

## PLANNING APPEAL DECISION

**Lead Officer:** Tony Pomfret – Development Control Manager

**To inform Members of a recent appeal decision at Wilson Pit Yard, Byrestead Road, Sandwith, Whitehaven**

**Recommendation:** That the decision be noted in the context of the Councils Local Plan and Local Development Framework policies.

**Resource Implications:** Nil

### 1.0 SUPPORTING INFORMATION

- 1.1 Planning permission was granted by the County Council for the use of this site as a recycling centre involving composting, tyre baling and the use of a previous agricultural storage building for the recycling of plaster board in 2009. This permission was limited to a temporary period of 3 years expiring on 31 December 2012 at which time the operations were required to cease. The limitation of this use to a temporary period was deemed to be appropriate to ensure that any development does not prejudice the long term regeneration potential of this part of the town. This approach was supported by the Council who considered that a more appropriate alternative site should be identified for a permanent waste recycling operation elsewhere within the district.
- 1.2 A recent appeal against this condition has been ALLOWED and the Inspector has extended the time period for the permission from 3 to 5 years, expiring on 01 June 2015. The Inspector noted the longer term ambitions of the Council for the land adjacent to the appeal site as a strategic housing site and also the use of the former Marchon land as a tourism opportunity site as set out in the Local Development Framework (LDF) Core Strategy Preferred Options. He concluded that the long term use of the appeal site would be likely to have an impact on residential uses nearby due to the odour resulting from composting green waste. However given the projected timescale for the LDF and also the likely phasing of development on any strategic housing site he concluded that there was some scope to extend the timescale without prejudice to the development of the wider area.
- 1.3 A copy of the Inspectors appeal decision is attached.

**Contact Officer:** Nick Hayhurst – Senior Planning Officer

**Background Papers:** Planning application file ref 4/09/9006



# Appeal Decision

Site visit made on 6 July 2010

by Alan Upward BA(Hons) MCD MRTPI

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

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Decision date:  
21 July 2010

**Appeal Ref: APP/HO900/A/10/2126157**

**Wilson Pit Yard, Byrestead Road, Sandwith, WHITEHAVEN, CA28 9QJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by West Coast Composting Ltd against the decision of Cumbria County Council.
- The application Ref 4/09/9006, dated 10 July 2009, was approved on 30 September 2009 and planning permission was granted subject to conditions.
- The development permitted is the creation of composting and tyre baling operations, and change of use of the existing agricultural storage building to house a plasterboard re-cycling operation.
- The condition in dispute is No.1 which states that: **This permission shall be for a limited period only expiring on 31 December 2012 by which date the operations hereby permitted shall have ceased.**
- The reason given for the condition is: The Local Planning Authority considers that the restricted time limit specified, having regard to Section 51 of the Planning and Compulsory Purchase Act 2004, is applicable in this instance.

**Formal Decision. I allow the appeal, and vary the planning permission Ref.4/09/9006 for the creation of composting and tyre baling operations, and change of use of the existing agricultural storage building to house a plasterboard re-cycling operation at Wilson Pit Yard, Byrestead Road, Sandwith, Whitehaven, CA28 9QJ, granted on 10 July 2009 by Cumbria County Council, deleting condition 1 and substituting for it the following condition:**

**1. The uses hereby permitted shall be discontinued and the land restored to its former condition on or before 1 June 2015.**

1. The appeal was made under S79(1) of the amended 1990 Act for a variation of the planning permission. The Appellant sought "a further 9 years" to the 3 now permitted. Condition 1 of the consent dated 30 September 2009 had been for a limited period expiring on 31 December 2012, and the variation sought was effectively the substitution of 31 December 2021 in that condition.
2. As permitted, the development related to 3 named waste management operations on a site which was said to have been used beforehand for storage and composting activities connected with a nearby agricultural business. The submitted layout plan also identified areas for "TIMBER RECYCLING" and "SOIL & STONE RECYCLING AREA". At my visit I saw that the site was laid out for various activities broadly in line with the approved plan, apart from the absence of "AGRICULTURAL MACHINERY" storage (other than 2 large liquid fertiliser tanks in the tyre baling area) and the use of the "TIMBER RECYCLING" area for storage of plasterboard. The plasterboard recycling shed was also being used for storing compost.
3. The stated reason for Condition 1 had referred to S51 of the 2004 P & CP Act. This makes various provisions relating to the duration of planning permissions in terms of the timescale within which development must be begun, rather than time limits on implemented consents.
4. The County Council's appeal representations had referred to the 3 years as a "trial run". A 'trial run' would not, however, be needed to test compliance with the terms of the planning permission and site capacity where, arguably, these matters were the subject of controls by

way of attached planning conditions. I see no basis to question the adequacy of the imposed conditions to regulate the development.

5. Acceptability of the use had been assessed in terms both of the existing pattern of land uses in the area and the likelihood and timescale of any changes. The County Council appear to have concluded that the development was in conformity with waste management policies in their adopted Minerals and Waste Development Framework (Generic DC Policies and Core Strategy). In particular, the criteria of DC4d for open windrow green waste composting were met in relation to the existing situation. The Copeland Local Plan allocation of the site, together with the extensive, cleared Marchon chemical works complex to the west, as an "Employment Opportunity Site" raises more doubts. The now permitted use of the appeal site has generated employment. In their representations Copeland Borough Council appear to accept that the "Employment Opportunity Site" label amounted to a marker of the land's availability rather than a reflection of specific development potential for the whole complex, having regard to the complex issues of site decontamination. Specific conflict of the allocation with the waste management uses of the appeal site would on this basis not be clear cut.
6. Although discussions about the site's future were continuing with the Council's partners, it appears probable that a large part of the contaminated site will ultimately be proposed for open space purposes as part of a regional coastal park. Associated built features seem likely to be located towards the northern end of the Marchon complex, ie some distance from the appeal site.
7. Additional possibilities being discussed for residential development of land adjoining the Woodhouse Estate to the north-east in association with the Housing Market Renewal [HMR] programme for this part of Whitehaven need also to be taken into account in considering the duration of planning permission for the Wilson Pit Yard.

**The main issue is**

- the implications of the duration of the planning permission for the site for regeneration projects in the area as part of the West Whitehaven project.

**Appraisal**

8. Although the appeal site had historically been an "industrial yard", its use as a waste management facility, particularly in terms of the potential odour consequences of composting green waste, would be likely to impact materially on nearby occupied developments, particularly those involving housing. The Environment Agency's recommended minimum "stand off" distance of 250 metres is a useful guide to the acceptability of impact. In particular, the prospects for new housing proposed within this separation distance would be likely to be adversely affected. The clarity, firmness and likely timescale for development proposals for Marchon and the Woodhouse estate are matters requiring examination.
9. The matter is currently being considered as part of the Borough Council's LDF process. The "Core Strategy and Development Management Policies Preferred Options" document was published as the basis for consultation in May 2010, and now carries some weight. The Core Strategy is currently envisaged to be adopted in April 2012. The "Preferred Options" include the Coastal Fringe/Marchon as a Tourism Opportunity and the Woodhouse Estate as a Key Regeneration Site for HMR, and identifies an intention "to co-ordinate tourism, open space, business development and HMR in a total regeneration package for the whole of West Whitehaven". A comprehensive approach is clearly advantageous, and it is reasonable to ensure that individual development proposals along this edge of the town over the interim period should not prejudice longer term regeneration potential in the overall strategy.
10. Copeland Borough Council's [CBC] representations on the current appeal refer to the Consultation Draft Core Strategy as including a strategic housing allocation of 700+

dwelling, and include a plan showing the land said to be involved. This would reach along the northern edge of Wilson Pit Road down to the St Bees Road, and pass close to the appeal site. Extracts from the Draft document supplied to me make no reference to the size of any housing allocation at Woodhouse, nor identify its broad extent. The numbers now being quoted would make a very substantial contribution to overall housing land supply for the LDF period, and the document itself suggests that a large number of "candidate housing sites" have been identified, and that there should be no real difficulty in establishing a supply of sites to meet the housing requirement for the locality. These various matters qualify the weight which should be given to the proposals said to be emerging from the Core Strategy process, given the stage in the process currently reached. Nevertheless, I consider that the decision in this appeal should avoid prejudice to the possibilities emerging or undue delay in implementation of a strategy.

11. The current planning permission restricts permission approximately to the timescale envisaged for adoption of the Core Strategy. That would of course not be the end of the matter, as a mechanism would have to be identified to carry proposals forward for implementation. A proposal of the magnitude now being suggested by CBC would clearly also raise major issues concerning phasing. Where the current limit of planning permission for the appeal site to 2012 creates difficulties for the site operator in terms of other regulatory consents, I consider that some further extension of time would be possible without prejudice to development of the wider area. The extent to which the permission might be extended is a matter for judgement on what is relatively limited available information. In this context it seems reasonable to assume that housing development seen as supporting regeneration of Woodhouse would begin at the urban edge some way to the north. Extension of the appeal site permission to 2021, as requested, would, nevertheless, run a clear risk of delaying or inhibiting development of strategic significance.
12. The recent grant of planning permission by the County Council for use of the former TDG Tanker Depot immediately to the north of the appeal site for "temporary storage of excess material from nearby residential development comprising of anhydrite and slag" is relevant in this context. This prominent and visually exposed former commercial site would be likely to stand between the appeal site and any new residential development. I doubt that new houses in close proximity to this storage site would be seen as compatible with it for the life of its permission to June 2015. My conclusion is that it would be reasonable to extend permission for use of the appeal site to that date without prejudice to the area development process. The situation can then be reviewed in the light of LDF policy decisions and estimated phasing of any development.
13. Having regard to the appeal site's long established status as an "industrial yard", I find less basis to conclude that open space proposals emerging for the Marchon site would be "scuppered" (as CBC describe it) by any extension of the permission. The long term position could be adequately protected by the date which I have identified above in relation to their housing aspirations. In their representations CBC also commented on a perceived need to consider alternative sites for the composting /waste management facility. This would not raise significant issues for the current appeal where it relates to a planning permission already granted on a time limited basis, unless a permanent permission or one clearly prejudicial to other development in the locality was being considered.
14. My overall conclusion is that this appeal should be allowed to the extent of variation of condition 1 to permit the use for a period expiring on 1 June 2015.

*Alan Upward*

INSPECTOR