



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – PLANNING COMMITTEE**

**11 April 2022**

**Report of the Executive Director - Place**

**Application under section 73 of the Town and Country Planning Act 1990 for permission not to comply with Condition 31 of Planning Permission Code Number CW8/0417/1, so as to allow the storage of material above the Nutbrook Culvert within the permitted site at Johnsons Recycling Centre, Crompton Road, Ilkeston, DE7 4BG**

**Applicant: Johnsons Aggregates & Recycling Limited  
Code No: CW8/0721/18**

**8.1087.17**

### **Introductory Summary**

This is an application made under Section 73 of the Town and Country Planning Act 1990, as amended, which seeks permission not to comply with Condition 31 of planning permission code no.CW8/0417/1. The granting of such a permission would allow the storage of material above the Nutbrook Culvert within the permitted site at Johnson's Recycling Centre, Crompton Road, Ilkeston. The applicant is seeking the removal of Condition 31 to enable Incinerator Bottom Ash Aggregate to be stored above the Nutbrook Culvert to increase storage capacity on the site and thereby improve efficiency. The stability of the Culvert has been assessed by the applicant and the storage area above the Culvert would be capable of holding a maximum load of 5,000 tonnes without causing damage.

There have been ongoing concerns about the impacts of dust and odour from the site. Updated dust and odour management plans are considered to be needed now. A planning condition to require the submission of updated plans is included in the draft conditions that are set out in the recommendation.

Provided that any permission from this application is granted subject to such a set of conditions, I am satisfied that the carrying on of the development under that permission would not give rise to any additional or otherwise

unacceptable impacts and that it would accord with the policies of the development plan and the National Planning Policy Framework. The application is therefore recommended for approval subject to the recommended conditions.

(1) **Purpose of Report** To enable the Committee to determine the application.

(2) **Information and Analysis**

### **Site and Surroundings**

The application site is located on the industrial edge of Ilkeston, at the southern end of the now extensive Quarry Hill Industrial Estate (formerly the Stanton Ironworks complex), off the junction of Compton Road and Merlin Way, approximately 2.5 kilometres (km) south of the Town centre. The Industrial Estate is accessible from the west, primarily via the A6096 and Sowbrook Lane/Ilkeston Road, and from the east via Trowell, the A609 and Low's Lane/Ilkeston Road. Quarry Hill/Hallam Fields Industrial Estates include a number of varied industrial and business uses, amongst them are several other waste recycling operations in close proximity to the application site (Ward Recycling Ltd, Stanton Recycling, Trust Utilities Management and Castle Environmental).

The application site consists of approximately 2.8 hectares (ha) of a flat open hard-surfaced yard area, where there is a centrally located large, high sided building which houses the extensive recycling equipment used to recycle incinerator ash and office accommodation.

Outside in the yard area, and immediately adjacent to the building, there is extensive external plant, conveyors, gantries, bays and the chimney stack which are utilised in the recycling process. The western section of the site (on the area of the former rifle range) is used for the storage and screening of material, and it is within this area that the storage above the culvert is proposed.

The site is bounded to the north by a short stretch of unadopted road then by industrial units. Immediately to the east are other units/businesses on the industrial estate and to the north-west an area of undeveloped vegetated land which includes a section of the Nutbrook Trail/National Cycle Route which follows the site boundary. The site is bounded to the south and south-west by the extensive open areas of the former Stanton Works which is subject to an application under consideration by Erewash Borough Council for re-development.

The Nutbrook Trail (Permissive Greenway No 118 and a National Cycle Route) runs alongside the west and northern boundaries of the site and

crosses the site access. The site is situated within a Flood Risk 2 Area. The site lies at a low elevation, situated along the River Erewash corridor where the floodplain widens out at the point of convergence with the Nutbrook Valley, wherein there is the (now disused) Nutbrook Canal.

The application site is accessed from the main traffic route through the Quarry Hill Industrial Estate via Merlin Way/Crompton Road. From the Merlin Way/Crompton Road junction, the site is accessed via a section of unadopted highway which is shared with other adjacent businesses. The site lies within 6 miles of Junction 25 of the M1 Motorway and the A52 Dual Carriageway.

The nearest residential properties lie approximately 350 metres (m) to the north of the site on Hallam Fields Road. To the north-east there are residential properties approximately 500m at the closest point. The village of Stanton-by-Dale is just over 1.5km to the south-west. The village of Trowell lies to the east of the site, which is separated from the application site by the River Erewash, the Erewash Canal, a waste water treatment works, the Nottingham-Loughborough main railway line and the M1 Motorway. Within 1km to the south-east and beyond the M1 Motorway are the towns of Stapleford and Sandiacre.

The Local Wildlife Site (LWS) ref. ER217 Stanton Ironworks is located adjacent to the south/south-west boundary of the site. The LWS Quarry Hill Lagoons wildlife site ref. ER201 is adjacent to the north-west boundary of the site. LWS ref. ER215 Erewash Canal is approximately 245m east of the application site. Local Nature Reserve (LNR) Trowell Marsh is 380m to the north-east.

There are no Public Rights of Way (PRoW) within the site, although there are a number close by. Public footpath (Ilkeston E6/79/1) is approximately 350m north of the site. It runs along Hallam Fields Road and connects to three others (including the Erewash Canal Towpath) which meet immediately to the east of Hallam Fields Bridge (Ilkeston E6/78/2, Ilkeston E6/81/6 and Ilkeston E6/81/7). In addition to this, PRoW Ilkeston E6/81/7 is within 300m of the application area and is separated from the site by the Erewash Canal.

The site is operated by Johnsons Aggregates and Recycling Limited and involves the importation, processing and recycling of Incinerator Bottom Ash (IBA), which is the ash residue from incinerator facilities, to produce a recycled aggregate, Incinerator Bottom Ash Aggregate (IBAA). The waste facility imports and recycles up to 350,000 tonnes per annum (tpa) of waste, comprising up to 300,000 tpa of IBA and up to 50,000 tpa of waste metal, which is a constituent part of IBA waste. The application site is located adjacent to the northern boundary of the Stanton Regeneration Site which has a long industrial heritage dating back 250 years. The Stanton Regeneration Site, which is set out in the Erewash Core Strategy, is proposed to form a new

sustainable neighbourhood consisting of 2,000 homes, 10ha Business Park, general industry, employment land and a 20ha wildlife/ recreation corridor. Erewash Borough Council is currently considering a planning application for the comprehensive redevelopment of the Stanton Regeneration Site for employment, B2 (Industrial), B8 (Storage and Distribution) and associated infrastructure and open space.

### **The Proposal**

The application seeks permission not to comply with Condition 31 of planning permission code no. CW8/0417/1, which would allow materials to be stockpiled above the Nutbrook Culvert.

Condition 31 prohibits the stockpiling of any materials which is carried out under this current permission within 8m of the Nutbrook Culvert. This prohibition was first imposed by a condition to the first planning permission for this development, under code no. CW8/0413/17. It protects access to the culvert should it need repair or replacement, thereby ensuring that the integrity of the Nutbrook Culvert is maintained. This Section 73 application is seeking removal of this prohibition to allow the stockpiling of IBBA in this 8m stand-off area.

The Nutbrook Culvert in this location comprises of two culverts running parallel to each other which are ovoid shape each being 1.57m wide x 2.18m deep and set 635 millimetres (mm) part. The culverts are set 3.6m below ground level and are 35m in length along the restricted section. The supporting information submitted with the application states that the culverts would be able to support a maximum loading of 5,000 tonnes. The supporting information further states that the normal operational tonnage on the land above the culvert would be 2,800 tonnes with a physical maximum capacity of 4,800 tonnes.

The applicant also notes that there are no inspection covers or access points within the site boundary and therefore there would be no impact on future maintenance access requirements.

### **Planning History**

Prior to the development of the site for IBA processing the site was derelict but had previously been used for small valve production and the western section used as a rifle range.

The following planning permissions relating to the site have been granted by the Council:

<b>Planning permission reference</b>	<b>Development</b>	<b>Date granted</b>
CW8/0413/17	Processing and recycling of incinerator bottom ash, aggregates and soils.	22 May 2014
CW8/0616/24	Raise the roof of an existing building and the erection of a dryer stack.	1 December 2016
CW8/0616/25	Variation of Condition 3 of planning permission CW8/0413/17 to allow a minor change to the external arrangements of the site.	1 December 2016
CW8/0417/1	Not to comply with Conditions 3 and 6 of planning permission CW8/0413/17 to allow the import and processing of waste metals (instead of construction and demolition waste).	20 July 2017
CW8/0817/37	Extension of storage facilities (This permission extended the area available for storage purposes to include land to the south-east of this site)	5 March 2018
CW8/0819/43	Retention of workshop/stores	12 June 2020

The applicant company has extended its activities onto an adjacent area of land immediately to the south of the site without the benefit of planning permission. This land is being used for the storage and processing of IBAA. The initial use of this land, which started around 2019, related to the storage of IBAA which was intended to be used by the owner of the land at that time. The landownership since changed, and the material was not required by the new owner. Because of Covid-19, the demand for IBAA (used in the building/construction industry) fell but contractual commitments meant there was a need to continue accepting and processing raw material from the waste incinerators remained. As a result, additional IBAA was stored on the unauthorised land. This matter has been investigated by the Council, and the Environment Agency, which has taken formal action in respect of the unauthorised activity. The applicant company is in the process of removing material from the land to secure its clearance and the company's vacation of it by the end of June 2022.

## **Consultations**

### **Local Members**

Councillor Gibson and Councillor Major have been notified of the application.

## **Trowell Parish Council**

The Parish Council's comments in the covering email to its consultation response are as follows:

*“As a Parish Council we cannot support any further development by Johnsons until they can demonstrate that they have complete control over their current processes. We suffer on an almost daily basis from alkaline dust, which has to be cleaned on a daily basis from Vehicles, Caravans, Motor Homes, Garden Furniture, Window Frames in/on every property in the village. We also breathe and ingest it.*

*Positive Action from yourselves, the Environment Agency and the environmental Departments of Erewash and Broxtowe is urgently required.”*

The Parish Council also provided in its consultation response, comments on the proposal to remove Condition 31 and further comments about the impacts of dust and odour, specifically on the wider operations at the Johnsons Aggregates site. These comments are as follows:

*“This application to remove a restrictive planning condition appears to be an application to legalise something that Johnsons have been carrying out for a number of years.*

*The mountain of Incinerator bottom ash (IBA) that is currently on site has been allowed to accumulate with little regard to the affect it has had on the residents of Trowell. Living in Trowell currently appears to replicate the conditions suffered by people living close to Active Volcanoes. Anything, left out in either a front or back garden is constantly affected by dust. Eating outside in the summer months is impossible, tables, chairs and food are quickly contaminated by dust.*

*The IBA mountain also has a very offensive odour, which has been noticed over 2 miles from the site.*

*We know that the dust and odour come from this site. The tall chimney stack always indicates when the site is in operation. As soon as it stops this indication the odour and the dust disappear.*

*The 3-paragraph supporting statement added below, seems to indicate that Johnsons are either unaware or do not care about the issues that they inflict on Trowell Residents daily.*

*As a Parish Council we believe that we have a duty to protect the health and amenity of our residents, as do Erewash Borough Council, The Environment Agency and Derbyshire County Council. Hence our decision to strongly oppose any further development of Johnsons business.*

*This application should not be passed until Johnsons can quite clearly demonstrate that all of their current operations are under control. Any dust or odour produced as part of their processes, should be contained within the curtilage of their land.*

*As this is an airborne issue, the prevailing wind direction is from Johnson's site to our village so while not constantly an issue it is nevertheless an issue around 70-80% of the year, making life unbearable, it limits residents garden usage and necessitates frequent cleaning especially of vehicles and garden furniture.*

*Cars have streaks in the windscreens that appear to be etched into the glass (which cannot be cleaned off), one resident installed a new copper beehive roof which became oxidised in the space of only 4 weeks exposure indicating an oxidation/reduction effect of the dust.*

*This has alarming implications for our health as we breath that dust in. When the wind is blowing from the direction of the Johnsons site, everyone keeps their windows closed.*

*Municipal solid waste incineration produces a non-combustible by-product known as incinerator bottom ash (IBA). Increase in waste production leads to increase in bottom ash, which raises environmental concerns and management issues.*

*The parameters and properties of bottom ash are in close agreement with those of aggregates used in concrete making, bottom ash has been adopted for reutilization in civil engineering (this is why Johnsons process it). The typical chemical constituents of incinerator bottom ash are shown below. One of the main constituents of Incinerator bottom ash is Calcium Oxide, this can form Calcium Hydroxide, when heated and particles are released into the air. Worryingly, heavy metals such as Arsenic, Cadmium, Chromium, Nickel and Lead are also present*

#### *Calcium Hydroxide*

*Calcium hydroxide, or lime, is a common cause of alkali injury in the construction workplace. It is a white powdered or granular solid that is used to make plaster, cement, mortar, and whitewash. Since calcium hydroxide exists in a particulate form, it is commonly retained in the eye (particularly beneath the upper eyelid) and provides a continuous source of exposure. Fortunately, it penetrates the eye much more slowly than ammonium hydroxide or sodium hydroxide, forming insoluble calcium soaps during saponification of cell membrane fatty acids. The calcium soaps precipitate and make penetration of the cornea more difficult. Consequently, lime causes many of the superficial complications seen following other strong alkali injuries, but deeper structures, such as the iris and lens, are routinely spared.*

*Although calcium hydroxide causes eye injuries that tend to be less severe than those of ammonium or sodium hydroxide, it promotes corneal opacification more quickly than other alkalis. More severe injuries occur when the pH is 12 or higher.*

*As we have said many times, we do not object to business growth. It's vital for the local economy and employment. However, such growth should not be at the expense of the health and amenity of residents living almost a mile away from the site.*

*The fact that we are suffering from this issue, whilst almost a mile away, gives a very clear indication that something needs to be done about the process carried out on that site by Johnsons.*

*What we all find particularly annoying is:- It would appear that we, the residents have to do the research into the harmful effects of the processes carried out by Johnsons. Rather than the agencies whose main function is to ensure that such industrial processes do not cause harm to the General Public."*

#### **Stanton by Dale Parish Council**

The Parish Council has been notified of the application.

#### **Erewash Borough Council – Planning**

Has been consulted and no comments have been received.

#### **Erewash Borough Council – Environmental Health Officer**

Raised no objections to the proposal.

#### **Environment Agency**

The Environment Agency (EA) provided the following comments:

*"The Environment Agency are against development over existing culverts and consequently in consultation with Derbyshire County Council, condition 31 was imposed on planning permission CW8/0417/1, which states:*

*There shall be no stocking of materials within 8 metres of the Nutbrook Culvert as indicated on the application details (FRA Section 3.4 of Appendix A).*

*The reason for imposing this condition is as follows:*

*To ensure the integrity of the Nutbrook Culvert is maintained and future access for maintenance/flood defence works is not affected.*

*The applicant has submitted a Section 73 application which seeks to remove Condition 31 of planning permission CW8/0417/1.*

*Whilst the landowner has ownership and maintenance responsibility of this culvert, the Environment Agency has a strategic overview role with regards to flood risk in the wider catchment. We are concerned that further development over culverts increases the risk of structural failure, it inhibits access for emergency maintenance and future opportunities to de-culvert and re-naturalise the river may be precluded.*

*We have worked closely with the applicant on this application and they have provided assurances through a CCTV survey and the commissioning of structural calculations, which seek to demonstrate that the Nut Brook culvert is capable of withstanding the anticipated loading.*

*Additionally, we have advised the applicant that the proposals will require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016. As part of this permit process, subject to approval and agreement, we may impose a defined timescale on the operations, which may require the applicant to re-apply for a permit in a number of years to be agreed. We will again need to be assured that the Nut Brook culvert is still structurally sound and any necessary maintenance is undertaken by the landowner. Additionally, we may re-review our strategic position with regards to the Nut Brook culvert at this location.*

*Finally, if the Environment Agency were to require access, the applicant shall be required to remove any material from atop the culvert in an agreed timescale, in order for us to gain access and carry out statutory functions.*

*The proposed development is for the storage of materials and no permanent building or structure is to be erected. Given the above mitigation measures are to be imposed through the flood risk activity permitting process, we are satisfied that Condition 31 can be removed, subject to the following conditions:*

*Any materials being stored over the Nut Brook culvert shall be removed, upon the request of the Environment Agency in order to carry out their statutory functions.*

*There shall be an ongoing obligation to continue monitoring and inspection of the Nut Brook culvert and remediate any structural issues identified within the confines of the development site. On becoming aware of such issues, these shall be reported immediately to the Environment Agency.”*

### **Nottinghamshire County Council**

Has no strategic comments to make regarding this application.

### **Derbyshire Wildlife Trust**

The Trust does not anticipate any ecological issues associated with the proposal.

### **East Midlands Airport**

East Midlands Airport raised no aerodrome safeguarding objections.

### **Lead Local Flood Authority**

Raised no objections to the proposal.

### **Canal and River Trust**

The Canal and River Trust did not raise an objection but requested that consideration is given as to whether a Flood Risk Plan is necessary.

Officer Comment: The Lead Local Flood Authority (LLFA) and the EA have not requested a Flood Risk Plan and, as such, it is not considered necessary.

### **The Coal Authority**

Raised no objections to the proposal.

### **Highway Authority**

Raised no objections to the proposal.

### **Publicity**

The application has been advertised by site notice and press notice (Derbyshire Times) with a period for comments ending on 3 September 2021. In response to this publicity, one letter of representation objecting to the proposal was received. The letter expressed support of the comments from Trowell Parish Council in respect of dust and odour from the site.

### **Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the development plan unless there are any material considerations which indicate otherwise. In respect of this application, the relevant development plan policies are contained in the saved policies of the adopted Derby and Derbyshire Waste Local Plan (DDWLP) (2005), the Adopted Erewash Core Strategy (2014) (ECS) and the saved policies within the Erewash Borough Local Plan Saved Policies 2005 (Amended 2014) (EBLP).

Other material considerations include national policy, as set out in the National Planning Policy Framework (NPPF) (July 2021), the associated Planning Practice Guidance (PPG), Erewash Borough Council's adopted Stanton Regeneration Site – Supplementary Planning Document (SPD) (2017), Waste Management Plan for England (WMPE) (2021), Resources and Waste Strategy (2018) and the National Planning Policy for Waste (NPPW) (2014).

The relevant development plan policies that must be taken into account when considering this application are set out below:

## **Derby and Derbyshire Waste Local Plan (2005) Policies**

W1b: Need for the Development.

W6: Pollution and related nuisances.

W7: Landscape and other visual impacts.

W10: Cumulative Impact.

## **Adopted Erewash Core Strategy (2014) Policies**

A: Presumption in Favour of Sustainable Development.

10: Design and Enhancing Local Identity.

## **Erewash Borough Local Plan Saved Policies 2005 (Amended 2014)**

DC7: Development and Flood Risk.

## **National Planning Policy Framework**

The NPPF sets out the Government's key economic, social, and environmental objectives, and the planning policies designed to deliver them. The NPPF is a material consideration in planning decisions. The NPPF states that local authorities taking decisions on waste applications should have regard to policies in the NPPF, so far as relevant. At the heart of the NPPF is a presumption in favour of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives which are economic, social, and environmental.

The most relevant chapters from the NPPF for this development are:

Chapter 12: Achieving well-designed spaces.

Chapter 14: Meeting the climate change, flooding and coastal change.

## **Waste Management Plan for England January 2021**

The WMPE clearly sets out the Government's intention to secure greater reuse and recycling rates across all waste streams, moving waste up the hierarchy. The plan recognises that to achieve the goals of increased reuse and recycling, there will be a need to increase the provision of waste recycling facilities and, in particular, those catering for the recycling and preparation of domestic waste for reuse and recovery.

## **National Planning Policy for Waste**

The NPPW was published in October 2014 and sets out detailed waste planning policies. The NPPW should be read in conjunction with the revised NPPF, and the WMPE. All local planning authorities should have regard to its policies when discharging their responsibilities to the extent that they are appropriate to waste management.

The NPPW identifies that '*Positive planning plays a pivotal role in delivering this country's waste ambitions through: ... helping to secure the re-use,*

*recovery, or disposal of waste without endangering human health and without harming the environment*.

The NPPW also emphasises the need to divert as much waste as possible away from landfill. In order to achieve this, the movement of waste up through the waste hierarchy is essential. Appendix A of the NPPW details the waste hierarchy. The prevention and reuse of wastes sit at the top of the waste hierarchy, however, once wastes are actually discarded, recycling is one of the preferred management routes, where value is recovered in terms of secondary materials that can be substituted for virgin resources. Wastes that still remain should be diverted from landfill through processes that recover energy, with disposal of residual waste by landfill as a last resort.

In addition to the above, the NPPW also sets out considerations, expectations, and guidance for the determination of waste planning applications. An example of this which can be applied to this application is *“waste planning authorities should ... concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced”*.

### **Stanton Regeneration Site Supplementary Planning Document**

The site is adjacent to land allocated in the ECS for the Stanton Regeneration Project. The bulk of the regeneration proposal land is separated from the application site by an area of existing industrial uses, and a belt of landscaping and wildlife sites crossed by a multi-user trail network.

As stated above, an application has been submitted to Erewash Borough Council for development located on the land identified within this SPD. Whilst that application remains undetermined, it is of some relevance to the application now for consideration under this report, regarding cumulative impacts. It would generally be inappropriate, having regard to the ECS, the application now before EBC, and other considerations identified in this report, to permit development that may compromise the potential for the wider development of the regeneration site and the benefits to the locality that it may bring.

At the time when the original application for the IBA processing facility on the application site was considered, an earlier draft version of the ECS identified part of the application site, which includes the Nutbrook culvert land within the site, as a potential access route to the Stanton regeneration area. A planning condition (previous Condition 3) was imposed to require this land to be made available for access, if required, at a future date. However, the subsequent adopted ECS and the SPD now exclude this part of the application site in the regeneration proposals. I therefore do not recommend carrying over this

condition in any fresh grant of planning permission under this Section 73 application.

### **Key Considerations**

This application relates to an existing IBA processing and aggregates recycling facility development, the use of which is currently subject to controls by Condition 31 and the other relevant conditions to which a previously granted planning permission for the development is subject.

The company imports, processes and recycles inert waste comprising IBA and metal wastes at the facility. Disposal of waste is at the bottom of the waste hierarchy and is considered to be the worst/last resort. The recycling operation undertaken at the site moves waste up the hierarchy in line with the objectives set out in the WMPE and the NPPW.

Other than the removal of the prohibition under Condition 31, to allow storage of material above the Nutbrook culvert, no other changes in respect of the conditions to the base planning permission are sought by this application. The proposal does not seek to increase the throughput of material to and from the site or propose development that would differ in any other way from the previously consented development. No application for permission for substantively different development could be made under section 73.

The applicant states within the application supporting information that there is a need for the removal of this condition to increase the sites' storage capacity. Removal of the condition would in the applicant's view make it easier to manage material stockpiles. The applicant states that it would "... *remove a significant obstacle to the efficient running of the stocking area.*"

In principle, the need for the proposed removal of Condition 31 is considered justified, given that it would assist with managing the overall storage of IBBA onsite without increasing the materials brought onto site.

The waste development carried out at this site has previously been assessed against the provisions of the development plan and relevant Government guidance in force at the time. When the original planning application was considered in 2014, they comprised the NPPF (2012), the DDWLP and the EBLP (2005). The development and operation of an IBA waste processing facility on this site was found to be acceptable in the context of these development plan policies and national guidance and planning permission, subject to conditions was granted. Further permissions for amendments to the operations and extensions to the site have been granted subsequently, as described on page 5 of this report. The application which resulted in the permission under code no. CW8/0417/1 is the previous permission subject to conditions which the use of the facility is currently required to comply with.

The current application, also made under section 73, seeks to release the ongoing use of the facility from the prohibition of Condition 31.

However, since the granting of the original permission in 2014, there have been changes in both development plan policy and national guidance. The EBLP has been replaced by the ECS and the NPPF of 2012 has been superseded, the latest version being the NPPF (2021).

The potential environmental and amenity impacts were also assessed during the consideration of the previous applications and mitigation measures, and planning conditions to reduce those identified impacts were imposed on the resulting permissions where then considered to be required. However, in the context of the current development plan and national guidance, it is necessary to consider whether the development, if released from the constraint of Condition 31, would be likely to give rise to any significantly different or additional impacts to those previously considered.

For this proposal, I consider that the main issues that need to be considered further are flood risk and protection of the integrity of the culvert, visual, odour and dust impacts.

### **Flood Risk and Protection of the Culvert**

Paragraph 167 of the NPPF states:

*“when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”*

Appendix B of the NPPW states, when determining planning applications, considerations should include the proximity of vulnerable surface and groundwater. In addition to this, further consideration must be given to the

*“suitability of the locations subject to flooding, with consequent issues relating to the management of potential risk posed to water quality from waste contamination, will also need particular care”.*

Policy W6 of the DDWLP states:

*“Waste development will be permitted only if the development would not result in material harm caused by contamination, pollution or other adverse environmental or health effects to:*

- *people or communities;*
- *the site of the development;*
- *nearby land uses; or*
- *the wider environment.”*

The culvert is located to the east of two flood prevention lagoons that are designed to act as a form of attenuation during periods of extreme rainfall events. The two lagoons are connected by means of a culvert, which currently allows the Nutbrook to pass through. The Nutbrook Culvert runs beneath the application site where IBAA is currently stocked. The EA originally expressed concern about the ability of the Culvert to support the additional load when the original application was considered. The Flood Risk Assessment (FRA) submitted with that application stated that at that time there was ongoing investigation into the structural performance of the Culvert which may take time to complete. Therefore, in order to protect the Culvert’s integrity, it was proposed to prevent stockpiling along the culvert corridor which was secured through the imposition of Condition 31 requiring an 8m stand-off to be maintained. The applicant has now provided an assessment of the structural integrity of the Culvert with this current section 73 application. The assessment concludes that the Culvert could safely accommodate a load of 5,000 tonnes without damaging it.

Notwithstanding the EA’s previous concerns, it is not objecting to the proposed removal of Condition 31, subject to the inclusion of conditions to require any materials stored over the Culvert to be removed, upon the EA’s request to carry out its statutory functions. The EA also requests ongoing monitoring and inspections of the Culvert and to remediate any structural issues within the confines of the development area. The EA is satisfied that the mitigation measures imposed through the flood risk activity permitting process and the recommended conditions would comply with the NPPF and the proposal would not increase flood risk.

I am also satisfied that the FRA, provided under application code no.CW8/0413/17, sufficiently assessed the flood risk from the development on the site and that the proposed storage of material along the culvert would not

lead to an increase in flood risk across the site. The EA and the LLFA have not objected or requested any further information in respect of flood risk.

Subject to the inclusion of the conditions suggested by the EA, I am satisfied that the proposal would accord with policy W6 of the DDWLP and the NPPF.

### **Visual Impact**

Policy W7 of the DDWLP is concerned with landscape and visual impact.

Policy W7 of the DDWLP states:

*“Waste development will be permitted only if: the appearance of the development would not materially harm the local landscape or townscape and would respect the character and local distinctiveness of the area; and the development would be located and designed to be no larger than necessary and to minimise its visual impact on or to improve the appearance of the townscape or landscape.”*

The relevant sections of Paragraph 130 of the NPPF states, *“Planning policies and decisions should ensure that developments:*

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities) ...”*

Views into the site are restricted due to the topography of the land, existing buildings, and the existing vegetation. The main visual element would be the stockpiles of aggregate proposed to be stored along the culvert corridor. The site already contains stockpiled materials that have a maximum height of 5m, which is controlled through a planning condition. The additional stockpiles would be viewed in context of these stockpiles and the wider site, which is already established. The proposed stockpiles along the culvert corridor, I would also recommend be restricted to a maximum height of 5m as measured from ground levels. It is considered that there would be no additional significant visual impacts from the proposal on the surrounding area.

In respect of visual impacts, the proposal is considered to be acceptable and accords with the policies identified above.

### **Dust and Odour Impacts**

Appendix B of the NPPW is concerned with general environmental impacts from waste development, which require consideration of air quality and dust

impacts. Policies W5 and W6 of the DDWLP, and Policy A of the ECS are similarly concerned with these potential impacts.

The concerns expressed by Trowell Parish Council and a local resident regarding dust and odour from the site, its impact on the immediate area and their concerns about public health are noted.

The company's activities at Ilkeston have also been the subject of complaints relating to dust, particularly since the start of the Covid-19 pandemic. Complaints have been lodged with the Council but, to a greater degree, they have been directed to the EA, which regulates the site, including emissions, through the Environmental Permit. I am aware that the unauthorised extension of the operations on the land to the south of the site (as mentioned above) has exacerbated the potential for dust emissions. It is anticipated that once this area has been cleared and vacated, and operations are only within the permitted site, the potential for dust will decrease. The Council and the EA are liaising with the applicant company in respect of improved mitigation, although it is the case that the EA is taking the regulatory lead in this matter.

The granting of previous planning permissions relating to the authorised site took into consideration dust impacts and conditions were imposed in respect of dust management. Dust action plans and monitoring schemes have been approved under previous permissions, however, it is considered that updated plans should be submitted.

This application relates only to the removal of Condition 31 on planning permission code no. CW8/0417/1 which restricts the storage of material within an exclusion zone on top of the culvert. The application does not propose any increase in the overall operational inputs which will remain the same.

I recognise that the site has been and continues to be a subject of concern to the local community in respect of dust and odour. However, the proposal in this application is limited to deletion of a condition that has prohibited stockpiling, for the purpose of culvert protection and there is no increase or intensification in any other aspect of the operation being proposed.

I am therefore satisfied that granting a permission within the limited scope of this application is unlikely to result in any additional impacts in regard to dust or odour emissions. The overall site is also subject to control through the Environmental Permit. However, I consider it appropriate to require updated Dust and Odour management plans.

The Environmental Health Officer (EHO) and the EA were consulted on this application and raised no objections or concerns in respect of dust or odour.

Subject to the inclusion of conditions requiring the submission of an updated odour and dust management plan, I am satisfied that the proposed change to the development would be unlikely to result in any unacceptable and significant impacts in regard to odour and dust emissions. The development is therefore considered to be in accordance with the policy W6 of the DDWLP.

### **Cumulative Impacts**

Paragraph 185 of the NPPF requires, *“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. ... mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life”.*

Policy W10 of the DDWLP states that *“Proposals for waste development will be assessed in the light of the cumulative impact which they and other developments would impose on local communities, concurrently or successively.*

*Waste development will be permitted only if the development would not result in significant and detrimental cumulative impact on the environment of those communities.”*

There is a cluster of waste facilities in this area and the cumulative impact of these developments in combination is recognised. The proposed development does not seek to increase any vehicular movements entering or egressing the site. Nor does this application seek to increase the throughput of materials brought on to site. This application only seeks permission for storage of IBAA upon the culvert area.

The site lies within a large industrial estate near to the M1 motorway, main line railway and less than 1km north of a number of other industrial and distribution uses on the former Stanton Ironworks site which has been in heavy industrial use since the 1780s. Given the location of the application site within this predominantly industrial area, a degree of noise and dust emissions must be anticipated. As addressed earlier within this report, an updated odour and dust management plan is recommended to be submitted which has up to date mitigation measures. Taking into consideration of the nature of the development it would not result in any significant cumulative impacts.

I do not consider that the development would result in any significant and detrimental cumulative impact on the environment and local communities. I am satisfied that the application would accord with Policy W10 of the DDWLP and the NPPF in this respect.

## **Conclusion**

I am of the opinion that the proposed removal of Condition 31, to enable stockpiling above the Culvert, would not damage its integrity or impact on flood risk. The concerns raised in the representation and those of Trowell Parish Council regarding dust and odour impacts are acknowledged, however, I am satisfied that the proposed change would not result in any significant impacts in these respects and that dust and odour controls are in place through the Environmental Permit and through planning conditions. However, updated dust and odour management plans should be required to be submitted, through attaching a suitable condition to any permission that is granted under this application. I am also satisfied that the proposal would not have a significant visual impact upon on the closest receptors and that, subject to the recommended conditions, it would accord with the NPPF and the policies of the ECS. The unauthorised development on the adjacent land is not a factor that can be weighed in the planning balance for deciding on this application. The application is therefore recommended for approval subject to imposition of a new set of conditions under the grant of the new permission. The new set of conditions carry over many of the conditions from the previous permission but include those amendments mentioned above and other minor amendments and deletions to reflect the current circumstances and the development that has taken place.

(3) **Financial Considerations**      The correct fee of £234 has been received.

(4) **Legal Considerations**      I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

Applications under section 73 of the Town and Country Planning Act 1990 are applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

By subsection (2), local planning authorities in considering these applications must consider only the question of the conditions subject to which planning permission should be granted. Whenever they decide that planning permission should be granted, subject to conditions differing from those subject to which the previous permission was granted, or be granted unconditionally, they are required to grant planning permission accordingly. Conversely whenever they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they are required to refuse the application.

The section does not apply where the time limit in the previous permission for starting the development has expired without the development having started. Where that time limit has not expired, the section cannot be used to obtain planning permission subject to a condition that would extend that time limit.

(5) **Environmental and Health Considerations** As indicated in the report.

(6) **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, social value, equality and diversity, human resources, property, social value and transport considerations.

(7) **Background Papers** File No. 8.1087.17  
Application Form, Planning Statement dated June 2021, cover letter from ML Construction Structural Engineering reference number 21/S122 dated 23 April 2021, Drawing Reference number MS256-7 entitled Site Management Protocol including vehicle routes dated 22 February 2013.

CCTV Drainage Survey dated 29 October 2021, CCTV Drainage Survey Report dated 25 October 2021. Further supporting information – email dated 14 January 2022 received 17 January 2022.

Consultation Responses from:

Derbyshire Wildlife Trust dated 24 September 2021.

Erewash Borough Council – Environmental Health Officer dated 5 August 2021.

The Highway Authority dated 26 October 2021.

The Canal and River Trust dated 16 August 2021.

Nottinghamshire County Council - Planning Policy dated 5 August 2021.

Trowell Parish Council dated 10 August 2021.

East Midlands Airport dated 18 August 2021.

The Environment Agency dated 1 September 2021, 7 February 2022, 17 August 2022 and 7 March 2022.

The Lead Local Flood Authority dated 31 August 2021 and 1 February 2022.

Representation received 13 August 2021.

(8) **OFFICER'S RECOMMENDATION** That the Committee resolves to **grant** planning permission, subject to the following conditions, or substantially similar to the effect of:

## Form of Development

- 1) The development shall be carried out in accordance with the details set out in the application for planning permission code no. CW8/0413/17 dated 26 April 2013 and approved 22 May 2013, as amended by application for planning permission code no. CW8/0417/1 dated 3 April 2017 and approved on 20 July 2017, and application code no. CW8/0721/18, except as otherwise modified or amended by conditions of this planning permission. For the avoidance of doubt the approved plans and documents are:

### CW8/0721/18

- Planning Statement dated June 2021
- Cover letter from ML Construction Structural Engineering reference number 21/S122 dated 23 April 2021
- Drawing Reference number MS256-7 entitled 'Site Management Protocol including vehicle routes' dated 22 February 2013
- CCTV Drainage Survey dated 29 October 2021
- CCTV Drainage Survey Report dated 25 October 2021
- Further supporting information – email dated 14 January 2022

### CW8/0417/1

- Covering Letter from Bond Planning Consultancy dated 3 April 2017
- Supporting statement Version 1.0 dated April 2017 from Bond Planning Consultancy

### CW8/0413/17

- Plan No: NTT/2200/001
- Plan No: NTT/2200/001(SP)
- Plan No: NTT/2200/002
- Plan No: MS256 dated October 2012
- Plan No: MS256-1 dated October 2013
- Plan No: MS256-4 dated February 2013
- Plan No: MS256-2 dated October 2013
- Plan No: MS256-6 dated February 2013
- Plan No: MS256-7 dated February 2013
- Plan No: MS256-8 dated February 2013
- Plan No: MS256-10 dated April 2013
- Plan No: BRD 1254-PL03P dated April 2013
- Plan No: BRD 1254-PEO1P dated April 2013
- Plan No: BRD 1254-PE02P dated April 2013
- Flood Risk Assessment with updates (BWB) dated September 2013
- Transport Assessment (BWB) dated April 2013
- Noise Assessment (Acute Acoustics Limited) reference dated April 2013
- Landscape Impact Assessment (FPCR): dated April 2013

- Design and Access Statement: dated April 2013
- Supporting Statement dated: dated April 2013
- Environmental Statement Volumes 1 and 2 dated July 2013
- Utilities Report (BWB) dated April 2013
- Ecological Appraisal (FPCR) (Revision A) dated July 2012

**Reason:** To ensure conformity with the details of the application that is approved and to clarify its scope.

### **Availability of Plans**

- 2) A copy of this permission, including all documents hereby approved and any other documents subsequently approved in accordance with any condition of this permission, shall be kept available for inspection at the site during the prescribed working hours for the duration of the development.

**Reason:** To ensure that the site operators are fully aware of the requirements of these conditions throughout the period of the development.

- 3) The external appearance of all buildings and structures on the site shall be maintained. Any maintenance or alteration to the external appearance of any of the buildings or structures shall be carried out using like for like materials so far as possible. In advance of any changes to the external appearance being made a scheme detailing the proposed changes shall be submitted to and approved in writing by the Waste Planning Authority. The changes shall then be carried out and maintained in accordance with the details as approved.

**Reason:** To control the spread and appearance of plant and ancillary development in the interests of the appearance of the site.

### **Tonnage of Waste Imported and Processed**

- 4) In any 12 month period, the amount of all permitted waste imported and processed at the site (Incinerator Bottom Ash waste and associated metals only), shall not exceed 350,000 tonnes. The site operator shall make accurate records of the tonnages of the wastes arriving at the site using the site weighbridge and these records shall be kept available for inspection as and when requested by the Waste Planning Authority.

**Reason:** To safeguard the amenity of users of nearby land and the nearest residential occupiers, and to ensure that continuation of the waste management facility does not give rise to environmental impact.

## Hours of Operation

5) No operations authorised or required by this permission, other than the essential servicing and maintenance of plant and other similar work of an essential nature, shall be carried out on the site except between the following times, unless otherwise approved in writing by the Waste Planning Authority:

a. The acceptance of IBA and Processing within the building:  
0600 hours – 2200 hours Monday to Saturday inclusive.

b. All other site works and distribution of reclaimed materials:  
0600 hours – 1800 hours Mondays to Saturday inclusive.

There shall be no working on Sundays, Bank Holidays or other National Holidays.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity and the environment.

6) The facility shall only be available to persons by prior arrangement with the operator and shall not be available to the general public.

**Reason:** To ensure that additional traffic to and from the site is minimised.

7) At all times, the recording of all complaints relating to odour, noise and other nuisance complaints shall be undertaken in accordance with the details received under cover of email from MEB Design Solutions dated 22 August 2014, as approved by the Waste Planning Authority on 16 October 2014.

**Reason:** To ensure that the amenities of the residents of the area are protected.

8) No additional outdoor lighting shall be installed at the site other than in accordance with the application details as shown on Drawing No. MS256-8 dated 22 February 2013, except in accordance with a scheme which has received the written approval of the Waste Planning Authority. The scheme shall include details of the type of any additional external lighting, the position, lux levels, light spread and activation methods.

**Reason:** To minimise the impacts of the development on the local environment and to protect the amenity of the area.

### **Site Access and Highway Protection**

- 9) The sole vehicular access to be used in conjunction with this development shall be as shown on Drawing No. MS256-7 dated, 22 February 2013.

**Reason:** To control access into the site in the interests of local amenity, highway safety and the environment.

- 10) All existing visibility splays and road markings at the access shall be retained and maintained for the duration of the proposed works.

**Reason:** In the interests of highway safety.

- 11) The number of Heavy Goods Vehicle movements shall not exceed 140 per day (70 in/70 out) on Mondays to Fridays and 68 (34 in/34 out) on Saturdays. Daily records of Heavy Goods Vehicle movements shall be maintained on site and made available for inspection by the Waste Planning Authority during the hours specified in Condition 6 above.

**Reason:** In the interests of highway safety.

### **Highway Safety**

- 12) All loaded vehicles entering or leaving the site shall be sheeted.

**Reason:** In the interest of highway safety.

### **Highway Cleanliness**

- 13) No mud, debris or other dirt shall be taken from the site and deposited onto the private road outside the site boundary or on any public highway.

**Reason:** In the interests of highway safety.

### **Noise suppression Measures**

- 14) a) All work on the site shall be carried out as appropriate in accordance with BS 5228-1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites – Noise' or its equivalent replacement.

At all times during the carrying out of the approved operations all practicable noise suppression measures shall be applied to the operation of all plant (including crushing and screening plant), machinery and vehicles. All vehicles, plant and machinery shall operate on the site only during the permitted hours, except in an emergency, and shall be maintained in accordance with the manufacturers' specifications at all times, and shall be fitted with and use effective

silencers or other acoustic mitigation devices/shrouds as appropriate. Save for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

b) There shall be no alterations in working practices or changes in equipment used which would be likely to materially increase the noise levels at the boundary of the site without the prior written approval of the Waste Planning Authority.

**Reason:** To ensure the development does not have an adverse effect on neighbouring commercial interests and local amenity.

- 15) Reversing warning devices on all plant and vehicles operated on the site shall be either non-audible, ambient-related or low-tone devices.

**Reason:** To ensure the development does not have an adverse effect on neighbouring amenity.

- 16) No materials shall be processed on the site other than via the plant specified in the application documents set out in condition 1.

**Reason:** To clarify the details approved and to ensure the development does not have an adverse effect on neighbouring commercial interests and local amenity.

- 17) The free field noise levels from the site operations, as measured at the site boundary expressed as a 1 hours LAeq, shall not exceed 60dB(A) or L90 plus 5dB(A), whichever is the higher.

**Reason:** In the interests of protection of amenity.

- 18) At all times, the noise monitoring and noise management measures set out in the Noise Mitigation Strategy produced by Acute Acoustics Limited (ref 1524) received under cover of email from MEB Design Solutions dated 22 August 2014, as approved by the Waste Planning Authority, on 16 October 2014, shall be fully implemented and maintained thereafter for the duration of the development.

**Reason:** In the interest of protection of the local amenity.

- 19) Within one month of receiving a written request from the Waste Planning Authority, the operator shall undertake and submit to the Waste Planning Authority for its written approval, a BS4142: 2014+A1:2019 noise survey, to assess whether noise arising from the development exceeds the daytime criterion of 5db(A) above the existing background noise level, after the addition of the 5db(A) penalty to reflect tonal, discrete or impact

noise as advised in BS4142:2014+A1:2019 at the nearest residential receptor. The submitted survey shall include further measures to mitigate noise impact so as to ensure compliance with the noise criteria. The noise mitigation measures shall thereafter be implemented in accordance with the approved details, and the mitigation measures maintained through the operational life of the site.

**Reason:** To safeguard the amenity of the users of nearby land and the nearest residential occupiers.

### **Control of Dust, Smoke, Fumes and Waste**

- 20) Within two months of the date of this permission a Dust Management Plan shall be submitted to and approved in writing by the Waste Planning Authority. The Dust Management Plan shall include all measures and provisions to suppress and control dust to prevent fugitive dust from leaving the site.

If despite the steps taken in the Dust Management Plan the operator becomes aware of dust leaving the site, or if it is considered necessary and upon request of the WPA all relevant operations shall be temporarily suspended immediately and shall not resume until appropriate measures are in place to ensure that site operations can resume without dust leaving the site.

The operator shall give prior notification to the WPA of any proposed revisions to the dust management measures and submit a revised version of the DMP to the WPA for its written approval.

The measures and provisions set out in the Dust Management Plan shall be implemented as approved.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 21) There shall be no fires on the site.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 22) The site shall be kept clean and tidy with measures in place to prevent litter or debris from the operations being deposited on land outside the site. Any windblown wastes or litter arising from the operations on the site shall be collected daily and stored in an appropriate container until it is removed from the site to an appropriate licenced facility.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 23) The maximum storage height of any unprocessed or processed material (IBA/IBAA/metals or other) shall be 5 metres, as measured from ground levels immediately adjacent to the stockpile and within the permission boundary.

**Reason:** In the interests of protecting the visual amenity.

- 24) Notwithstanding the requirement of the other conditions of this permission relating to dust management, those areas on the application site and outside the building, where vehicular activity takes place, shall be surfaced with a solid bound material and appropriate dust suppression implemented.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 25) All rubbish, debris, scrap and other waste material generated on the site shall be regularly collected and stored in a tidy manner in a contained and inconspicuous location within the site until disposed of in a suitable facility.

**Reason:** To ensure that the site working areas are kept clear.

### **Site Drainage and Contamination**

- 26) Within two months of the date of this permission details of the surface water drainage system in place on the site shall be submitted to the WPA for approval in writing. The submission shall include:

- a plan(s) detailing all surface water features in place on the site
- details of surface water drainage processes/mechanisms/rainwater collection systems in place on the site
- details of maintenance provisions and contingency arrangements.

The surface water drainage scheme as approved shall be maintained throughout the operational life of the waste operations.

**Reason:** To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the future maintenance of the sustainable drainage structures.

- 27) There shall be no discharge of foul or contaminated drainage from the site into the ground, ground water or any surface waters, whether direct or via soakaways. All necessary measures shall be taken to prevent

effluents, oil, fuel or lubricant being discharged to any watercourse, ground water system or underground strata.

**Reason:** To prevent contamination of watercourses.

- 28) Any oil, fuel, lubricant and other potential pollutants shall be handled on the site in such a manner as to prevent pollution of any watercourse or aquifer. For any liquid other than water, this shall include storage in suitable tanks. All facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of each bunded compound shall be at least equivalent to the capacity of the tank and associated pipework plus 10%. If there is multiple tankage within a bund, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels and associated pipework plus 10%. All filling and emptying points, associated valves, vents, tank overflow outlets, pipework, gauges and sight glasses shall be located within the bund or have separate secondary containment. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund. There shall be no drain through any bund floor or walls. The drainage system of each bund shall be sealed with no discharge to any watercourse, land or underground strata.

**Reason:** To prevent contamination of watercourses.

- 29) With the exception of the requirement to exclude the Nutbrook culvert corridor from the influence of any stockpiling the development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) NTT/2200/FRA Rev C and the mitigation measures detailed within the Flood Risk Assessment.

**Reason:** To ensure that the site drains efficiently.

- 30) Any materials being stored over the Nutbrook culvert shall be removed, upon the request of the Environment Agency in order to carry out their statutory functions.

**Reason:** To ensure the development is safe for its lifetime without increasing flood risk elsewhere.

- 31) The Nutbrook Culvert in the confines of the development site shall be routinely monitored and inspected to identify any structural defects in it. Any such defects, that are identified shall be remediated and be

reported immediately to the Waste Planning Authority and the Environment Agency.

**Reason:** To ensure the Nutbrook Culvert in the confines of the development site is safe for the lifetime of the development from increasing flood risk elsewhere

- 32) Prior to being discharged into any watercourse, surface water drain, sewer or soakaway system, all surface water drainage from parking areas and hardstanding, shall be passed through an oil interceptor, which shall be designed and constructed to have a capacity (and details) compatible with the site being drained.

**Reason:** To prevent pollution of the water environment and ensure the site is adequately drained.

### **Odour**

- 33) Notwithstanding the information required by the other conditions of this permission, each working day, the surrounds of the site shall be monitored for any odours arising from the development. If any materials result in noticeable odours they shall be contained or removed from the site as soon as practicable.

**Reason:** To ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 34) Any non-inert odorous wastes brought onto the site shall be stored separately from the inert wastes in a lidded skip or container and removed from the site as soon as reasonably practicable.

**Reason:** For the avoidance of doubt and to ensure that the waste management facility and related operations do not have an adverse impact on local amenity.

- 35) Within two months of the date of this permission an Odour Management Plan shall be submitted to and approved in writing by the Waste Planning Authority. The Odour Management Plan shall include all measures and provisions to control odour on site.

The operator shall give prior notification to the WPA of any proposed revisions to the odour management measures and submit a revised version of the OMP to the WPA for its written approval.

The measures and provisions set out in the Odour Management Plan shall be implemented as approved.

**Reason:** To ensure that odour emissions do not adversely impact on local amenity.

### **Contaminated Land**

- 36) The development shall be undertaken in accordance with the details set out in the Phase 1 Factual Contamination report/risk assessment, the Borehole data and all associated plans prepared by Geodyne (ref D33158/PK dated 26 November 2013) and the additional information received from Geodyne dated 2 November 2016, as approved by the Waste Planning Authority on 15 December 2016.

**Reason:** National Planning Policy Framework Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from or being adversely affected by unacceptable levels of water pollution.

### **Conservation and Landscaping**

- 37) All existing hedges and fences on the site boundary shall be maintained and protected from damage throughout the period of operations.

**Reason:** For the protection of visual amenity.

### **Landscaping/Ecology**

- 38) Within two months of the date of this permission a detailed landscaping scheme shall be submitted to the WPA for approval in writing. The scheme shall include the following:

- Details of all planting carried out on the site including location/species/date of planting, maintenance undertaken.
- Details of planting to be carried out on the internal bank of the existing bund that runs along the northwest boundary and the banks/bunds/non-operational areas either side of the site access. The details should include proposed plant species, size of plants, ground preparation, means of protection and density of planting.
- Details of the maintenance and management of existing and proposed planting which should be carried out annually for five years following planting being undertaken. The details should include provision for protection from pest damage, weed control, watering, cutting, trimming and replacement planting.

The landscaping scheme shall also provide opportunities for habitat creation and ongoing management, in compensation for those mitigation and enhancement measures proposed in the Environmental Statement dated July 2013 and the Habitat Mitigation scheme dated August 2014 that have not been undertaken.

The scheme shall be implemented as approved and all proposed planting will be carried out in the first planting season following approval of the scheme.

**Reason:** To enhance the character and local distinctiveness of the surrounding natural and built environment.

- 39) No operations required by this permission, including the stripping or storage of soils, shall take place within 6 metres of the centre line of any hedge and not within 10 metres of the trunk of any tree which is to be retained on the site.

**Reason:** To ensure that all existing vegetation is preserved.

- 40) No trees, hedgerows or shrubs shall be removed during the bird nesting season unless the trees, hedgerows or shrubs that are to be removed have been surveyed to confirm the absence of active bird nesting and a report setting out the method employed and the results of the survey have been submitted to and approved in writing by the Waste Planning Authority.

**Reason:** To ensure the protection of nesting birds.

### **Statement of Compliance with Article 35 of the Town and Country (Development Management Procedure) (England) Order 2015.**

The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article.

### **Footnotes**

- 1) The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:
- on or within 8 metres of a main river (16 metres if tidal);
  - on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal);
  - on or within 16 metres of a sea defence;
  - involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert;
  - in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you do not already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk).

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

- 2) The following issue is not within our direct remit or expertise, but nevertheless is an important consideration for managing flood risk for this development. Prior to deciding this application, we recommend that consideration is given to the issue below. Where necessary, the advice of relevant experts should be sought.

Details and calculations relating to the structural stability of the Nutbrook culvert

The applicant has provided structural calculations which seek to demonstrate that the Nutbrook culvert is able to withstand the loading being placed atop it (ref 21/S122-2, dated 17th February 2022 and compiled by ML Consulting Structural Engineers).