonstrating the security of the ecological being provided on and off site, biodiversity matters would be addressed sufficiently. Should Members conclude that the benefits of the development outweigh the existing biodiversity interests of the site, the compensatory proposals put forward would address this matter. The views of the Council's Biodiversity Officer in relation to the long term maintenance and management plan can be reported to Members in the update or on the day of committee.

## **Local Amenity**

- 10.36 At present the site comprises two fields of open pasture divided by a deep steep sided clough. This provides a pleasant rural setting within the wider area. Public Right of Way (PROW) Hol/134/20 runs to the north of the site and this would allow users of this route views of the site at relatively close quarters and be affected to some extent by the proposed works. This PROW links with other PROWs in the area and it is considered that the surrounding landscape enhances the experience of users of this route and therefore acts to attract walkers and visitors to the area, providing an attractive recreational facility. The proposals are to be carried out over a period of 3 years, which can be deemed a short period in terms of landfilling and as such it is considered that the proposed works would not prejudice the function and continuity of the core walking routes, in accordance with KLP Policy LP23.
- 10.37 With regards to waste being transferred to the site by HGV's including open skip and tipper lorries. This will inevitably result in additional noise generated by the vehicles themselves and during the unloading and working of the waste. The nearest residential properties are located between approximately 200 to 250 metres away from the proposed development. To mitigate against any associated impact and to protect the amenities of nearby residents from any potential noise/disturbance during unsociable hours, conditions can be imposed restricting the number of vehicle movements (in and out of the site per day) and hours of operation in accordance with those suggested by the Environmental Health Officer. Consequently, the proposal would accord with KLP Policy LP24 and Section 11 of the NPPF with regard to potential noise nuisance.
- 10.38 The potential emissions of dust to the atmosphere from tipping and landform operations such as those proposed at the application site would arise from three main sources:-
- Vehicle movements to and from the site.
  - Operational processes including the tipping of waste and its subsequent working and placement and compaction.
  - Exhaust's from operational plant/equipment.
- 10.39 The degree to which significant dust emissions are capable of causing nuisance from a particular site depends upon various factors, including:
- Time of year and climatic conditions, with dry conditions and high wind speeds being conducive to dust generation.
  - Surface characteristics, with vegetation cover making material in bunds less susceptible to dispersion
- 10.40 However, it is considered that problems associated with dust could be adequately dealt with through the implementation of measures on site which could include:
- All lorries delivering waste to the site being sheeted
  - Internal haul routes would be defined and dampened as necessary
  - Upswept exhausts used on site vehicles
  - Dampening of surface of filling areas when necessary
  - The suspension of operations in extreme windy conditions
  - Speed restrictions on site

- 10.41 To summarise, should Members be minded to accept the principle of development in terms of waste disposal, the above suggested measures could be required via appropriately worded dust suppression planning conditions, to comply with KLP Policy LP52 as well as guidance contained in Section 15 of the NPPF,

### **Highway issues**

- 10.42 DM Highway Officers initial assessment is set out below:

*“that access is to be taken from an existing track off Hogg Lane that serves the application site. The access is to be upgraded to incorporate 7m radii and realigned to allow a 21m straight alignment for vehicles to pass. The access will be widened to 8m in width. The geometric characteristics are considered acceptable and the proposal is acceptable in this regard. Internally to the site a turning head for large vehicles is proposed.*

*The application is supported by swept-path analysis of large vehicles passing and being able to access and exit in a forward gear. Visibility splays and the location of the proposed gate are also demonstrated on drawing no. MJC 172-05E (as a consequence of further revisions, this plan is superseded by drawing MJC 172-05G).*

*It should be noted that the council’s Highway Safety department raised concerns regarding the suitability of the local road network. However, given the proposals would produce around 16 vehicle movements per day, and for a temporary period of 24-30 months, Highways DM feel that the proposals are acceptable on balance. These proposals remain acceptable from a highways perspective, and Highways DM wish to raise no objection to the scheme. No specific conditions are deemed necessary.*

- 10.43 As set out above, it is anticipated the proposals would generate an average of 96 HGV movements per week. It is considered reasonable and necessary to restrict the number of HGV movements (by condition) in and out of the site to those proposed, (8 in and 8 out, 16 in total a day).
- 10.44 Taking account of the Council’s Highway Safety department, DM Highway Officers follow up advice is that a pre commencement condition requiring a survey which highlights the existing condition of the highway Hog Close Lane should be imposed. The condition will require the applicant, before development is commenced, to monitor the condition of Hog close Lane, (followed by subsequent annual monitoring) until completion of the proposals. In the event Hog Close Lane results in any defects, a scheme to reinstate the defects will be required to be carried out at the expense of the applicant. The applicant is agreeable to this.
- 10.45 Hog Close Lane falls within Barnsley district, therefore any remedial works required to Hog Close Lane as a result in defects caused by the use of HGV’s in association with the proposals, would need to be approved by entering into a Section 278 agreement with the relevant Highway Authority. This can be addressed by condition, should the application be approved.

10.46 It is therefore considered, subject to appropriate conditions being imposed and the proposals being carried out over a period of 3 years this development would accord with KLP Policy LP21 with regards to its impact on the local highway network. On site wheel wash facilities will also need to be conditioned to prevent HGVs depositing material on the highway.

### **Private water supply**

10.47 Council historic maps for the valley, indicate that the area proposed to be filled is spring fed which is typical of watercourses in the area. This was not fully captured in the applicant's initial design or reports. Significant concerns were also raised by Environmental Health Officers, regarding the sourcing and composition of the infill matter and the effect it could have on nearby groundwater and surface waters, on the private water supplies downstream from the site in question that may be affected.

10.48 According to records, nearby properties could potentially be served through these private water supplies. At the request of the Council details of a hydrology survey undertaken on behalf of the applicant has been received during the course of the application. This identifies private water supplies in the immediate area, so that the potential impact of the development could be considered. This survey checked 31 properties, of these 5 had private water supplies. Of these 5 only one is still claimed to be used, the other 4 have converted to mains supply and the private supply has already, or is in the process of being abandoned, and capped. An assessment of the potential impact of the development has now been completed and for completeness the potential impact on the private supplies, was assessed as part of the survey.

10.49 The survey states the infilling of the gully should not contain any soluble contaminants and the springs feeding the clough are to be diverted round the filled site. This would reduce the risk of pollution of private water supplies. In addition water arising from the site is proposed to be drained separately and passed through a reed bed and ponding area as shown on drawing no. MJC 172-P07 dated September 2019. It is acknowledged that the 'inert' fill should not contain any biodegradable matter and as advised by the applicant, the reed bed is purely there as a safeguard mechanism to extract any bio-degradable matter that might escape the waste screening and certification process. The reed bed and ponding area will ensure that all suspended solids are removed, and the reed bed will treat any biodegradable matter. It is concluded that the filling of the gully will have minimal or no impact on the private water supply to neighbouring properties

10.50 Subject to the provision of the reed bed being formed and installed to protect the groundwater from any potential contamination associated with the infill, Environmental Health Officers would have no objections. The applicant is amenable to this and can be addressed by a pre commencement condition, in the event the application is approved, in accordance with KLP Policy LP52 and guidance within the NPPF.

### **Drainage/flood and ground stability issues**

10.51 The LLFA consider the information provided with regard to the proposed drainage systems, (which will comprise of a series of perforated pipes within the landfill area, diversion of the existing surface water course and formation of reed bed/wetland areas) is sufficient in principle. Subject to further design,



calculation and phasing which can be secured by the suggested conditions set out in the consultation response from LLFA dated 4<sup>th</sup> June 2020, drainage and flood matters can be addressed to accord with KLP Policy LP28 and guidance in the NPPF.

- 10.52 With regards to ground stability, water management on steep slopes can be a fundamental issue and should be considered particularly when introducing new material, such as is proposed. The design needs to consider the geotechnical suitability of the proposals including interaction with existing ground, reinforcement required of the retaining face to prevent mobilisation and potential for settlement and any ground preparation required. The operation of plant and weight of material could lead to mobilisation of sediments which needs to be assessed.
- 10.53 Paragraph nos. 178 and 179 of the NPPF sets out clearly that where a site is affected by land stability issues, responsibility for securing a safe development should rest with the developer and/or the landowner. Moreover, any proposals should be accompanied by adequate site investigation information, prepared by competent person taking into account of ground conditions and any risks arising from land instability.
- 10.54 The LLFA does not generally lead on geotechnical considerations, however, due to the interaction with the watercourse, in this instance it was a matter for consideration. Given the high risks, Officers considered it necessary to request a full geotechnical site appraisal to establish whether the proposed methods are suitable and safe before the principle of such works is considered acceptable and to ensure such works can be deliverable without potential harm to people or the environment, in accordance with KLP Policy LP53. The geotechnical report has been independently assessed on behalf of the Council. The outcome of which concludes further technical information is required including an intrusive ground investigation report, a method statement for the proposed valley reprofiling and details of proposed gravity earth bund on face of landfill, prior to development commencing. This can be addressed by pre commencement conditions. Subject to the works being carried out in complete accordance with the recommendations in any subsequent reports, the issue of ground stability can be addressed, in accordance with KLP Policy LP53 and guidance within the NPPF.

### **Climate Change**

- 10.55 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

10.56 Uncontrolled release of greenhouse gasses from traditional waste disposal methods are inextricably linked to climate change. Crucially, in order to adapt to and mitigate against climate change impacts, the management of waste will need to be considered further up the waste hierarchy before consideration of disposal through landfill, which is the least sustainable way to manage waste. Furthermore, the application site is not an identified allocated safeguarded waste site in the Local Plan. The approval of such proposals fails to meet the objectives of reducing the release of greenhouse emissions into the atmosphere, contrary to Local Plan Policies LP43(a) and government guidance.

### **Representations**

#### **10.57 Flooding/drainage private water supply:**

- Land adjacent to gully and drains are flooded in winter months
- Considerable water travels down the gully and collects within the site
- Proposed wetland area would be no different to current area of wetland on site
- Concerns, that water in the area could become contaminated and effect wildlife & humans including any properties served by natural spring water
- Could cause contamination or enter stream and rivers at Cat Clough

Response: Addressed in preceding paragraphs. With regard to the potential contamination, this would be limited as the proposals would use inert material/waste.

#### **10.58 Impact on amenity and character of area:**

- Removal of drystone walls & felling of considerable number of trees prior to submission of application

Response: Noted.

- Loss of habitat to birds
- The provision of small area of agricultural land does not outweigh the detrimental impact on local wildlife including included protected species and their habitat/foraging from the loss of this gully/feature
- Will affect the natural environment of the area and the green belt “to allow this further desecration of green belt land should not even be considered”
- The site is visible from surrounding public rights of way (PROW) & would affect public enjoyment and the safety of PROW users
- Noise, dust, odour and heavy traffic associated with this development would be detrimental to the amenity of the area.

Response: addressed in preceding paragraphs

- Tipping has taken place on site for the last 2 years consisting of clean fill, topsoil and white goods

Response: See Enforcement notes above, under section 4 of the report

- A detailed restoration scheme should be submitted indicating finished land levels and landscaping.

Response: A detailed restoration scheme to include finished ground levels can be secured by planning condition should planning permission be granted.

10.59 **Highway/safety issues:**

- The local highway network does not have the capacity to cope with this proposal HGV's and access to site is on brow of hill could cause accidents.
- How will debris/mud on highway to be managed

Response: addressed above

- A new footpath or road widening the length of Hog Close Lane could help

Response: On consideration of the proposals, Highway Officers have not deemed such provisions necessary in this instance

- How will the infill operations, to ensure what is being deposited into landfill and vehicle trips be monitored?

Response: The applicant would need to obtain an Environmental Permit from the Environment Agency to ensure that the proposed landfill activities comply with the provisions of the Landfill Directive (99/31/EC). The vehicles trips can be restricted by condition.

10.60 **Other issues:**

- Concerns over accuracy of information within the private water supply report

Response: A revised Private water report was received (January 2020) and publicised on the website. No new representations were received in relation to this matter

- much development in our area; and this is another unacceptable commercial application being submitted

Response: noted

- Inconsistencies with the submitted information

Response: noted

10.61 With regards to odour issues, the proposal would involve inert waste only and problems associated with odours would not therefore be an issue.

**Other Matters**

10.62 Whilst potential land stability issues and flood risk, as a result of the proposals are addressed above, the additional information submitted received 11<sup>th</sup> March 2021, introduces claims in support of the applicant's proposals which states:

*"The gully (formed by previous mining activity) is unstable and suffers from erosion. It also poses a hazard to livestock and farm operatives...The exposed clay and shale and the steep sides of the gully also lead to rapid water run-off into local watercourses and into the river system. Filling the void and restoring the site to agricultural use will remove this hazard in accordance with Policy LP53."*

10.63 The submitted geotechnical report (sections 6.2 and 6.3) concludes that the risk of ground water flooding at the site is negligible and that based on the topography of the surrounding area, surface waters would be expected to drain towards the various surface water courses which lie in the bottom of the respective valley features. With respect to the impact on surrounding watercourses from the proposed landfill operations, the drainage scheme proposed would ensure and alleviate concerns, removing the risk of contributing to localised flooding downstream.

- 10.64 With respect to the gulley being stated to be unstable and suffering from erosion, the geotechnical report does identify 'indicative small-scale ground movements/slippages'. However, the report also states "*it is likely these have resulted due to the steepness of the existing valley sides and soil erosion by surface waters flowing down the valley sides*". It must be noted that the geotechnical report was commissioned for the reason set out above, in paragraph 10.54, to demonstrate that there would be no concerns in relation to ground stability as a result of the proposed development, not to address any instability land issues, which pose a risk to the environment or people.
- 10.65 Finally, to address concerns in relation to the site "*posing a hazard to livestock and farm operatives*" appropriate fencing (stock proof/dry stone) or walling can be considered. In any case, it is recognised that farmers/operators of the site will have a duty of care to ensure appropriate measures are in place to protect the welfare of animals and anyone using the site under health and safety and other relevant regulations in which they will be required to adhere to.

## **11.0 CONCLUSION:**

- 11.1 The National Planning Policy for Waste sets out its commitments to the aims for sustainable waste management to take a positive approach towards dealing with waste in a way which moves its treatment up the 'waste hierarchy'. The Councils Waste Needs Assessment (WNA) has been produced which details the quantities of waste generated and managed in the Kirklees district, the projected growth of waste to be managed over the plan period and the associated future capacity requirements.
- 11.2 The information submitted fails to demonstrate why the waste cannot be treated up the 'waste hierarchy'. Nor has evidence been provided to support the genuine need for use of this site for landfill operations that is critical to the applicants existing agricultural business, prior to the use of allocated safeguarded sites, for which there is a sufficient capacity for the plan period and beyond. The proposals are therefore recommended for refusal.

## **12.0 REASONS FOR REFUSAL**

1. The Council has sufficient landfill capacity in the district for meeting the needs of Construction, Demolition and Excavation waste as set out in the Kirklees Waste Needs Assessment 2016. The submitted information fails to demonstrate and justify:

- i) why the waste cannot be met by treatment higher in the waste hierarchy,
- ii) the use of allocated safeguarded waste sites shown on the Policies Map and all other options (restoration of any quarry void) and,
- iii) that there is a genuine justifiable proven need for additional landfill capacity.

The proposals for landfill at the application site are contrary to the requirements of Kirklees Local Plan Policies LP43 (a) and LP46, the National Planning Policy for Waste 2014 and Kirklees Waste Needs Assessment 2016

**Background Papers:**

Application and history files: set out in the above report under sub heading 'Relevant Planning History'

Website link to be inserted here

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f93676>

Certificate of Ownership –Certificate A signed by the agent on behalf of the applicant