#### DELEGATED REPORT

## Report considered and agreed by Team Manager, Planning Policy & Development Management

……*Sarah Iles*………….. date ……12 December 2017…

## Report considered and agreed by Principal Planning Officer, Planning Policy & Development Management

……*JAS Patterson*…………….. date …6 December 2017…………

|  |  |
| --- | --- |
| Report by: | **Director of Communities, Economy and Transport** |
| Proposal: | **Proposed amendment of Condition 4 of planning permission WD/782/CM to include the wording 'unless otherwise agreed in writing by the Director of Communities, Economy and Transport' at the end of the condition.** |
| Site Address: | **Composting Site, Isfield Road, ISFIELD, TN22 5JJ** |
| Applicant: | **KPS Composting Services Ltd** |
| Application No. | **WD/782/CMNM/1** |
| Key Issues: | **Whether the amendment sought is considered to be non-material in its effect** |
| Contact Officer:  | **Katie Rayner** |
| Local Member:   | **Councillor Roy Galley**  |

**RESOLUTION OF THE DIRECTOR OF COMMUNITIES, ECONOMY AND TRANSPORT:**

**Under the powers delegated to me by the Governance Committee on 4 May 2010, I resolve to refuse the application for a non-material amendment for the reasons set out in the recommendation.**

## CONSIDERATION OF RELEVANT PLANNING MATTERS

## 1. Introduction

1.1 The Planning Act 2008 inserted a new Section 96A into the Town and Country Planning Act 1990. Section 96A (s.96A) allows non-material changes to be made to an existing planning permission. An application under s.96A is not an application for planning permission and therefore statutory consultations and publicity requirements do not apply and any consultation is at the discretion of the Local Planning Authority (LPA).

1.2 In determining non-material change applications, the LPA must have regard to the effect of the change, singularly and cumulatively, and any representations received. The LPA must satisfy itself that the change sought is non-material before granting any s.96A application and in deciding whether a change is non-material it must also consider any previous changes made under any s.96a applications.

## 2. The Site and Surroundings

2.1 The application site is an established outdoor composting facility that receives and processes green waste to produce compost, which is then exported as a finished product. From 2010, the site also began to process wood waste, which is screened and shredded on the site to form woodchip and is exported for use in chipboard and fibreboard manufacture. The site is located in a rural area 0.7 kilometres (km) south of the village of Isfield and 6km north-east of Lewes. It occupies an area of approximately 9 hectares (ha) and is surrounded by farmland and some woodland, including areas of designated ancient woodland to the north and south.

## 3. The Proposal

3.1 The applicant is seeking a non-material amendment (NMA) to alter the wording of Condition 4 (overall site throughput) attached to planning permission Ref: WD/782/CM, which was granted in July 2017. Condition 4 of the above permission currently reads:

The total amount of waste imported to the site, including wood waste, shall not exceed 50,000 tonnes per annum.

Reasons: To enable the County Planning Authority to control the development in the interest of the amenity of the locality, in accordance with Policy WMP25 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Saved Policy EN27 of the Wealden Local Plan 1998.

3.2 The applicant is seeking an alteration to the wording of the above condition to allow for temporary increases in the overall permitted throughput of the site in exceptional circumstances, subject to written approval and therefore seeks a revision to the wording of Condition 4, as follows:

The total amount of waste imported to the site, including wood waste, shall not exceed 50,000 tonnes per annum, *unless otherwise agreed in writing by the Director of Communities, Economy and Transport.*

## 4. Site History

4.1 For the purposes of this application, the relevant planning permission relates to Ref: WD/782/CM, which was granted on 21 July 2017, to increase the annual site throughput of wood waste from 5,000 to 10,000 tonnes per annum, whilst remaining within the site’s total permitted annual tonnage of 50,000 tonnes, as secured by Condition 4. In order to facilitate the increase in wood waste operations on the site and improve the overall operational efficiency of the facility, permission was also granted to reconfigure the existing yard and storage areas to the east of the active composting pad. These works are yet to be undertaken but comprise the removal of the third overflow water storage lagoon and an extension of the existing hardstanding, to enable the creation of a formalised wood waste storage and processing area, which will be enclosed within 3 metres high concrete push walls. The displaced storage lagoon would be relocated further to the east of the site in the form of a pond and reedbed wetland treatment system.

## 5. Consultations and Representations

5.1 Wealden District Council: No observations received.

5.2 Isfield Parish Council: No observations received.

5.3 Local Representations: None received.

**6.** **The Development Plan and other policies of relevance to this decision are:**

6.1 East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013: WMP3b (Turning Waste into a Resource), WMP6 (Safeguarding Waste Sites), WMP7a (Sustainable Locations for Waste Development, excluding Land Disposal), WMP20 (Community Involvement and Benefits), WMP22 (Increased Operational Capacity within the Site Boundary of Existing Waste Facilities), WP25 (General Amenity) and WMP26 (Traffic Impacts).

6.2 East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan, February 2017: Policy SP6 (Safeguarding Waste Sites) and Map 21 SP-WCA/C Boathouse Farm, Isfield.

The East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan sets out the site specific policies for the management of waste and minerals in the Plan Area up to 2026.

6.3 National Planning Policy Framework (NPPF) 2012:

The NPPF does not change the status of the Development Plan as the starting point for decision making but it does constitute guidance as a material consideration in determining planning applications. At the heart of the NPPF is a presumption in favour of sustainable development. Whilst it does not contain specific waste policies regard should be had to the NPPF policies as far as relevant.

6.4 National Waste Planning Policy (NPPW) 2014:

The NPPW sets out detailed waste planning policies and regard should be had to them when planning authorities seek to discharge their responsibilities to the extent that they are appropriate to waste management.

**7. Considerations**

**Whether the amendment sought is considered to be non-material in its effect**

7.1 Applications of this type are not planning applications. The National Planning Practice Guidance advises that there is no statutory definition of ‘non-material’ because it is dependent on the context of the overall scheme. The LPA must be satisfied that the amendment sought is non-material in its effect in order to grant the application and the procedure allows for new conditions to be imposed to the original planning permission or for existing conditions to be removed or, as in this case, to be altered.

7.2 Any decision made relates only to the amendment sought and, if approved, the decision does not constitute a reissue of the original planning permission, which still stands. The decision, together with any other non-material amendments which have been approved, should all be read together.

7.3 The applicant is seeking a non-material amendment to Condition 4 of the extant planning permission, which currently restricts the sites overall throughput of wood and green waste, to 50,000 tonnes per annum. The amendment sought is to include wording to allow, subject to written agreement, flexibility within the Condition to deal with an increase in the overall permitted throughput of the site in exceptional circumstances.

7.4 The applicant has advised that given the nature of the operations the amount of waste material coming through the facility varies on a monthly basis. Subsequently, during the months of August and September of this year, the applicant reported that the monthly figures were significantly higher than previous years. As suggested within the application the reasons for this increase are linked to the good growing season, creating additional green waste and the temporary closure of the Veolia in-vessel composting facility at Whitesmith, which resulted in its green waste being re-directed to KPS. This application has therefore been made on the basis that the instances described above are ‘one-off’ occurrences and in combination are likely to lead to the site exceeding their permitted overall throughput for this year. Under the provisions of Condition 4, the exceedance of the total throughput of the site is prohibited and by proposing a change to the wording of the Condition, exceptional changes in tonnage could be agreed in writing. However, this does not imply that any request by the applicant to increase tonnage would necessarily be approved, as any proposal would need to be considered on its merits and with reference to the reason for the Condition.

7.5 Notwithstanding the above, on review of the amount of waste re-directed to the site during the temporary closure period of the Veolia facility in comparison to that received from Veolia throughout the summer period of this year (April to October), it has transpired that there is minimal variation in the amount of waste received. This has therefore indicated that rather than a one off occurrence triggering the exceedance of the site’s overall permitted tonnage, the site has over a number of months continued to take a significant amount of waste this year. Accordingly, the instances discussed in the proposal cannot be considered exceptional and the sites exceedance of tonnage appears to be a direct result of the applicant allowing increased throughput. In light of this, the information provided in the current non-material amendment application is misleading and the exceedance of tonnage at the site is not solely related to the temporary closure of the Whitesmith facility, or circumstances discussed within the application.

7.6 Further to the above, as a result of the proposed alteration to the wording of Condition 4 the applicant would be able to seek the written approval to increase the sites throughput, and whilst the implementation of this would be subject to approval by the County Planning Authority, an increase in the overall throughput of the site was not considered as part of the proposals under the extant permission (Ref: WD/782/CM). It is therefore considered that in allowing flexibility within Condition 4 to vary the tonnage, albeit for a temporary period, it would effectively enable the applicant to extend the scope of the works beyond that approved in the extant permission. As a consequence, this proposal raises new issues and material considerations, the potential effects of which have not been assessed within the context of the locality. As such the proposed alteration is not considered to be non-material in its effect.

7.7 Overall, the proposed alteration to the wording of the condition in this instance would not be acceptable as a non-material amendment. The applicant has not sought to reduce the volume of waste imported to the site and the alteration of the wording of the condition is considered to effectively extend the scope of the works beyond that approved under the extant planning permission for the site. This could increase the impact of the development in the locality and diminish the reason for the provision of Condition 4 in the first instance.

**8. Conclusion and reasons for approval**

8.1 This application has been considered in accordance with s.96A of the Town and Country Planning Act 1990 and the National Planning Practice Guidance.

8.2 The proposal is for an alteration to the wording of Condition 4 attached to planning permission Ref: WD/782/CM, to allow for flexibility to increase the site’s overall permitted throughput in exceptional circumstances. It is considered that the increased throughput at the site is not solely related to the instances as detailed within the application and the site’s exceedance of tonnage appears to be a direct result of the applicant allowing increased throughput. Moreover, the proposed alteration to Condition 4 is considered to effectively extend the scope of works beyond that approved and therefore the potential effects of the proposed changes have not be assessed within the context of the locality. As such the proposal conflicts with the reason for the provision of Condition 4 and cannot be considered non-material in its effect.

8.3 In determining this application, the County Council has worked constructively with the agent. The overall approach in dealing with this application has been taken positively and proactively in accordance with the requirement in the NPPF, and as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

**8. Recommendation**

8.1 That the application for a non-material amendment to alter the wording of Condition 4 attached to planning permission Ref: WD/782/CM, approved on 21 July 2017, is refused and no approval is issued for the following reason:--

1. The proposed alteration to the wording of Condition 4 is considered to effectively extend the scope of the works beyond that approved under the extant planning permission for the site (Ref: WD/782/CM) and therefore the potential effects of the proposed changes have not been assessed within the context of the locality. As such the proposal conflicts with the reason for the provision of Condition 4 and can not be considered non-material in its effect.

RUPERT CLUBB

Director of Communities, Economy and Transport

13 December 2017

## BACKGROUND DOCUMENTS

Application file WD/782/CMNM/1

Planning permission file WD/782/CM

The Development Plan

National Planning Policy Framework 2012

National Planning Practice Guidance

National Waste Planning Policy 2014