Appeal Decision

Hearing held on 6 & 7 October 2010
Site visit made on 7 October 2010

by Chris Gossop **BSc MA PhD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
16 November 2010

Appeal Ref: APP/M2460/A/10/2128382
Fenn Lane Composting Site, Fenn Lane, Nuneaton, Leicestershire CV13 6BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Zeeshan Aslam against the decision of Leicestershire County Council.
- The application Ref 2009/0592/04 (2009/C103/04), dated 29 June 2009, was refused by notice dated 24 November 2009.
- The development proposed is open windrow composting facility for the processing of up to 75,000 tonnes of waste per annum.

Decision

1. I dismiss the appeal.

Main issues

2. I consider there to be three main issues in this case. These are:

   (i) The extent of compliance of this proposal with development plan policies and national and other relevant guidance concerning sustainable waste management, including the policy case for it to be in a countryside location.

   (ii) The likely impact of the proposal, in terms of: its transport and related environmental implications; the proposed arrangements for highway access; its effect upon the local landscape, and; its impact upon local living and working conditions, in respect of odour, bioaerosols, dust, and noise.

   (iii) The overall balance and whether there is an overriding need for this development within the countryside.

Reasons

(i) Policy compliance

3. The Core Strategy A Waste Development Framework (WDF) is being prepared for the Leicestershire and Leicester City administrative areas. A key part of that WDF, the Core Strategy and Development Control Policies up to 2021 document, was adopted in October 2009. Following the recent revocation of the East Midlands Regional Plan, the Core Strategy forms the main pillar of the Development Plan in respect of waste. While some of the saved policies in two 'old style' local plans have some bearing on this case, these being listed in the

Statement of Common Ground (SoCG), those of the Core Strategy are up to date and of much greater relevance, reflecting as they do the strategic framework provided by PPS10 *Planning for Sustainable Waste Management* and the *Waste Strategy for England 2007.*

4. The Core Strategy recognises two categories of site, strategic and non-strategic. Strategic sites, which are addressed by Policy WCS2 are to be located near to centres of high population density, including within the Broad Locations shown in the Key Diagram. The proposed site does not meet those criteria. Instead, it is regarded as a non-strategic site and Policies WCS3 and WCS4 are applicable. These are seen as smaller sites operating in tandem with the larger strategic sites, part of a mixture aimed at balancing 'the benefits of proximity to waste arisings whilst being able to exploit economies of scale'. As with the strategic sites, urban or urban edge locations are sought, save in situations where it can be demonstrated that a more dispersed location, within a smaller settlement or rural area, is called for.

5. The supporting text to Policy WCS3 cites on-farm composting as an example of a use requiring a more dispersed location. While the composting by a farm of its own waste provides an obvious link to the need for a rural location, as the appellant argued, Leicestershire's larger scale composting sites are themselves located almost entirely within rural areas. That is evident from the Key Diagram. However, based upon the Council's schedule of composting sites, there are significant differences between these and the appellant's proposal. For one thing, in terms of throughput, the appeal proposal would handle three times as much waste as the largest of the existing open windrow sites (Document 7). For another, the waste to be processed would be from a wider range of sources, a point to which I return in my consideration of the second issue.

6. Under Policy WCS4, the Core Strategy establishes a sequential approach for the location of waste sites. Clearly, the proposed location is not a priority one site with an existing waste management use offering the potential benefits of co-location. From a straight reading of the policy itself, the proposal's use of previously developed land (PDL) qualifies it as part of the next tier down, a priority two site. However, the supporting text states that the PDL would, where possible, involve urban or urban fringe land, having good transport connections and being close to waste sources. As I shall discuss later, the proposal does not comply well with the last of these, total distances would be considerable and, clearly, this is not an urban, or urban fringe site.

7. On the other hand, the supporting text to Policy WCS5 recognises that open windrow waste composting can require large sites and, for environmental reasons, locations 'away from residential areas and other sensitive land uses'. Moreover, as stated in the preamble to WCS4, there is a viability issue in respect of certain industrial sites given the limited availability of such land and the prospect of competition with high value land users. Also, the Core Strategy's Implementation and Monitoring section recognises that, while 80% of non-strategic sites are to be located in 'areas listed' (largely urban ones), open air composting sites do not fall within that percentage target.

8. However, the context for this support for composting in more dispersed locations is the management of the 'green waste' that Leicestershire is well

used to. That is borne out by the tables in Section 4 on the need for new waste management capacity which cite municipal waste as the sole source of waste requiring composting. I address need further in paragraphs 13 and 14.

9. Moreover, while the test in WCS5 for 'waste, recycling, waste transfer and composting facilities' is the same, that new waste management development should be allowed provided that it 'does not cause unacceptable harm to the environment or communities', it is necessary to be aware of the possible implications of a different mix of wastes. I address that question in my consideration of the second issue.

10. The countryside A key aim of the document's development control policies is to protect the County's natural resources and heritage. Thus, Policy WDC5 indicates that permission will not be granted for waste management development in the countryside unless three criteria can be met. Thus it has to be shown that the development cannot be accommodated in the urban areas, there has to be an over-riding need for it to be within the countryside, and there should be no harm to the landscape character of the area. I see that second criterion as being one of the key tests for this proposal.

11. Saved Policy NE5 of the Hinckley and Bosworth Local Plan (2001) seeks similarly to protect the countryside. However, it is out of line with Policy WDC5 in that it does not recognise the potential scope for waste management development in such a location. It therefore seems to me that in respect of this case, NE5 is effectively superseded by the relevant policies of the recently adopted Core Strategy. In attaching limited weight to it, I also take into account the final paragraph of the Secretary of State's Direction of 26 September 2007 in respect of the Local Plan.

12. Transportation The proposal complies only in part with Policy WCS14 on the transportation of waste. While the Key Diagram shows it to be 'in close proximity' to the County's lorry route network, from the details provided, the development could not be said to be in 'close proximity to the arisings in order to minimise the need to transport waste'. I return to this point under the second issue.

13. Need The Core Strategy describes the various waste streams, and the three main categories of 'municipal waste', 'commercial and industrial (C&I) waste' and 'construction and demolition (C&D) waste'. It also provides indications of the scale and number of new facilities required for the management of these categories at 2009/10, 2014/15 and 2019/20. The relevant table for composting is Table 4.2 which refers to municipal waste. While that shows a shortfall of capacity for 2009/10, the draft annual monitoring report for that year shows that two further composting plants have become operational, and that the target is met (Document 9).

14. That finding does not itself mean that no further composting capacity is required in Leicestershire. For one thing, there are two further 5 year targets to be met. For another, the appellant's proposals would manage a range of waste streams which would include, but extend beyond, the municipal waste category, and I address this further below. However, in principle, what is proposed would be supportive of the overall objective of Government policy on waste as set out in PPS10 in that it would drive waste management up the

waste hierarchy of reduction, re-use, recycling and composting, energy recovery and disposal. It would also support the aims of Core Strategy Policy WCS1 in terms of overall waste management capacity and landfill diversion.

15. Other relevant PPS10 objectives include the need to provide a planning framework in which communities take more responsibility for their own waste, making sufficient provision to meet the needs of their communities.

16. My **conclusion** thus far is that there is some compliance between the principle of this proposed development and the policy base. Thus, in its favour, it would increase composting capacity in the County and it would drive waste management up the waste hierarchy. It would also involve previously developed land. On the other hand, it would involve a countryside location and the specific need for that would need to be justified and weighed against its impacts. Moreover, the transportation implications of this development, including its proximity to the waste arisings, need to be assessed in the round.

(ii) Details and impacts

17. Arisings and transportation impacts It was established at the hearing that the arisings to be composted would comprise predominantly a mixture of waste wood and various liquid wastes. A schedule supplied by the appellant lists the possible waste streams that might be targeted, although the final list would be subject to discussion and final agreement with the licensing authority, the Environment Agency. C&D and C&I waste would provide sources for the waste wood to be composted and wood products recovered from 'non-inert landfill' might also be used. These are both areas where there is a shortfall of capacity in waste management terms and where helping to reduce that shortfall would meet Core Strategy Policy WCS1. The likely contributions of these and of the municipal waste sector in tonnage terms have not been quantified.

18. In terms of the origins of the waste, the site is close to the County boundary and the Supporting Statement indicates that the waste would come from waste management companies within Warwickshire, as well as Leicestershire. Moreover, based on the experience of the appellant's composting plants elsewhere, notably the one at Arthington Quarry, Leeds, it is expected that the majority of the waste would be sourced from within a 20 mile radius of the composting site. Applied to the Fenn Lane site, that would encompass large parts of the West Midlands conurbation. On that basis, while the plant might fulfil a significant regional scale role in waste management terms, its contribution to Leicestershire's needs and its targets could be expected to be lower than would be the case were it to be more centrally located within the County.

19. On the related sustainability point, a 20 mile radius implies significant HGV mileage, particularly as many of the potential sources of the waste, the major urban areas, lie within the outer parts of that circle. As I concluded earlier, this extent of travel would be contrary to the first criterion of Core Strategy Policy WCS14. Seen overall, and notwithstanding the proximity of the site to Leicestershire's lorry route network, which would limit the impacts along those stretches within any one journey, these movements would have significant implications for the environment and residential amenity. The effects would be

both local, in terms of noise, air pollution and visual intrusion, and global, in terms of greenhouse gas emissions.

20. Regarding this travel, it seems to me that the Arthington Quarry site enjoys a closer relationship with Leeds (and other parts of the Leeds/Bradford conurbation) than does the Fenn Lane site to Leicester and other major urban areas. The former is significantly closer to the built up area of Leeds, and the likelihood is that the HGV mileages involved would be substantially lower.

21. The appellant considers that the consequences of a 20 mile radius for the sourcing of the waste to be handled at Fenn Lane would be offset by the fact that the composting product would be applied to farm land within a five mile radius of the site. This is said to be an important element of the economics of the operation. However, while it is stated that there is significant interest amongst local farmers, no written confirmation of this was put before the hearing. But even were this local use to be confirmed, from the evidence, the likelihood is that, overall, the HGV distances travelled would be considerable.

22. Access to the site The final connection to the site would be via a private access road linking to Fenn Lane. Following the advice of the highways authority, this would necessitate sight line improvements at the junction, to be created either through the cutting back of vegetation on the south side of the junction or, under Option B, through the realignment of Fenn Lane at this point.[1] The first option would involve privately owned land, the second, land that is owned by the authority. From my own use of this junction, I have no reason to doubt that such works would be necessary on highway safety grounds. From my scrutiny of the plans and from my site inspection, it seems to me, however, that the Option B works would be likely to impinge to some degree upon a tree belt to the north of the present junction, leading to some loss, or cutting back, of those trees. I return to this question later in this decision.

23. The highways authority has no objection to the proposal based upon the number of highway movements, subject to the imposition of conditions. I note, however, that, in addition to the Fenn Lane access, it has also drawn attention to the need to improve the junction of Fenn Lane with the A444. While no actual details of what is required were provided at the hearing, the collective view of the parties was that these works would be minor ones, designed to improve the turning radius at the left hand exit onto the A444. From my inspection and use of that junction, I consider that such works would be necessary to allow lorries to negotiate this corner without over-running the grass verge. As with the works at the Fenn Lane junction, I am satisfied that this could be achieved through a Grampian planning condition.

24. Landscape impacts Notwithstanding the presence of the extensive Motor Industry Research Association (MIRA) vehicle proving ground a short distance to the south east, the immediate setting to the appeal site is countryside with blocks of woodland punctuating farmed land. The appeal site lies between two such blocks (Lindley Wood and Rowden Gorse) and is thus largely concealed from public view. It is proposed that there would be a reinforcement of the present mound that runs just inside the site frontage, thereby screening off

[1] Option B plan forming Appendix B to the Appellant's Hearing Statement and Summary

views of the operational areas from the access road that runs alongside, and it is understood that trees within the site would be retained. I consider that the development itself would have a limited impact upon the landscape.

25. I reach the same conclusion in respect of the proposed upgrading of the access track. Subject to the details, which would include passing places, I am satisfied that an acceptable level of upgrading could be secured through the imposition of a planning condition. It seems to me that the main, public, impact would be in terms of the Fenn Lane junction, were the Option B improvements to be needed, and were this to result in any substantial loss of trees. Were the latter to be the consequence, this would have a locally adverse effect upon the character of this rural road and hence upon this local part of the countryside.

26. The proposals provide for the compost product to be stored for a period of months on farmland, to allow it to mature, prior to being ploughed into fields as a fertiliser/soil conditioner. While the storage (and subsequent spreading) of this material would need to be controlled by means of an environmental permit, I consider that the visual impact of the storage would be in line with other farming activities and not obviously out of place in the countryside.

27. The local environment The appellant acknowledges that the proposed operations have given rise to concerns about potential odour, dust, bio-aerosols, noise and traffic but maintains that it is these feared impacts that justify the use of a more dispersed location. However, given that this is not a 'conventional' green waste site, in respect of which the local authorities are likely to have built up much experience, and also that this operation would be much bigger than any other composting plant in Leicestershire, it seems to me that there is potential for unforeseen impacts, notwithstanding the controls possible through planning conditions and environmental permitting.

28. In my view, that risk would apply, in particular, in respect of odour. PPS23 *Planning and Pollution Control* states at paragraph 10 that 'pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level'. However, it is not yet clear what those lowest practicable levels would be in this case. The information presented cites numerous waste streams, falling into over 30 categories as described in the European Waste Catalogue. As the appellant's Odour Management Plan describes, were the composting process to be operated under sub-optimal conditions, then unpleasant odours could occur. Based upon the scale of this operation, and with such a spread of waste streams, the possibility of such incidents could not be excluded.

29. While there are relatively few people living within 1km, the nearest village Fenny Drayton is some 1.2 km distant, and the MIRA vehicle proving ground, a source of local employment, is just 0.7km away at its closest.[2] If odours were released, and were local weather conditions to allow, this could be a source of significant discomfort to local people. Minimisation of such risks would be dependent upon continuing good management within the context of a waste management license. That license would specify the acceptable waste

[2] Statement of Common Ground

streams which might differ in detail from those envisaged in the planning application.

30. Regarding bioaerosols, I note that there is some evidence to show that concentrations of these may exceed background levels at distances greater than the 250m prescribed by the Environment Agency as the limit beyond which a specific bioaerosol risk assessment is not required. However, according to the Health and Safety Executive research report No.130 (cited by the appellant) there is no published evidence to show that exposure to bioaerosols associated with composting facilities causes respiratory ill health at distances of 200-250m, or that slightly greater than background aerosol levels represent a significant excess risk. Therefore the 250m 'limit' remains in place.

31. In this case, the closest dwelling is Rowden Cottage which is just beyond the 250m threshold. While the distance cited in the SoCG is 220m, the former figure is the distance between the dwelling and the 'composting site boundary' which is the area within the overall site where the storage and other operations would take place. This follows the policy applied by the Environment Agency which has confirmed that there is no need for a bioaerosol risk assessment.

32. Based upon the evidence provided, I have no reason to think that the health of local residents would be put at material risk. That arises from a combination of distance and, in the case of Rowden Cottage and other dwellings to the south east, from screen provided by Rowden Gorse. In addition to blocking direct views, the dense tree foliage would be likely, in my view, to intercept and absorb bioaerosols.

33. Dust from the operations would have the potential to cause significant environmental effects but I am satisfied that this would be amenable to control following measures on the lines of those set out in the Dust Action Plan.

34. Regarding operational noise emissions, these would arise from the use of the shredder and other plant within the site itself and from lorries and tractors/trailers entering and leaving the site. I believe that potentially the most intrusive noise would be from the shredder. However, from the figures presented, which have not been seriously disputed by the planning authority, I am satisfied that noise emissions would not be unacceptable and that the development would be able to meet the terms of the planning condition that was agreed between the parties. That condition would set a 5dB(A) limit above the background level.

35. My **conclusion** on the second issue is that this development would have significant adverse impacts in terms of the transportation of waste and its environmental consequences, that its landscape impact would be limited (one potential exception relating to the loss of trees at the Fenn Lane junction) and that there is some possibility of adverse impacts upon the local environment, in particular in respect of odour. On the last of these, I reach that view notwithstanding the Environment Agency's letter of 4 May 2010 stating that it has no objection to the proposal for an open composting site. Based on the information that is available to me, my conclusion is that those potential local environmental impacts could be limited but not necessarily eliminated through the imposition of environmental controls. Finally, I am satisfied that it would be possible to create a safe access at the Fenn Lane junction and to achieve the

required improvement at the junction between Fenn Lane and the A444; this could be secured through planning conditions.

(iii) The Overall Balance

36. In the context of Leicestershire this would be a large scale composting operation, one significantly larger than any of the existing sites. While this would involve open-windrow composting, the technique that is used at all but one of the present official sites, it would differ from them in ways other than in terms of scale. First, it would cater for a much wider range of waste types than do the present operations and, secondly the waste would be likely to come from a significantly greater distance.

37. On the positive side, the scheme would contribute to Leicestershire's capacity needs, and in so far as it would be able to cater for waste fractions such as Construction and Demolition waste that would otherwise go to landfill, it would drive waste management up the waste hierarchy. In principle it would also provide capacity for a wide range of industrial waste streams, subject to the approval of the Environment Agency.

38. Such benefits would extend to a wider area than just Leicestershire – based upon the declared 20 mile radius and, subject to where the waste handling contracts were secured, the development would have a 'sub-regional' role that would extend to parts of the West Midlands conurbation. While, as a generality, many waste plants import materials from neighbouring authorities, this effect would be likely to be magnified in this case, first because the plant would be close to Leicestershire's edge and secondly because of the extent of the urbanisation on the far side of that boundary.

39. In terms of the Core Strategy, while the development would accord with the strategic aims of Policy WCS1, for the above reasons, the likelihood is that only some of the capacity would be available to Leicestershire. At the same time the development would be likely to be dependent upon substantial lorry mileages which would be contrary to the first criterion of Policy WCS14 and the general principle of reducing greenhouse gas emissions. As I have found earlier, I reach that conclusion notwithstanding the appellant's stated intention to apply the matured compost to fields close to the composting site (para.21). While an existing composting plant close to Leeds has been cited as an indication of how the Fenn Lane site might operate, my own limited comparison suggests that the former is substantially better related to urban areas that would generate much of the waste to be processed, involving significantly lower HGV mileages.

40. I turn now to the proposed countryside location and to the tests that are needed to justify it. In the past there has been a pattern of allowing open windrow sites in countryside locations and the policies of the Core Strategy provide for this for appropriate cases. I agree that, following the criteria of Policy WDC5, this is a development requiring a significant land area that would be difficult to accommodate within the urban areas, in both viability and environmental terms (criterion (i)). Moreover, there would be limited harm in landscape terms (iii). However, as the Arthington Quarry example shows, it does not necessarily follow that the alternative to an urban location is a site in the countryside that is so relatively remote from the main urban centres.

41. In terms of the overall balance, the development would provide additional waste management capacity and, to the extent that it would handle waste streams such as Construction and Demolition Waste that would otherwise go to landfill it would drive waste up the waste hierarchy. In these respects it would be in accord with PPS10 and Core Strategy Policy WCS1. Against that it would be contrary to: the first criterion of Policy WCS14 in that, with its 20 mile radius for the collection of waste, the site would be remote from a significant proportion of the arisings on which it would depend; the intentions of Policy WCS4, as set out in paragraph 6 above; and, because of the environmental consequences of that remoteness, the test of Policy WCS5.

42. PPS10 states at paragraph 2 that there are two ways whereby 'positive planning' can play 'an important role in delivering sustainable waste management', the second of which is 'by providing sufficient opportunities for new waste management facilities of the right type, in the right place and at the right time'. In my view, the site's relative remoteness from the larger urban areas, and the transport consequences that stem from this, indicate that the proposed facilities would not be in the right place. While there may be merit in the principle of 'a more dispersed location' and while the facilities would involve previously developed land, my **overall conclusion** is that, following Policy WDC5, an overriding need for the development at the proposed location has not been demonstrated and that this appeal should be dismissed. That conclusion is reinforced by the uncertainties surrounding this proposal in terms of odour emissions, which I addressed under the second issue.

43. In reaching my decision, I have taken all of the other matters raised into account, including the concerns raised by local residents. Regarding the appellant's reference to PPS10, and quantitative and market need, I have found that, in important respects, the proposals are inconsistent with the recently adopted Core Strategy. Moreover, while I note the content of the PPS regarding the role of the pollution control authorities, in respect of odours it is as yet unclear what the 'lowest practicable level' would be in this case. I also acknowledge the potential benefits of the compost product and the appellant's preparedness to set up a local liaison group committee in respect of the MIRA operation. However, these additional considerations do not outweigh my objections to this proposal.

Chris Gossop

Inspector

APPEARANCES

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INTERESTED PERSONS:

Cllr Ivan Ould	LCC Cabinet/ward member

DOCUMENTS

1. Letters of notification
2. File containing additional reference material: Environment Agency letter dated 4 May 2010; Leicestershire and Leicester Waste Development Framework – Core Strategy and Development Control Policies up to 2021; East Midlands Regional Waste Strategy (2006)
3. Letter from Environment Agency dated 15 December 2009 in respect of bioaerosol risk assessment
4. Letter from Steve Quartermain (CLG) plus question and answer advice concerning revocation of Regional Strategies
5. Appellant - Response to consultation queries
6. Lindley Wood – sales document
7. Composting sites in Leics. (put in by LCC)
8. Composting sites in Leics. Planning applications (put in by LCC)
9. Update (unpublished) of Annual Monitoring Report (LCC)
10. Table (LCC) Capacity of (new) waste management facilities by type (2010)
11. Definitions of Compost and Composting – from Quality Protocol for Compost, Environment Agency, September 2008
12. Nutramulch Yorkshire Ltd - web site material
13. Arthington Quarry Waste Management License
14. Arthington Quarry - Environmental permit for spreading of compost
15. Closing statements