

<b>Planning Reference No:</b>	10/2251N
<b>Application Address:</b>	WHITTAKERS GREEN FARM, PEWIT LANE, BRIDGEMERE, CW5 7PP
<b>Proposal:</b>	Application to Vary Planning Conditions 5 and 6 on Planning Permission 7/2007/CCC/7, in order to vary the description of permitted waste and specify a percentage of contaminated waste allowed.
<b>Applicant:</b>	MR F.H RUSHTON
<b>Application Type:</b>	Variation of Condition
<b>Ward:</b>	DODDINGTON
<b>Constraints:</b>	Open Countryside

## Note

The applicant has applied to vary conditions 5 and 6 of planning permission 7/2007/CCC/7. A second identical application to vary the conditions of 7/2009/CCC/1 has also been submitted and appears as a separate item on this agenda.

## REASON FOR REPORT

Due to the site area, this application is not considered to be a major waste application; therefore the decision would have been delegated by the Head of Planning and Housing to officers for decision. However, this application has been called in to the Southern Planning Committee by Councillor Walker so that the application can be reported to them for determination.

Councillor Walker provided reason for the call-in; *I believe the Committee should discuss these changes in the light of possible pollution resulting from them (planning policies BE.1 and NE.17).*

Due to the strategic nature of this site, and the high level of public interest, this application has been referred by the Head of Planning and Housing from the Southern Planning Committee to the Strategic Planning Board for determination.

## DESCRIPTION OF SITE, CONTEXT AND SITE HISTORY

The application site is an existing green waste composting facility located within the open countryside approximately 8.5 kilometres south east of Nantwich and a kilometre south of Hunsterson. The surrounding countryside is slightly undulating, divided into medium sized fields utilised for arable production. There are a number of isolated properties and farm units widely spaced surrounding the compost site. The nearest residential property; Fox Moss is 230 metres to the north east of the site, with Pewit House a further 200 metres away to the north east. The Uplands lies 440 metres and Whittakers Green Farm is located 470 metres to the north of the

application site. Woodend is 350 metres to the east of the site, and Woodfall Hall Farm is 670 metres to the south west.

Hunsterson Footpath No. 22 lies immediately on the eastern and southern boundary of the compost site.

The site has been operational for approximately five years. The original application (7/P04/0124) granted the use of the land for the composting of green waste on 11<sup>th</sup> August 2004. The permission enabled the applicant to produce compost for use as a soil improver to assist the farm to become organic. The compost produced as a soil improver and for sole use on the applicant's farm, cannot be exported; this was controlled by condition. The applicant's farm amounts to an 80-hectare farm which is in a nitrate vulnerable zone, which restricts the amount of nitrogen and hence compost which can be applied to the land.

*Condition 9 states; only those wastes specified in the application, namely 'green' garden wastes, shall be imported to, deposited, processed or stored at the site.*

*Condition 10 states; any material contained within the waste deliveries which falls outside of the above description shall be removed from the 'green' waste, and stored in a designated covered container, prior to removal from the site.*

Application 7/2006/CCC/11 to vary condition 13 of permission 7/P04/0124 to allow the importation of green waste on Bank Holidays except for Christmas was approved on 6<sup>th</sup> December 2006. The conditions attached to the initial permission with the exception of pre-commencement conditions which had been satisfied were replicated within this consent. Conditions 9 and 10 above became 5 and 6 on the new consent.

Application 7/2007/CCC/7 to provide an extension to the existing green waste composting facility, doubling the size of the concrete storage pad, was approved on 25<sup>th</sup> June 2007. Previous conditions were again replicated.

Application 7/2008/CCC/7 to create a new access off Bridgemere Lane and track to join up to existing tracks at Whittaker's Green Farm, and thereby the compost site and hence avoid the use of Pewits Lane, was approved 30<sup>th</sup> March 2009, subject to a legal agreement regarding routing.

Application 7/2008/CCC/9 for a variation of Condition 14 of permission 7/P04/0124 to increase the green waste vehicle movements from 10 movements to 40 a day was refused permission 7<sup>th</sup> July 2008.

The decision to refuse was appealed (Appeal ref: APP/A0645/A/08/2080691) and the appeal was dismissed on 27<sup>th</sup> October 2008. The reasons for the appeal dismissal were that the increase in vehicle movement would generate a level of traffic which would be unsuitable on the local highway network and which would harm the safe movement of traffic on the local roads, and it would also have an unacceptable impact on local communities and the local environment with regards to increased noise and disturbance contrary to Policy 28 of the WLP.

Application 7/2009/CCC/1 was a resubmission to vary Condition 14 of permission 7/P04/0124 to increase the number of vehicle movements, differing from the previously appealed and refused application by including seasonal variations in maximum average vehicle movements, but less vehicles than the refused application, with restricted hours of delivery to avoid school delivery and pick-up times and to encourage an alternative route. The application was approved 11<sup>th</sup> March 2009.

Application 09/1624W was a retrospective application for the improvement and extension of an existing agricultural track for use in association with agricultural and green waste compost operations at Foxes Bank and Whittakers Green Farm. This permission regularised development that took place to extend the track approved by 7/2008/CCC/7 and to join existing tracks. The application was approved on 21 October 2009.

#### Enforcement Appeal; APP/Z0645/C/09/2098882

An enforcement notice was served by Cheshire County Council on 30 January 2009, alleging that without planning permission, an unauthorised change of use had occurred in that an unauthorised Waste Transfer Station was being operated on the land in addition to the permitted green garden waste composting activities. Despite the condition limiting the import of waste to 'green' garden wastes, it was apparent a considerable proportion of mixed waste was being brought onto the site.

The operator appealed against this enforcement notice and following a hearing, the appeal was dismissed but time periods for compliance were extended in a decision letter dated 7<sup>th</sup> October 2009.

The appellant then appealed against the above appeal decision at the high court on 2 November 2009. Part of that appeal was allowed, as the High Court Judge considered that the Inspector had failed to give any or any adequate reasons for her conclusion that a material change had occurred.

For this reason the Inspector's decision should not be allowed to stand and that the decision should therefore be remitted to the Secretary of State. As such, the court has ordered that the appeal should be decided again. This does not necessarily mean that the original decision will be reversed. The current situation is that the decision is open for re-determination under Rule 17 of the Town and Country Planning (Enforcement) (Hearing Procedures) England). This appeal is still lodged with the Planning Inspectorate.

#### **DETAILS OF PROPOSAL**

The applicant has applied to vary conditions 5 and 6 of planning permission 7/2007/CCC/7. A second identical application to vary the conditions of 7/2009/CCC/1 has also been submitted and appears as a separate item on this agenda.

Condition 5 of planning permission 7/2007/CCC/7 states that:

*“Only those wastes materials specified in the application, namely ‘green’ garden waste, shall be imported to, deposited, processed or stored at the site.”*

The applicant seeks to vary Condition 5 to read:

*“Only those materials identified by the Environment Agency as constituting green waste and specified in the European Waste Catalogue as:*

*02 01 03 – Plant Tissue Waste*

*02 01 07 – Waste from Forestry*

*20 02 01 – Biodegradable Waste*

*Shall be imported to, deposited, processed or stored at the site.”*

Condition 6 of planning permission 7/2007/CCC/7 states that:

*“Any material contained within the waste deliveries which falls outside of the above description shall be removed from the ‘green’ waste, and stored in a designated covered container, prior to removal from the site.”*

The applicant seeks to vary Condition 6 to read:

*“Any material contained within the waste deliveries which falls outside of those identified in condition 5 above shall be removed and stored in a designated covered container, prior to removal from the site. At any one time these other materials shall not amount to anymore than 5% by tonnage of the total waste materials held on the site.”*

## **POLICIES**

The Development Plan comprises of The Cheshire Replacement Waste Local Plan 2007 (CRWLP) and The Borough of Crewe and Nantwich Adopted Replacement Local Plan 2011 (CNLP).

The relevant Development Plan Policies are:

### ***Cheshire Replacement Waste Local Plan (CRWLP)***

Policy 1: ‘Sustainable Waste Management’

Policy 2: ‘The Need for Waste Management Facilities’

Policy 12: ‘Impact of Development Proposals’

Policy 14: ‘Landscape’

Policy 17: 'Natural Environment'

Policy 18: 'Water Resource Protection and Flood Risk'

Policy 20: 'Public Rights of Way'

Policy 23: 'Noise'

Policy 24: 'Air Pollution; Air Emissions Including Dust'

Policy 25: 'Litter'

Policy 26: 'Odour'

Policy 28: 'Highways'

***Borough of Crewe and Nantwich Adopted Local Plan 2011***

BE.1 Amenity

BE.4: Drainage, Utilities and Resources

NE.2 Open Countryside

NE.5 Nature Conservation and Habitats

NE.9 Protected Species

NE.12 Agricultural Land Quality

NE.17: Pollution Control

RT.9: Footpaths and Bridleways

**Other Material Considerations**

Waste Strategy (2007)

***National Planning Policy and Guidance***

PPS 1: Delivering Sustainable Development

PPS 7: Sustainable Development in Rural Areas

PPS 9: Biodiversity and Geological Conservation

PPS 10: Planning for Sustainable Waste Management

PPS 23: Planning and Pollution Control

## **CONSULTATIONS (External to Planning)**

**The Strategic Highways and Transport Manager** has not raised an objection to the proposal as it can be accommodated within the vehicle numbers (20) permitted to use the site daily.

**The Borough Council's Environmental Health Officer** notes that the requested categories of waste have the potential to contain animal and food wastes and that these are not acceptable and should not be imported into the site. The only acceptable wastes on the site should comprise wood and plant tissue. Concerns raised about the potential of odour and vermin should not arise if animal and food waste is not composted, or imported into the site. Nevertheless a specific condition to control odours from non-compostable material should be added if this is not controlled by other conditions.

**The Public Rights of Way Unit** does not object to the proposal. The property is adjacent to Public Footpath Hunsterson No. 22 as recorded on the Definitive Map. It appears unlikely that the proposal would interfere with the public right of way. However, should planning permission be granted, the Public Right of Way Unit requests an informative to be attached to any decision notice, listing the developers' obligations with regards to the public footpath.

**The Environment Agency** has no objection to the variation of conditions 5 and 6 of planning permission 7/2009/CCC/1. Additional comments were sought from the Environment Agency Officer responsible for permitting the site to provide comments with regards to the European Waste Catalogue Codes suggested by the applicant. The EA consider that the waste that is received under these codes would need to satisfy each part of the description, i.e. the waste would have to sit comfortably under each of the three individual 'sections' of the code break down. The codes used under the EA 'Standard permit' issued to the application have been decided nationally, and are therefore deemed acceptable for a composting site to receive, so these may be a good starting point when addressing the code changes on the existing planning permission.

## **VIEWS OF THE PARISH / TOWN COUNCIL**

Doddington and District Parish Council object to the application. They highlight the ongoing concerns of the residents of the Parish which include the detrimental effect the composting site has had on the local area. Their principle concerns have been the hazards of increased heavy traffic going to and from the site, and the detrimental effect on the local environment, particularly the impact of the importation of large quantities of non-compostable material.

Hatherton and Walgherton Parish Council object to the application. There is particular concern around the increased heavy traffic on local roads, which would be necessary to remove the additional waste received on site. The Parish Council consider that the site is becoming more like a waste transfer site than the type of operation that was approved in the original application.

## **OTHER REPRESENTATIONS**

26 letters of objection from local residents have been received expressing concerns towards this application.

The main issues which are raised include:

- The application is seeking to do what the Planning Inspector into the recent Enforcement Appeal found unacceptable. In fact the 5% contamination level applied for is greater than the 4.5% claimed to be on site during the appeal, and shown in the photo evidence.
- Prematurity based on the fact that the enforcement appeal proceedings have not yet been decided as the enforcement appeal is back in the hands of the Planning Inspectorate for redetermination
- The proposal would change the use and scale of the development which is currently permitted for on farm composting to a larger industrial waste transfer station operation which is unsuitable for this location;
- It is intolerable that applications and appeals have allowed this situation to drag on for 2 years;
- Permitting more non-compostable waste would lead to more heavy goods vehicles on local country roads as a result of importing and then removing the non-compostable waste off site;
- 5% of non-compostable waste is too much; in a typical 10 tonne green garden waste collection vehicle 5% would amount to ½ a tonne of 'landfill' material, such a level of contamination is not acceptable;
- Creating a landfill in the open countryside with no environmental controls;
- A 5% limit would be difficult to control and enforce;
- The vast amount of contaminated material is not removed, instead it is shredded and included in the compost resulting in contaminating the land once it is spread;
- There are significant health and environmental risks associated with accepting non-compostable waste (landfill material) which have not been assessed in the application;
- Contrary to the development plan and policies in the CRWLP;
- Cardboard is considered by the EA to be compostable but in food packaging such as pizza cartons often food remains attracting vermin and flies to the site also resulting in malodours waste, no odour management plan is proposed.
- Setting a precedent over other composting site across Cheshire as none of them have these conditions
- The application would have an adverse impact on residential amenity putting an intolerable burden on the roads which are inadequate for the increase traffic this would involve;
- Concerns that non-compostable wastes are being burnt on site.
- Cheshire East will become a dumping ground for unsorted rubbish outside of the Borough as witnessed by the imports of mixed waste from Blackpool.

## **APPLICANT'S SUPPORTING INFORMATION**

A Supporting Planning Statement dated March 2010 accompanies the application.

## OFFICER APPRAISAL

### Condition 5; Types of waste – definition of green waste

The original 2004 application sought the composting of green waste for use as a soil improver within the farm unit. Green waste composting was further defined within the application as consisting of garden, park and roadside, including tree trimmings. The application was not for a general commercial compost facility. The condition limiting the type of waste considered suitable attached to that permission was a standard condition that referred to green garden waste. Such a condition has been used on similar sites throughout the County and has not proved contentious elsewhere. The Council, originally the County Council has interpreted the condition as relating to garden type waste irrespective of the wastes source and including as acceptable green material from those locations cited in the original application namely garden, park and roadside.

This condition was not appealed or questioned by the operator, nor have any of the subsequent permissions which have been granted, each contain the same condition. The applicant is now claiming that the wording of the condition does not reflect the permitted use or waste types being imported and has suggested alternative wording through a Section 73 application to vary condition 5 to now read;

*“Only those materials identified by the Environment Agency as constituting green waste and specified in the European Waste Catalogue as:*

*02 01 03 – Plant Tissue Waste*

*02 01 07 – Waste from Forestry*

*20 02 01 – Biodegradable Waste*

*Shall be imported to, deposited, processed or stored at the site.”*

Enforcement action was taken against the operator of Whittakers Green Farm because significant quantities of non-green waste were being brought onto the site contrary to the conditions of the relevant permissions. Whilst some of the imported waste may well have been bio-degradable, quantities of non-degradable wastes including, plastic's, foam furnishing, fabric, cans, metal, rubble and glass were also present. Whilst some of this waste has been removed and exported from site, a proportion is shredded and ultimately spread on the land. The bio-degradable element includes animal faeces, food scraps and paper and cardboard often with inks, waxed and plastic coatings. This enforcement case has yet to be finally determined, however, the applicant now seeks to align the definition of acceptable wastes to those being imported.

The above three numbered categories of waste are lifted from the sixteen categories included within the sites license issued by the Environment Agency. However, there are a number of waste types within the above listed categories from the European Waste Catalogue, which from a planning and pollution control point of view would not be considered to be acceptable. The categories include fairly general descriptions of



waste types and or sources, for example food processing wastes, horticultural waste, civic amenity waste and parks and garden waste. Such types of waste or sources could consist of a very wide range of wastes, they are ambiguous and certainly do not assist in defining more clearly the type of waste that would be acceptable for on-farm composting. Also within these categories is a general description; green waste, which is exactly the general description the applicant is now seeking to avoid.

Mixed source waste from civic amenity sites, food processors and park bins are likely to contain unacceptable materials that could generate odours, attract vermin and pests and present a health risk. Within the bio-degradable content are likely to be rotting food, animal faeces and quantities of paper and cardboard contaminated with inks, plastics and waxes.

Without considerable refinement the above definition is not acceptable and does little to clarify the wastes that should be accepted on site.

The Association for Organics Recycling, which is the body overseeing the quality and accreditation of compost from sites such as this, considers composts containing contaminants such as cardboard in quantity should only be used for land reclamation and is not suitable for farm application. Application of compost derived from the above categories would appear to be contrary to the farms stated aims of achieving and holding organic farm status.

Cheshire East Council's green/garden waste collection excludes cardboard. Cardboard is collected separately and sent on for recycling. Therefore there should be no cardboard in the source supply to the farm from Cheshire East Council or from local landscapers. Whilst cardboard and paper should be more sustainably used through recycling schemes, which are higher up the waste hierarchy, clean brown cardboard can form a small useful balancing component in composting, particularly where the primary source of material is wet, for example grass cuttings.

Whilst it is acknowledged that it would be appropriate to amend the wording of the condition to be more defined, it is considered that the wording suggested by the applicant could be more ambiguous, give rise to an unacceptable impact on residential amenity, present health and safety concerns especially with regards to animal faeces and excrement and could result in pollution protection problems.

As noted earlier the present definition has not with the exception of this site proved problematic. It may however be appropriate to condition such permissions with

*Only waste materials consisting of green garden type waste originating from gardens, parks, cemeteries and highway verges, specifically plant tissue including cuttings/trimmings from trees, hedges and shrubs, vegetation including weeds, crops and grass, and also paper and cardboard collected as part of the Local Authority's green kerbside waste bin collection up to a maximum of 5% by volume, but excluding litter bin contents unless pre-sorted, kitchen waste and wastes including any produce of animal origin, shall be imported to, deposited, processed or stored at the site.*

This should provide sufficient clarity for on farm compost facilities.

## **Condition 6 to allow a contamination level of 5% for imported waste**

It is appreciated that the import of green waste into an on-farm composting site is likely to contain from time to time, material that has inadvertently been mixed in and is therefore contrary to condition 5. The odd flower pot, plant label, piece of rubble, crisp packet or drinks bottle are often found within green wastes. None of these items will be compostable and must therefore be removed from the waste and taken off site for appropriate disposal. The present condition 6 covers this eventuality and it is expected that a waste bin or small covered skip is kept on sites for this purpose. Such a small covered regularly emptied bin should satisfy the odour condition required by the Environmental Health Officer.

This condition has been used as a model condition by many waste planning authorities for a considerable time, including all sites in Cheshire East. To date this has not presented any problem.

The applicant seeks the variation of this condition so that a level of contamination is set and the operator knows what level is acceptable and what is not. The operator will then have a clear idea of when the local authority will take enforcement action against the level of contamination. The applicant is seeking a 5% contamination level by tonnage, to be a threshold of acceptance.

As stated above, an enforcement notice was served in January 2009 by Cheshire County Council as it was obvious significant quantities of non-green waste was being brought onto the site in contravention to condition 5, and the amount of waste being sorted and then exported resulted in a change of use to a waste transfer station. The enforcement notice was appealed and evidence prepared and submitted to a hearing.

Some of the photographic evidence used at the appeal will be presented at the meeting, it shows the high proportion of non-compostable waste being brought into the site, it also shows the condition of shredded material, which was not solely green waste, but includes those wastes being applied for by variation of condition 5 above. The County Council considered these levels to be unacceptable as did the Planning Inspector. This evidence is significant because the appellant claimed that the contamination rate was 4.54%; that is less than the 5% now being applied for.

As noted by objectors a 5% level of contamination would equate to half of tonne of unsuitable waste being brought in on every 10 tonne lorry load. There is little confidence that all of the contaminated material would be removed, entailing a high probability that unsuitable and polluting material would be spread over the farm. Objectors have indicated that this is visually obvious already, particularly after the land has been ploughed and prepared for seeding. Even for the material that can be sorted and will be removed from site, the likelihood that vermin and pests will be attracted and odours generated, is significant and likely to adversely affect residential amenity. The additional sorting will introduce additional activity on site with the likelihood that additional bio-aerosol discharges, visual intrusion, dust, odour and noise would be created.

The sorting of such large quantities of material goes well beyond the simple hand removal envisaged by the existing conditions and constitutes development more appropriate to a waste transfer station, such a facility being unsuitable for open countryside. A view also held by the Planning Inspector.

The import of non-green waste and its subsequent export will generate additional and unnecessary traffic movements which will impact on local amenity.

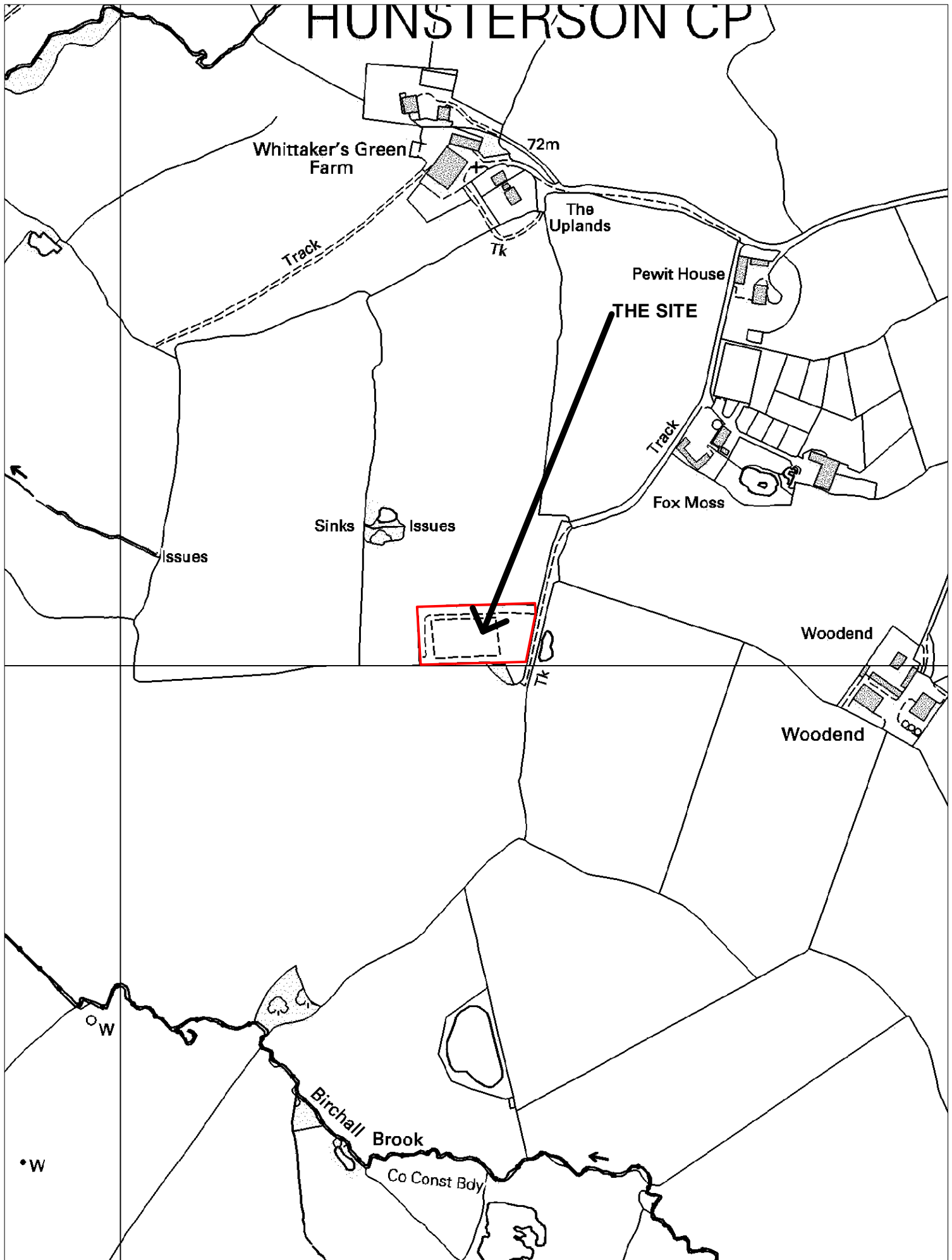
It is your officers view that on-farm compost sites that are selective in terms of suppliers and accept only green garden waste in accordance with their planning permissions should encounter very little unsuitable material. It is considered there is no justification in such circumstances to identify a level of acceptable contamination as this should be virtually nil.

## **CONCLUSIONS**

This application is seeking an amendment to existing conditions that stipulate the type of waste that can be brought onto the site for composting and to identify a level of contamination that is acceptable. The alternative wording suggested by the applicant and based on European Waste Catalogue definitions, reflects the type of waste brought onto the site over the last two years which is the subject of an ongoing enforcement case. The definition includes material and sources that are not considered acceptable for an on-farm composting facility and which are considered likely to cause injury to local amenity. Following considerable discussion an alternative acceptable form of wording to the existing condition 5 is recommended;

It is considered that on-farm composting facilities should be selective in accepting waste onto their sites and that such wastes should strictly adhere to the conditions attached to any planning permission. There should be no contamination of source material and any loads or sources containing contamination should be immediately rejected. The existing condition 6 provides for the occasion when inadvertently items are mixed in with the green waste. It is expected that the quantity of such material will be exceedingly small and it is therefore considered it is not appropriate to set threshold limits of acceptability.

# HUNSTERTON CP



**WHITTAKERS GREEN FARM, PEWIT LANE, BRIDGEMERE, CW5 7F**

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## RECOMMENDATION

It is recommended that condition 5 is reworded to more closely define the type of waste acceptable for composting at the site;

*Only waste materials consisting of green garden type waste originating from gardens, parks, cemeteries and highway verges, specifically plant tissue including cuttings/trimmings from trees, hedges and shrubs, vegetation including weeds, crops and grass, and also paper and cardboard collected as part of the Local Authority's green kerbside waste bin collection up to a maximum of 5% by volume, but excluding litter bin contents unless pre-sorted, kitchen waste and wastes including any produce of animal origin, shall be imported to, deposited, processed or stored at the site.*

*Reason: to define the type of waste allowed at the site.*

It is further recommended that the existing wording of condition 6 remains unaltered and the submitted amendment is refused.

*Reason: the existing and amended condition 5 makes clear the type of waste acceptable on site, the operator should ensure only such waste is imported. Existing condition 6 adequately allows for inadvertent contamination. Allowing a quantity of mixed waste, up to 5% to be imported would have unacceptable impacts on amenity.*