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| Planning Reference No: | 10/2984W |
| Application Address: | Whittakers Green Farm, Pewit Lane, Bridgemere, CW5 7PP |
| Proposal: | Application for the removal of conditions attached to previous consents prohibiting the export of compost from the site. Planning Condition 11 of 7/P04/0124 and Condition 7 on permissions 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1 |
| Applicant: | Mr Rushton |
| Application Type: | Major Waste – Section 73 application |
| Grid Reference: | 369055 345426 |
| Ward: | Doddington |
| Earliest Determination Date: | 13 th September 2010 |
| Expiry Dated: | 3 rd November 2010 |
| Date of Officer's Site Visit: | |
| Date Report Prepared: | |
| Constraints: | Wind Turbine Consultation Area |

SUMMARY RECOMMENDATION:

To instruct officers to contest an appeal against the non-determination of the application.

MAIN ISSUES:

Nature of application

Traffic impact

Potential environmental impact and its assessment

Assessment of suitability in comparison to preferred sites.

REASON FOR REPORT AND NATURE OF APPLICATION

Due to the site area, this application is considered to be a major waste application and should therefore be determined by the Strategic Planning Board in accordance with the established terms of reference.

The applicant has appealed against the non-determination of this application. The decision has therefore been taken from the Board and will be made by the Planning Inspectorate. This report seeks from the Board, an indication of how it would have determined the application, thereby establishing the Council's position at the forthcoming appeal.

DESCRIPTION OF SITE

The application site is an existing green waste composting facility, located within the open countryside, approximately 8.5 miles 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.

The site has a weighbridge and small office and on-site facility building at its entrance. The reception of waste, shredding, composting and storage takes place upon a large sealed concrete pad. Hunsterson Footpath No. 22 lies immediately on the eastern and southern boundary of the compost site.

SITE HISTORY

The site has been operational for approximately five years. The original application (7/P04/0124) was granted for the use of the land for the composting of green waste on 11th 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 is produced as a soil improver and for sole use on the applicant's farm and cannot be exported. This was controlled by condition.

The conditions on all the permissions relating to the composting site state: *No compost shall be exported from the area edged in blue*. The area edged blue is the farm holding. It is very clear therefore that the site is an on-farm composting facility.

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 6th 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.

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 25th 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 30th 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 7th July 2008.

The decision to refuse was appealed (Appeal ref: APP/A0645/A/08/2080691) and the appeal was dismissed on 27th 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 vehicle movements, but less vehicles than the refused application, and included restricted hours of delivery to avoid school delivery and pick-up times and to encourage an alternative route. The application was approved 11th 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 21st October 2009.

Applications 10/1005N and 10/2251N, for a revision to the definition of waste allowed on the site and allowance for a quantity of contaminated waste to be imported were refused permission on 12th November 2010. Both of these decisions have now been appealed and have reference numbers APP/R/0660/C/09/2140836 and 2141878 respectively.

Application 10/4485N was registered on 19th November and seeks to amend the hours of working back to a position prior to the increase in numbers permitted by 7/2009/CCC/1. This application will be brought to the attention of the Board at a future meeting.

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 7th 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 is not allowed to stand and the decision has to be returned 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 now scheduled for a Hearing on 1st February 2011.

DETAILS OF PROPOSAL

The applicant has applied to remove condition 11 of 7/P04/0124 and conditions 7 of planning permissions 7/2006/CCC/11, 7/2007/CCC/7 and 7/2009/CCC/1. All state;

No compost shall be exported from the area edged in blue..... The area edged blue is the farm holding.

The reasons for the conditions are to control the scale of the development, in the interests of residential amenity and to comply with Policy R7 of the Cheshire Replacement Structure Plan, Policies 7 and 12 of the Cheshire Replacement Waste Local Plan, Policy BE1 of the Crewe and Nantwich Replacement Local Plan and Policy DP 7 of the RSS.

These policies seek to protect amenity, promote environmental quality, control the impact of development and ensure correct location of facilities.

The effect of this application would be to allow the export of compost from 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 Regional Spatial Strategy (RSS) has also been considered as it is despite Government intention to abolish it, still at this time part of the Development Plan.

The relevant Development Plan Policies are:

Cheshire Replacement Waste Local Plan (CRWLP)

- Policy 1: 'Sustainable Waste Management'
- Policy 7: 'Sites for Open Air Windrow Composting 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 Bridal ways

Regional Spatial Strategy

EM10: A Regional Approach to Waste Management

DP 7 Promote Environmental Quality

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

PPG 24: Planning and Noise

CONSULTATIONS (External to Planning)

The Strategic Highways and Transport Manager has not raised objections on the grounds that there will be no increase in vehicular movements beyond that approved.

The Borough Council's Environmental Health Officer considers that, regardless of limits on vehicle movements, there is a potential to increase impacts on the environment. He notes that no consideration has been given to the noise, odour and air quality (bio-aerosols) impacts of the proposal and that these need to be adequately assessed. On current information, he considers he is unable to recommend approval.

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 whilst having no objection to the export of compost, they note that only those green wastes collected and delivered to the site by Cheshire East Council has reached PAS 100 standard. They also note more recent improvements in quality. If non PAS 100 compost is removed from site it will still be classed as a waste and the relevant exemptions will be required at the site.

VIEWS OF THE PARISH / TOWN COUNCIL

Doddington and District Parish Council objects to the application due to the damage it would inflict on the local environment and the hazards caused by heavy vehicles on narrow country lanes used by children walking to school, ramblers, cyclists and horse riders. They point out that the size of lorries will increase making the roads less safe.

Hatherton and Walgherton Parish Council objects to the application due to the increase in activity the proposal would bring and the impact on local roads which are not suitable for the size and quantity of vehicles visiting the site. They point out that the original intention of the applicant was to import green waste being garden, park and roadside tree trimmings with a maximum annual tonnage of 10,000 tonnes and on average 4 vehicles a day. The current application now wishes to fundamentally change the nature of the development with consequent adverse impact on the local environment and populous.

OTHER REPRESENTATIONS

The **Campaign to Protect Rural England** objects to the proposal. They state they had concerns regarding the initial application in such a rural area and have since seen a series of applications aimed at intensifying the scale of the operation. They consider no further concessions should be granted as the area and roads are

inappropriate for the scale of development likely to develop. They also have concerns about how the contaminated compost would be disposed of.

A total of 36 individually written letters of objection have been received including letters from the Headteachers of both Stapeley Broad Lane Primary School and Bridgemere CE Primary School. A petition signed by 54 local residents has been received expressing concerns towards this application.

The main issues which are raised include:

- The existing consent is for an on-farm composting facility. This proposal will change the scale and nature of the operation and result in an industrial and commercial use.
- Such a facility is not suitable for a rural tranquil area. It will change the character of the area and should be located on an industrial site.
- This is not a preferred site as identified by the Waste Local Plan.
- There is no need for the level of composting likely, the material being brought in is coming from outside the County, particularly Blackpool, making this a dumping ground for other areas waste.
- There will be increased activity on site, leading to disturbance within a peaceful rural area, including noise, smell, dust and pollution.
- Local roads are not suitable for the traffic.
- There will be more HGV's and larger vehicles.
- There is already damage to verges, road surfaces and hedges.
- There are fears over road safety, particularly near schools where the lack of pavements, on road parking and attempts to encourage children and parents to walk to school will lead to accidents.
- Traffic already ignores opening times and conflicts with school traffic, despite earlier assurances.
- More and larger vehicles will be more intimidating.
- This is part of a long term plan to introduce an industrial operation. It will lead to further development and to further commercialise the site with other development like bagging and on site sales being difficult to resist.
- The Environment Agency acknowledge contaminated wastes are brought onto the site and mixed into the compost, that compost to be removed will be classified as waste and potentially spread elsewhere.
- The export of compost is not essential for agriculture
- The same vehicles would not be used to import and export material due to cross contamination
- The site has a history of planning breaches. It would be impossible to monitor and police and there is no confidence the site would be operated correctly
- Decision on this application is premature bearing in mind the other outstanding appeals

APPLICANT'S SUPPORTING INFORMATION

A Supporting Planning Statement dated August 2010 accompanies the application.

OFFICER APPRAISAL

The original application, reference 7/P04/0124 was submitted to Cheshire County Council on 30th January 2004, the proposed development was described as Green Waste Composting and a quantity of up to 10,000 tonnes a year was applied for. The applicant clarified by letter dated 16th March 2004 that the compost was to be used on the farm to help obtain organic status.

Planning permission was granted on 11th August 2004, subject to conditions that required the development to be carried out in accordance with the submitted documents unless modified by further condition. Whilst it was stated within the approved documents that the compost would be used on the farm, a specific condition was also applied stating;

No compost shall be exported from the area edged blue on plan 9. This area was the farm unit.

Therefore, it is very clear that the permission is for an on-farm composting site.

The site has been the subject of several previous applications as noted within the site history section. The above condition has been replicated on each of the relevant permissions. The stated reasons for the conditions are to control the scale of the development, in the interests of residential amenity.

This application has been made under Section 73 of the Town and Country Planning Act 1990 and is seeking to remove the above condition. The affect of removing the condition would be to allow compost to be removed from site. This would result in a fundamental change to the nature of the development, as the condition ensures this is an on-farm composting facility. Without it, the site can and will become a commercial composting venture which is not what was originally applied for. It is considered that such a fundamental change to the nature of the development cannot be made under Section 73 and that a full planning application is necessary. The applicant has declined to put in a full application and requested the Section 73 application be determined. On the above basis alone it is considered the application should be refused.

However, should the planning inspectorate consider the application is valid, the Board are requested to consider how they would have determined a valid application.

Traffic

The original restriction of 10 movements a day was amended by permission 7/2009/CCC/1 which limits traffic movements to a maximum of 40 vehicle movements a day (20 in 20 out) during summer months and 32 (16 in 16 out) during the winter. The applicant states that these figures will not be increased should the export of compost be allowed and has not applied to increase them.

There have been a large numbers of objections bearing in mind the rural nature of the area. Most objectors have serious concerns over the quantity and size of

vehicles using the site at present and the likelihood that allowing the export of compost would increase vehicle movements and the size of vehicles. Whilst vehicle numbers are controlled by condition (which can be monitored and enforced), it is considered that the mix of sizes visiting the site is likely to change. At present vehicles vary from small landscape contractors delivering small quantities of material in pick up's and trailers, to large HGV's originating from transfer and bulking stations. Residents fear that the small local deliveries will be halted in order to maximise input and export through the utilisation of large HGV's alone. Such vehicles, it is said, would have an unacceptable impact on the rural roads around the area and be particularly dangerous and intimidating in the locality of schools. Residents also consider there is damage to verges and hedges caused by existing HGV's visiting the site and this would increase.

Residents have also expressed a concern that should the export of compost be allowed, the site would become more commercial over time and seek expansion of the quantity of material produced and also the nature of it. They consider the bagging of compost, development of buildings and introduction of on-site sales would be the next step and that this would be difficult to oppose. Such developments would impact on the site and lead to yet further traffic impact. Whilst there is some logic to this argument, further development would need to be subject to planning permission that would be determined on its merits, albeit considered in relation to a commercial composting facility.

The Highway Engineer has not raised objection to the proposal on the basis that the local road system can accommodate the existing daily total of 20 in and 20 out and this would not alter. However, local residents concerns, particularly those relating to fear and intimidation of increased heavy vehicles on rural roads and in proximity to schools, extend beyond the physical ability of the roads to take the number of vehicles anticipated. They also point to a previous planning appeal (APP/A0645/A/08/2080691) that considered such movements unacceptable.

Planning Policy

The Cheshire Replacement Waste Local Plan was adopted in 2007. Policy 7 relates to Sites for open air windrow composting facilities. The policy firstly directs such development to preferred sites that have been identified within the plan and states that sites not shown as preferred sites will not be permitted unless it can be demonstrated that, the preferred sites are no longer available or are less suitable for the proposed development. Whittakers Green Farm is not identified as a preferred site, nor has the applicant demonstrated that preferred sites are no longer available or that this site is more suitable than them. Secondly, that the proposal would meet a requirement not provided for by the preferred sites. The applicant has not demonstrated this and would have been requested to submit further information had the application not been appealed. The application as it currently stands is therefore contrary to policy 7 and should not be approved.

Whilst it could be argued that the site already has the benefit of planning permission for the composting of green waste, as noted above this permission relates only to on-farm composting and not the commercial composting now being applied for by removal of the control on compost exporting.

Environmental Impact

The removal of the existing condition prohibiting the export of compost from the site is likely to result in an increase in waste being brought onto the site and composted since in addition to the existing permissions primary purpose to spread the compost within the farm, additional compost will be sold and taken from site. Additional activity on site would increase the level of noise, dust, litter, odour and emissions of bio-aerosols and potentially adversely impact on residential amenity. The nearest property is 230 metres from the site boundary. The Environmental Health Officer considers the application has not been adequately supported by information to assess the likely impacts and therefore at this time cannot recommend approval. Again, had the application not been appealed, this information would have been requested.

The increased impact that is considered would arise should the 'no export' condition be removed, is contrary to the reasons on the original condition to control the scale of the development, in the interests of residential amenity.

Quantity

The applicant has declined to state the quantity of waste he expects to treat on site, relying on his existing vehicle limits. The current limit of 40 movements (20 in and 20 out) a day in summer and 32 movements (16 in 16 out) in winter could result in total waste imports of over 50,000 tonnes a year. This is somewhat over the originally quoted annual tonnage of under 10,000 tonnes which was assessed. The environmental impacts of such increases are not considered acceptable.

Should it be considered that export of compost from the site is acceptable, then it is recommended that a finite annual quantity of imports should be set so that impacts can be adequately assessed and thereafter monitored and enforced if necessary. The original annual tonnage applied for was 10,000 tonnes.

CONCLUSIONS

This application has been appealed on non-determination grounds. The decision on it will therefore be determined by the Planning Inspectorate at a time yet to be confirmed. The Board are therefore being requested to indicate what their view would have been had it come before it and to establish what the Council's position is to be at the appeal.

The application was submitted under Section 73 of the Town and Country Planning Act 1990 and is for the removal of a condition on four previous permissions. That condition stated there should be no export of compost from the farm. It was applied to control the scale of operations and protect residential amenity. The condition limits activity to on-farm composting where all product is spread over the farm unit. Its removal would enable compost to be exported from the site and would turn the

development into a commercial activity. It is considered that the removal of the condition would be a fundamental change to the character of the development and that consequently this application is not suitable to be determined under Section 73.

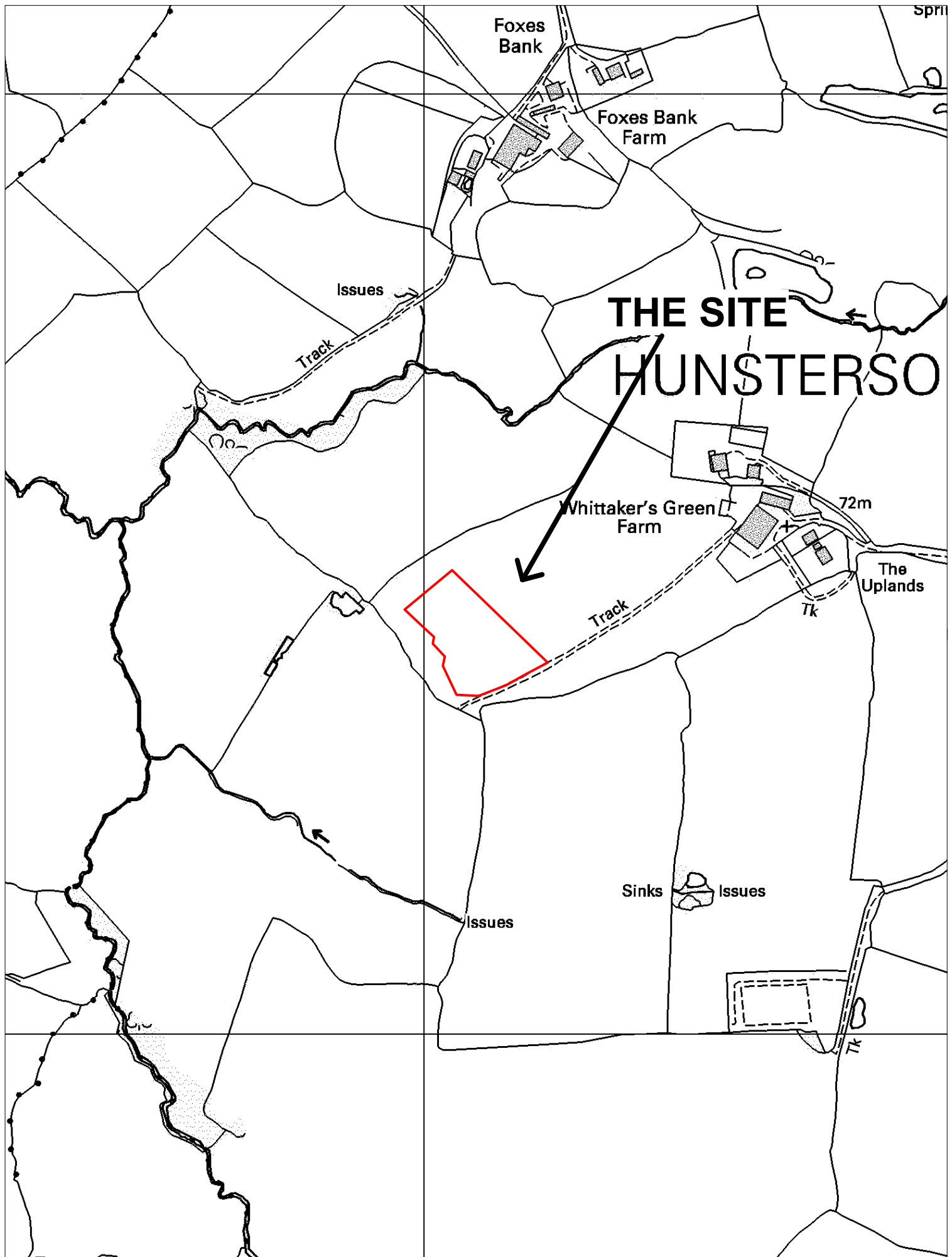
It is considered there are likely to be unacceptable environmental impacts should export be allowed, including a change in the size of vehicles using the site, which would impact on local rural roads, safety and amenity. It is also considered that increased activity could also lead to noise, dust, odour and emissions of bio-aerosols to the detriment of residential amenity. These impacts have not been addressed by the applicant. The applicant has also not addressed the requirements of policy 7 of the Cheshire Replacement Waste Local Plan, as the site is not a preferred site for open windrow composting, and the applicants need to demonstrate why other preferred sites are not available or are not as suitable as the application site.

Should the Board be mindful not to contest the appeal, then it is recommended that additional conditions be applied covering the quantity of annual waste imports, quantity of waste and compost allowed on site at any time, daily records of waste deliveries and compost exports, and a scheme to monitor and control bio-emissions.

RECOMMENDATION

That the Board agrees to contest the appeal on the grounds that;

1. The application should not be determined under Section 73 of the Town and Country Planning Act 1990 as the development applied for is fundamentally different from that approved, and should be considered through a full application.
2. The export of compost from the site would lead to an unacceptable increase in the quantity of waste being handled at the site, resulting in;
 - Larger vehicles adversely impacting on the safety of pedestrians, children attending school, cyclists, horse riders and other road users,
 - Increased activity on site impacting on the residential amenity of residents in terms of noise, dust, litter, odour and bio-aerosol emissions.



10/2984W WHITTAKERS GREEN FARM, PEWIT LANE, BRIDGEMERE, CW5 7PP
 NGR- 369,050:345,420

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