

County Matter: Waste

Teignbridge District: Application under S73 of the Town and Country Planning Act for Variation of Conditions 4, 19, 21 and 24 of Permission DCC/4101/2018 (19/00207/DCC) – Importation of 350,000m³ of inert soils and topsoil for the land raising of previously disturbed land that is not capable of sustaining commercial agriculture at Lower Hare Farm, Lane from Higher Hare towards Alderbed Copse, Whitestone, Exeter

Applicant: GRS Stone Supplies Ltd.

Application No: DCC/4293/2022

Date Application received by Devon County Council: 8 February 2022

Report of the Chief Planner

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that, subject to the applicant entering into a deed of variation to apply the terms of the previous legal agreement to the new permission, planning permission is granted subject to the conditions set out in Appendix 1 of this report (with variations to the conditions of the previous planning permission highlighted) (with any subsequent minor material changes to the terms of the agreement being agreed in consultation with the Chair and Local Member).

1. Summary

- 1.1 This report explains the variations to the conditions proposed in this application made pursuant to S73 of the Town and Country Planning Act and sets out the amendments to the phasing of an existing planning permission for landfill/land raise and the consequent alterations to the previously approved drawings should the re-phasing be approved. It should be noted that the application, if granted, would result in a fresh planning permission in addition to the extant permission that was granted previously for the development.
- 1.2 It is considered that the main material considerations in the determination of this application are legal considerations and the scope of the application; surface water management; ecology and biodiversity; landscape and visual impact; highways; public health and climate change.
- 1.3 The planning application, consultation responses and representations received are available to view on the Council website under reference DCC/4293/2022 or by clicking on the following link:
<https://planning.devon.gov.uk/PlanDisp.aspx?AppNo=DCC/4293/2022>

2. Proposal/Background

- 2.1 Planning permission was granted for the 'Importation of 350,000m³ of inert soils and topsoil for the land raising of previously disturbed land that is not capable of sustaining commercial agriculture' at Lower Hare Farm on 30 June 2021, following consideration of the application by Members at their meeting on 2 December 2020 ([minute *117, committee reports available at: https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=131&MId=3863&Ver=4](https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=131&MId=3863&Ver=4)).
- 2.2 Since the determination of that application, a new operator has taken on management of the site and wishes to revise the phasing of the tipping. The approved tipping was in seven narrow phases aligned north to south and running broadly from east to west across the site (as indicated in the attached Plan 1). However, the new operator wishes to tip from the top (north) to the bottom (south) in three phases, restoring the site as the tipping progresses to the bottom and deepest part of the approved scheme (see Plan 2).
- 2.3 In order to achieve this, the applicant wishes to vary certain conditions of the original consent which specify compliance with the previously approved drawings: Condition 4 - phasing; Condition 19 - phasing; Condition 21 - ecological buffer zones; and Condition 24 - progressive restoration. It is noted that Condition 3, relating to notification of stages of development, would also need to be consequently amended as it refers to seven phases of development rather than the three as now proposed.
- 2.4 This report deals only with the impacts of the proposed changes to the existing planning permission which would be enabled by the amendment to the conditions as applied to the existing permission, rather than considering the principle of the development. The new application does not propose to alter the development previously granted. The volume of waste materials to be deposited, the final landform, the duration of the development and the means of vehicular access will remain unaltered.
- 2.5 As the original application was Environmental Impact Assessment (EIA) development, this is a 'subsequent scheme' under Regulation 9 of the EIA Regulations and has been advertised accordingly.
- 2.6 The permission allows for the importation of 350,000 cubic metres of inert waste soil and topsoil over a 10 years' period with restoration to agriculture.
- 2.7 The original permission is subject to a legal agreement which requires onsite and offsite carbon offset contributions, an offsite biodiversity contribution and a bridleway scheme. There will need to be a deed of variation made to the existing agreement to ensure that those obligations will also apply to the S73 permission if granted.
- 2.8 The applicant wishes to alter the phasing as indicated on Plans 1 and 2 attached to this report. This would have implications for the interim landscape impact and the progressive restoration and water management that were not assessed in the original application, and the applicant was therefore asked to provide an addendum to the original Environmental Statement assessing only those potential impacts that might comprise alterations or omissions from the original assessment.

- 2.9 At the same time as the S73 application was submitted, applications to discharge pre-commencement conditions on the original consent (the Landscape and Environmental Management Plan (LEMP), the operational traffic management plan and the detailed drainage design) have been submitted. The LEMP and the drainage designs are based on the revised phasing proposed by the S73 application, and the applicant is aware that these cannot be determined in their current form unless permission is granted to alter the conditions relating to the phasing. The determination of these should wait until such time as the S73 application has been determined.
- 2.10 The landfill will also require an Environmental Permit from the Environment Agency which will deal in more detail with the engineering construction of the landfill. The applicant has confirmed that there is no intention on their part to vary Condition 15 of the existing consent which restricts the landfill to inert waste soils

3. Consultation Responses

- 3.1 Teignbridge District Council (Planning): If DCC are minded to grant consent, it is requested that the matters raised by the Landscape Officer are fully addressed within conditions and that biodiversity net gain is secured. In addition, the comments from the Environment Agency regarding the need for an Environmental Permit are noted as is the Note of Clarification dated June 2022 from the applicant which confirms that an Environmental Permit application is in the process of being finalised. Having considered the objections, DCC are recommended to satisfy themselves that the proposed changes fall within the scope of S73.
- 3.2 Teignbridge District Council (Environmental Health): no response received.
- 3.3 Whitestone Parish Council: Objection. Concerned that the imported materials may be contaminated; the application does not accord with S73 as it is not a minor amendment and the description has been altered; subsoils would now be only a minor element of the fill and a considerable amount of engineering fill is proposed especially in Phase 3; the geological barrier indicates that the fill may be contaminated; and the proposal would contradict existing condition 15 which restricts imports to inert waste soils.
- 3.4 Tedburn St Mary Parish Council: Strongly support the comments made by Whitestone Parish Council against the application. Tedburn St Mary Parish Council has an additional worry about increased noxious traffic through the village.
- 3.5 Environment Agency: No comment on the application as proposed, but they advise that no waste operations should take place until an Environmental Permit is in place.
- 3.6 National Highways: No objections subject to following the traffic routeing as set out in response to DCC/4101/2018.
- 3.7 Natural England: Is not able to assess the potential impacts of the proposal on statutory nature conservation sites or protected landscapes. It is for the

Local Authority to determine whether or not the proposal is consistent with national and local environmental policies.

- 3.8 Historic England: Suggest the views of the Council's specialist conservation and archaeological officers are sought.
- 3.9 Exeter Airport: No safeguarding objections so long as no changes made to the current application.
- 3.10 DCC Highways: No objection as vehicle movements are proposed to remain the same as for DCC/4101/2018.
- 3.11 DCC Road Safety: No comment.
- 3.12 DCC Landscape: Considers that the landscape benefits of the proposed restoration scheme would not result in a "beneficial" impact on the landscape character, as the restoration design remains essentially unchanged. However, the residual effects would be "negligible." The impact of the current proposals would reduce the impact of the operations slightly as a result of the earlier restoration of fields 1 and 2 including the associated Devon hedgebanks and the proposed configuration of phased working from north to south in 3 phases.

The greatest benefits would arise where views of working in Phase 3 would now be obscured by intervening topography whereas, before, waste operations in all phases would have been visible for the whole duration of land raising operations. Recommends a suitably worded condition to secure the early restoration of Phase 1 before the commencement of infilling Phase 3 (including the construction and planting of the new hedge banks).

- 3.13 DCC Flood Risk Management: No in-principle objections. The applicant has now designed the surface water drainage system based on the entire field draining into it. Therefore, the discharge rate from the basin has been increased.
- 3.14 DCC Ecology: No ecological issues with the S73 application with regards to the proposed changes in phasing. The applicant has commissioned an updated ecological walkover survey, which has confirmed the site remains the same from the original application. I am satisfied that the proposed changes along with the financial contribution secured by the legal agreement as per the original planning consent will achieve a net gain in biodiversity.
- 3.15 DCC Public Health: Having read the clarifications we have nothing further to add over and above our previous responses regarding the application with regards Lower Hare Farm. If an application is made for an Environmental Permit we will consider this separately if consulted by the Environment Agency.

4. Advertisement/Representations

- 4.1 The application was advertised in accordance with the statutory publicity arrangements by means of a site notice, notice in the press and notification of neighbours by letter. Notifications were also sent to those who had commented on the original application.

4.2 As a result of these procedures, 94 objections have been received. Many representations have been made based on concerns regarding the original determination. A number of objections were also made to the process of dealing with variation of conditions by S73 and questioning information in the application about the nature of the construction of the landfill. A document has been produced by the applicant to clarify a number of matters about which objections had been raised. This was published on the Council's website, but it does not add any new environmental information under the terms of the EIA Regulations.

4.3 The principal objections which are directly relevant to this application for the variation of conditions attached to the previous permission fall into the following main categories:

Procedural matters:

- (a) too many alterations for the application to be determined by S73 process: the changes are not minor; the description has been altered; and lack of assessment of proposed changes;
- (b) change in site size and red line area;
- (c) inadequate consultation; and
- (d) comments on the original proposal which have not been the basis of this application and allegations that the original determination was flawed and based on poor officer advice.

Matters related to the actual proposed alterations to the scheme:

- (e) The nature of materials to be imported including concerns about hazardous and construction/demolition/mining wastes;
- (f) change in nature of the lagoon;
- (g) landscape impact would be greater than the original proposal;
- (h) increased traffic due to the need to double handle construction materials that would require crushing elsewhere, with no carbon assessment of this; and
- (i) the proposed re-phasing of the development would result in a landscape "scar" for a longer period.

Matters related to the operational traffic and environmental management plan:

- (j) proposed new structures on the southern boundary, especially concerns about lighting;
- (k) proposed alterations to the access drive;
- (l) no construction/management plan; and
- (m) gradient of haul roads.

4.4 The CPRE object on the basis that a S73 application is not the appropriate mechanism, and raise concern that the planning supporting statement refers to pre-approved inert mining and construction and demolition waste whereas the conditions of the original permission specify inert waste soils which is a fundamental change.

5. Planning Policy Considerations

5.1 In considering this application the County Council, as Waste Planning Authority, is required to have regard to the provisions of the Development Plan insofar as they are material to the application, and to any other material considerations. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that where regard is to be had to the Development Plan, the determination shall be in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Development Plan policies are summarised below and the most relevant are referred to in more detail in Section 6.

5.2 Devon Waste Plan (adopted December 2014)

Policies W2 (Sustainable Waste Management); W3 (Spatial Strategy); W7 (Waste Disposal); W11 (Biodiversity & Geodiversity); W12 (Landscape and Visual Impact); W13 (Historic Environment); W14 (Sustainable and Quality Design); W16 (Natural Resources); W17 (Transportation & Access); W18 (Quality of Life); W19 (Flooding); and W20 (Restoration & Aftercare).

5.3 Teignbridge Local Plan 2013-2033 (adopted May 2014)

Policies S1A (Presumption in favour of Sustainable Development); S1 (Sustainable Development Criteria); S2 (Quality Development); S6 (Resilience); S7 (Carbon Emission Targets); S9 (Sustainable Transport); S10 (Transport Networks); S11 (Pollution); S22 (Countryside); WE11 (Green Infrastructure); EN2A (Landscape Protection and Enhancement); EN3 (Carbon Reduction Plans); EN4 (Flood Risk); EN5 (Heritage Assets); EN6 (Air Quality); EN7 (Contaminated Land); EN8 (Biodiversity Protection and Enhancement); EN9 (Important Habitats and Features); EN11 (Legally Protected and Priority Species); and EN12 (Woodlands, Trees and Hedgerows).

5.4 Other material considerations include:

- National Planning Policy Framework;
- National Planning Policy for Waste; and
- Planning Practice Guidance.

6. Comments/Issues

6.1 It is considered that the main material considerations in the determination of this application are legal considerations and the scope of the application; surface water management; ecology and biodiversity; landscape and visual impact; highways; public health and climate change.

Legal Considerations and Scope of the Application

6.2 Representations have been made by Whitestone Parish Council and a number of local residents questioning the legality of the use of Section 73 of the Town and Country Planning Act 1990 to determine the application

6.3 Section 73 of the Town and Country Planning Act 1990 provides for the determination of applications to develop land without compliance with conditions attached to a previous planning permission. Subsection (2) limits

the scope of the planning authority's consideration of a S73 application to the conditions to which planning permission should be granted.

- 6.4 There is case law on this matter that establishes that, using S73, a planning authority can only impose different conditions upon a new planning permission if they were conditions which the authority could lawfully have imposed upon the original planning permission, in the sense that they did not amount to a fundamental alteration of the proposal put forward in the original application. It is clear that phasing conditions could have been imposed on the original permission, and there is no material change to the operation to the extent that it would amount to a different development.

Minor Material Amendments

- 6.5 A number of objections have been made to the application based on the assumption that a S73 application can only be used to make minor amendments to an application, and that the proposed alterations are not 'minor'. While Planning Practice Guidance may refer to the use of S73 for 'minor material amendments', that concept is a creature of policy; as a matter of law, S73 is in no way limited to making minor material amendments. The key requirement for exercising S73 is that an amendment must be capable of being effected by variation to one or more existing planning conditions, and that the principles established in case law are adhered to. The S73 application to vary conditions has not been made with a view or any attempt to amend the 'operative part' of the existing planning permission, and the description of the development remains unaltered.
- 6.6 The application was advertised to make it clear that it was an application to vary conditions of an existing permission. If this variation of conditions is approved, then the procedure is to issue a new planning permission with the amended conditions and the same description as well as reiterating all of the unaltered conditions [it should be noted that a new planning permission granted through S73 does not replace the original permission, which remains extant alongside the new permission]. There is no application to vary the description of the existing permission as originally granted in any way or to remove or amend the condition restricting the importation of materials to inert waste soils
- 6.7 This application would, by varying some of the existing conditions, enable an alteration to the phasing with consequential amendments to the treatment of surface water. It does not seek to alter the nature or description of the planning permission as originally granted, and the end result will be the same eventual landform and restoration to agricultural land.

Extent of the Site

- 6.8 It is agreed that S73 cannot be used to vary the extent of an application site as defined by a red line, but the red line used to define the site in the previous application has not been changed in the S73 application. One originally submitted drawing which was not consistent with the approved red line and was a part of the Landscape and Visual Impact Assessment has required amendment to make it consistent with the approved red line. This was an error and the applicant has provided a corrected revised plan (1073/PL32 Rev B) to ensure consistency with the other plans.

- 6.9 There has been concern raised that the application form for the S73 application indicates that the operational site is larger (7.7ha) than that specified in the original application (6.4ha). The applicant has explained that the original area had been calculated manually and that new application drawings are based on Autocad measurements which are more precise. In terms of the legal extent of the site, this is dictated by the red line area of the application (which includes land not affected by the landfilling operation but comprises access and drainage/and the ecological buffer zones) rather than the area stated on the application form, and the red line has not altered.

Ancillary Operations

- 6.10 The application was advertised along with the information that had been submitted to discharge conditions on the existing planning permission related to the Operational Traffic and Environmental Management Plan, the Landscape Environment Management Plan and the Surface Water Management Plan. These documents would relate to the consent as varied by the S73 application to alter the phasing and, therefore, could not be determined before this application is resolved. They were added to the file for completeness, but this report relates only to the S73 application to vary conditions relating to phasing.
- 6.11 There have been concerns raised regarding, in particular, the Operational Traffic and Environmental Management Plan as it indicates temporary facilities along the southern boundary of the site that were not included in the original application, comprising a ticket office and inspection platform, a site office and welfare facility and a wheel wash.
- 6.12 Under the provisions of the Town and Country Planning (General Permitted Development) Order 2015, the temporary facilities would be 'permitted development' under Schedule 2 Part 4 Class A (Temporary buildings and structures). Class A allows the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.
- 6.13 Additionally, the proposed widening to the access track would be 'permitted development' under Schedule 2 Part 9 Class E (The carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way).
- 6.14 The applicant has agreed to assess any potential impacts of the works that would be 'permitted development' through the discharge of the pre-commencement conditions. They have confirmed in writing that there will be no lighting, which seems to have been the basis for most of the concern, and that alterations to the access track would take place within the existing lane using the verges, with no hedgerows would be affected. The subsequent determination of the LEMP condition will be based on an updated walkover survey and assessment of the areas affected by the operations that are 'permitted development'.

Type of Materials

- 6.15 Many objectors have expressed concern about the reference in the application to mining waste and to the use of construction and demolition wastes where there might be other materials than soils, and suggested that these are outside the scope of the materials allowed for in the existing permission. The applicant has subsequently confirmed that they will abide by Condition 15 of the existing permission that restricts the input to inert soils, and this condition will be reimposed in the S73 consent.
- 6.16 The proposed operations need an Environmental Permit from the Environment Agency and its engineering construction will be based upon this. The geological barrier referred to in the S73 application would be a requirement of the Permit, and this would comprise soils with high silt or clay content.
- 6.17 The reference to 'mining wastes' seems to have somewhat understandably been taken to mean hazardous materials, with the confusion about the nature of the materials due to the definitions of waste types for different parts of the construction of this project which fall within general categorisation in the Environmental Permitting legislation.
- 6.18 The applicant has confirmed that this reference to 'mining wastes' could relate to soils with a higher clay or silt content which might, for example, be found when stripping soils from mineral sites, and it is advised that the site is still primarily intended to take soils and overburden from housing development sites around Exeter.
- 6.19 Concerns were also raised by objectors that the supporting documentation implied that the 1.25m 'capping' of the landfill with clean soils might indicate that there would be hazardous or non-inert materials within the landfill beneath the capping. The applicant has clarified that, whilst the landfill will comprise waste soils only, some may not be of the appropriate type or quality to produce the level of agricultural restoration envisaged and, therefore, the soils used to cover down the tipped materials would have to be of a higher specification for the reinstatement of agriculture.

The Environmental Permit

- 6.20 A number of objections have been made on matters including slope stability, the gradient of haul roads, references to 'engineering' fill and the geological barrier. The applicant has clarified that haul routes, the basal layer, side wall stability and on-site risk assessments (essentially a Construction Management Plan) will be managed through the Environmental Permit and approved by the Environment Agency. Advice in the NPPF is that planning decisions should be concerned with the use of land, rather than duplicating matters covered by the separate permitting/pollution control regime.

Surface Water Management

- 6.21 The surface water management scheme has had to be amended to take into account the revised phasing as the landform and open areas will be different to the original proposal. Additionally, the applicant has recalculated the

drainage requirements based on the whole red line area and has made the proposed water management and catchment scheme more robust by proposing the enlargement and deepening of the existing pond and the provision of a chain of temporary ponds along the base of the valley until Phase 3 is completed. The new hedgerow across the top of the site is intended to provide a natural 'break' to surface water which will enable Phase 1 to be restored early and restored to farmland.

- 6.22 The flood risk management team has considered the proposals and has no in principle objections, noting that the applicant has now designed the surface water drainage system based on the entire field draining into it, therefore the discharge rate from the basin has been increased. For the restored site, the applicant has proposed to construct a pond within the south-eastern corner of the field to capture flows to an extent, while overflows from the pond will be conveyed into the western pond by a swale.
- 6.23 Concerns have been expressed that the enlargement and deepening of the existing pond will lead to biodiversity loss; however, the creation of a new pond in the south-east corner of the site is intended to be a replacement and the County Ecologist is of the view that this proposal presents a marginal gain over the previous approved scheme.

Ecology and Biodiversity

- 6.24 The proposal to revise the phasing of the site has been accompanied by an Environmental Statement addendum indicating that the revised proposal would have a marginally improved net gain over the existing approved scheme. Objections have been received regarding the deepening of the existing water body on the site to accommodate the surface water management scheme, but this is a necessary action to ensure the surface water is managed adequately. The applicant has mitigated for this by increasing the size of new on-site replacement habitat areas and early delivery of the majority of the biodiversity gains with ongoing maintenance through the operational phase.
- 6.25 The County Ecologist has noted that there is more biodiversity benefit than that proposed by the existing approved scheme but that there is a need to update the walkover survey. The applicant has stated that the survey has been done but that, due to the time of year, it is proving difficult to get the reports written up as it is peak survey season. This could be overcome by requiring the inclusion of the updated walkover survey in the Landscape and Environmental Management Plan which would be required to be discharged after the determination of this application and before commencement of development.

Landscape and Visual Impact

- 6.26 A recurring comment made by objectors is that the revised phasing would leave an open "scar" on the landscape for a longer period. On the basis of the additional Landscape and Visual Impact Assessment provided by the applicant, it is considered by the County Council's Landscape Officer that there is a wider landscape benefit to the proposed operational development as proposed by this application over the existing permitted scheme, as the current proposals would reduce the impact of the operations slightly as a

result of the earlier restoration of fields 1 and 2 including the associated Devon hedgebanks and the proposed configuration of phased working from north to south in three phases.

- 6.27 The greatest benefits would arise where views of working in Phase 3 would now be obscured by intervening topography, whereas before waste operations in all phases would have been visible for the whole duration of land raising operations. A slight amendment to Condition 19 is intended to deal with the fears about Phase 1 being left as an open scar by adding the following sentence: "There shall be no filling in Phase 3 until the hedgebank at the lower end of Phase 1 has been completed and planted and the fields to the north restored to pasture".
- 6.28 One neighbouring landowner has objected as the original proposal to tip in seven phases east to west would have meant that the early phases closest to him would be restored and the operation would move away to the west. While this is correct, the property concerned is 450m from the site boundary and the topography would make the likelihood of disturbance small as the tipping would move down into the steep valley after the initial completion of Phase 1.

Highways

- 6.29 There are no objections from highways or highway safety officers as the proposed number of movements is not proposed to be altered. A number of objectors have written revisiting issues that were considered when determining the original application which cannot be relevant to this application for variation of the phasing conditions. Other comments have been made concerning alterations to the access track, but these are 'permitted development' as explained above.

Public Health

- 6.30 When the original application was determined, the County Council's Public Health service assessed that the impacts of noise and dust were not significant but asked for mitigation measures that have been included in the planning conditions attached to the existing permission. The Public Health team has confirmed, on the basis of the clarification provided by the applicant, that they have nothing further to add on this application. This proposal raises no new issues, and the previous conditions will be reiterated in any new consent.

Other Environmental Considerations (including Climate Change)

- 6.31 Paragraph 148 of the National Planning Policy Framework requires that "the planning system should support the transition to a low carbon future in a changing climate", while Devon County Council has declared a climate emergency and committed to facilitating the reduction of Devon's carbon emissions to net-zero by 2050. Climate change and 'making Devon greener' are priorities in the County Council's Strategic Plan for 2021-2025. The scope for individual planning applications to contribute to these initiatives will be dependent on the nature and scale of the development being proposed, and relevant considerations are outlined below.

- 6.32 A number of objectors have made the assumption that, because the applicant mentioned construction and demolition wastes, this would require either crushing and screening on the site with the associated unassessed impacts, or would require construction and demolition materials to be taken elsewhere for crushing and screening before being received at this site, thus increasing the mileage of materials and leading to a greater amount of fuel consumption and CO₂ emissions.
- 6.33 The applicant has clarified in writing that this is not the intention. Materials will be sourced from development sites and taken straight to this site in accordance with the requirements of the original conditions that the materials will be waste soils (Condition 15) and that there would be no processing (Condition 17) or stockpiling (Condition 18) at Lower Hare Farm. The applicant has not sought to alter either the existing conditions that prevent processing or stockpiling at the site, and has not sought to increase the size of the site. These are therefore not new issues that are material to the re-phasing of the tipping and would raise no new issues that were not considered when the existing planning permission was determined.

7. Reasons for Recommendation/Alternative Options Considered

- 7.1 The Committee has the option of approving, deferring or refusing this planning application.
- 7.2 Planning permission has already been granted for the importation of inert materials to this site and provide a new inert landfill to service the needs of the greater Exeter area and to improve the agricultural landform.
- 7.3 The alterations to that proposal are straightforward and raise no significant new issues. It is therefore recommended that the variation of Conditions 4, 19, 21 and 24 of permission DCC/4101/2018 be granted and the S73 permission issued with the revised plans and drawings related to the new scheme of working and the revised conditions as set out in Appendix I to this report. A deed of variation tying the existing S106 agreement to the new S73 permission will be required prior to the new permission being issued.
- 7.4 The main alternative to this proposal would be to implement the existing planning consent which tips across the face of the hillside in strips from east to west. The applicant has stated that this would be their intention if permission to alter the phasing is not granted.

Mike Deaton
Chief Planner

Electoral Division: Exminster & Haldon

Local Government Act 1972: List of Background Papers

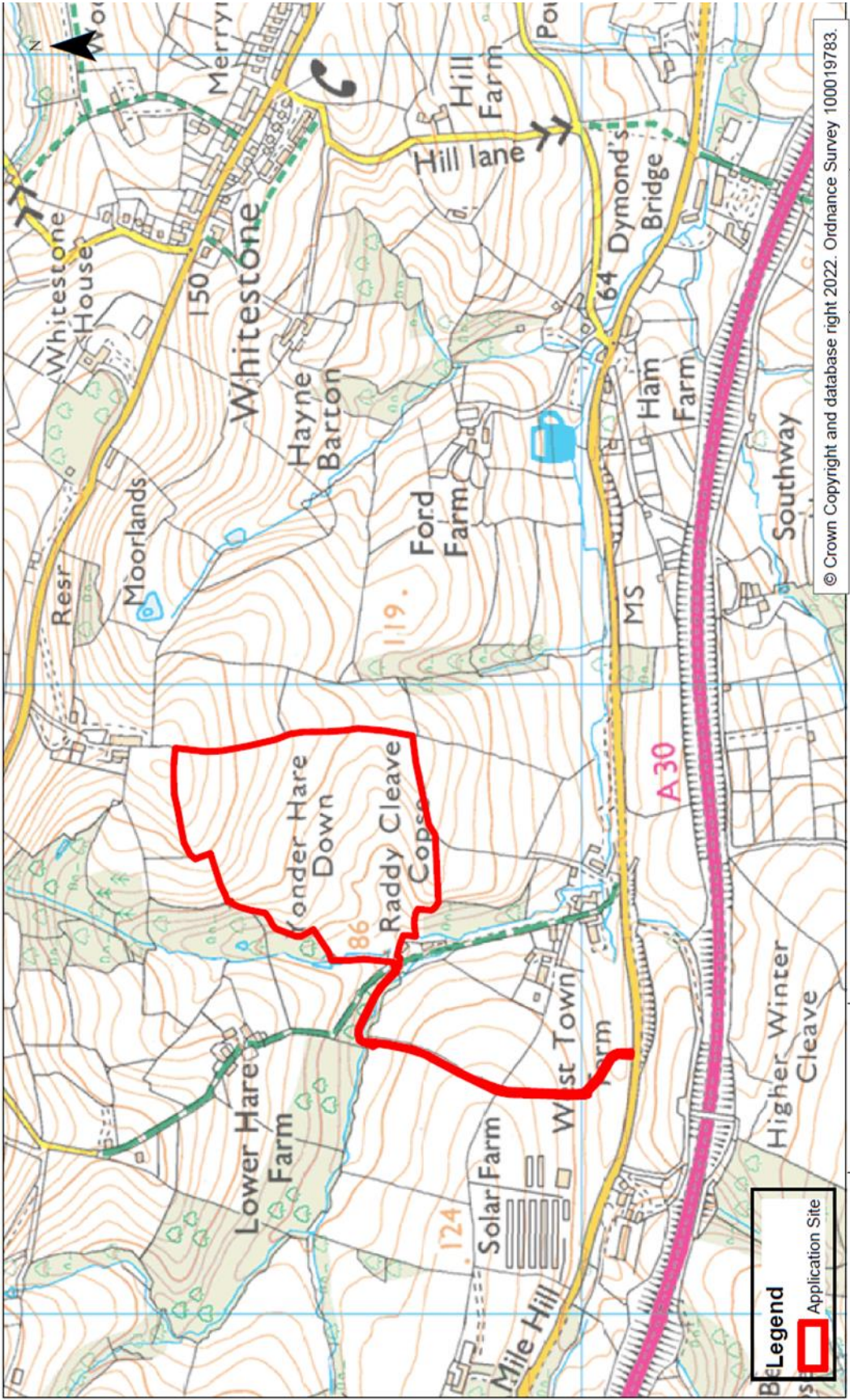
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Tel No: 01392 383000 Room: 120 County Hall

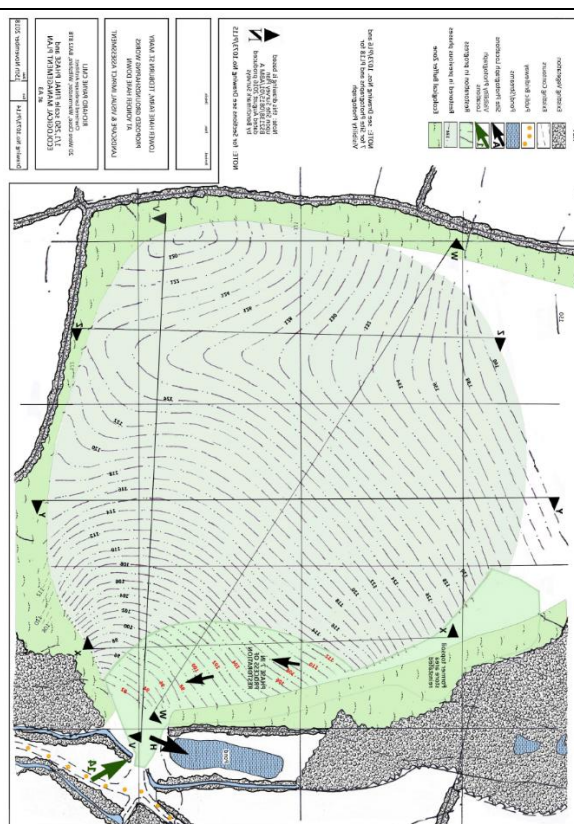
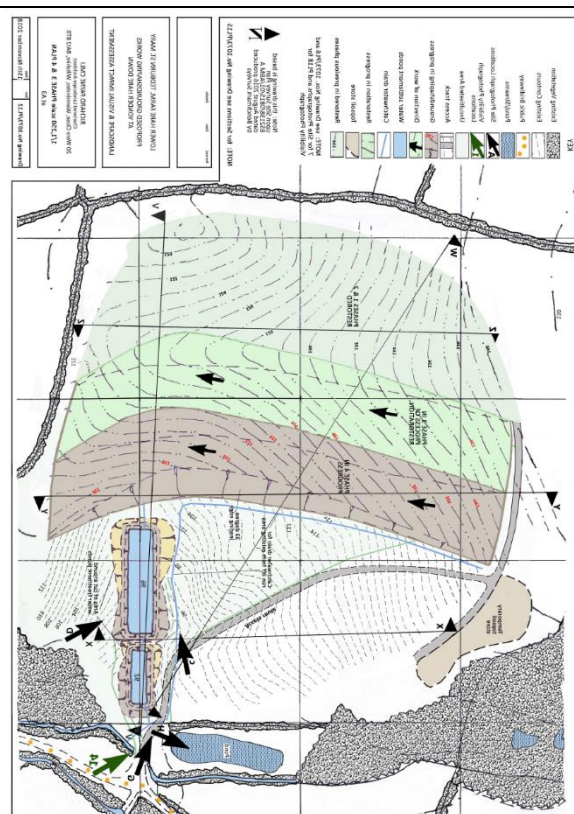
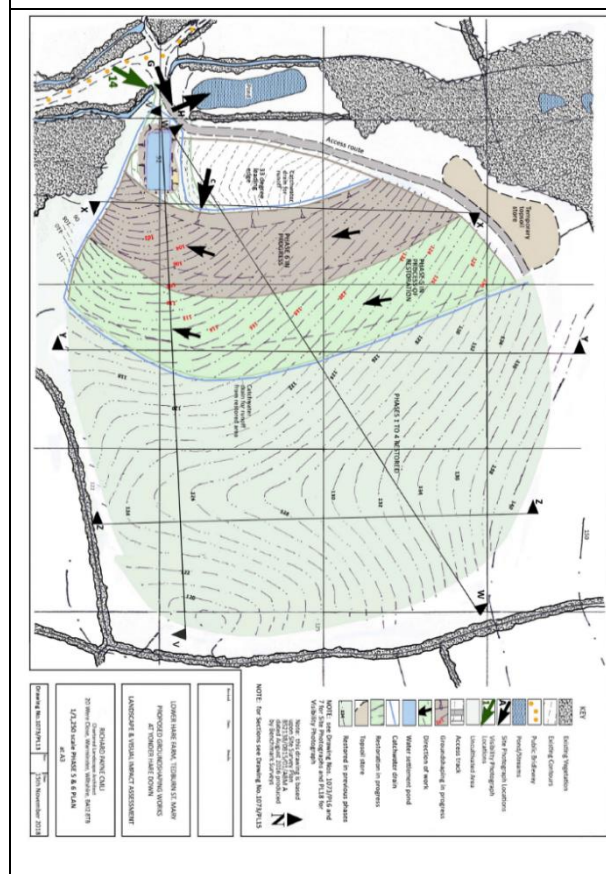
Background Paper	Date	File Reference
Casework File	Current	DCC/4293/2022

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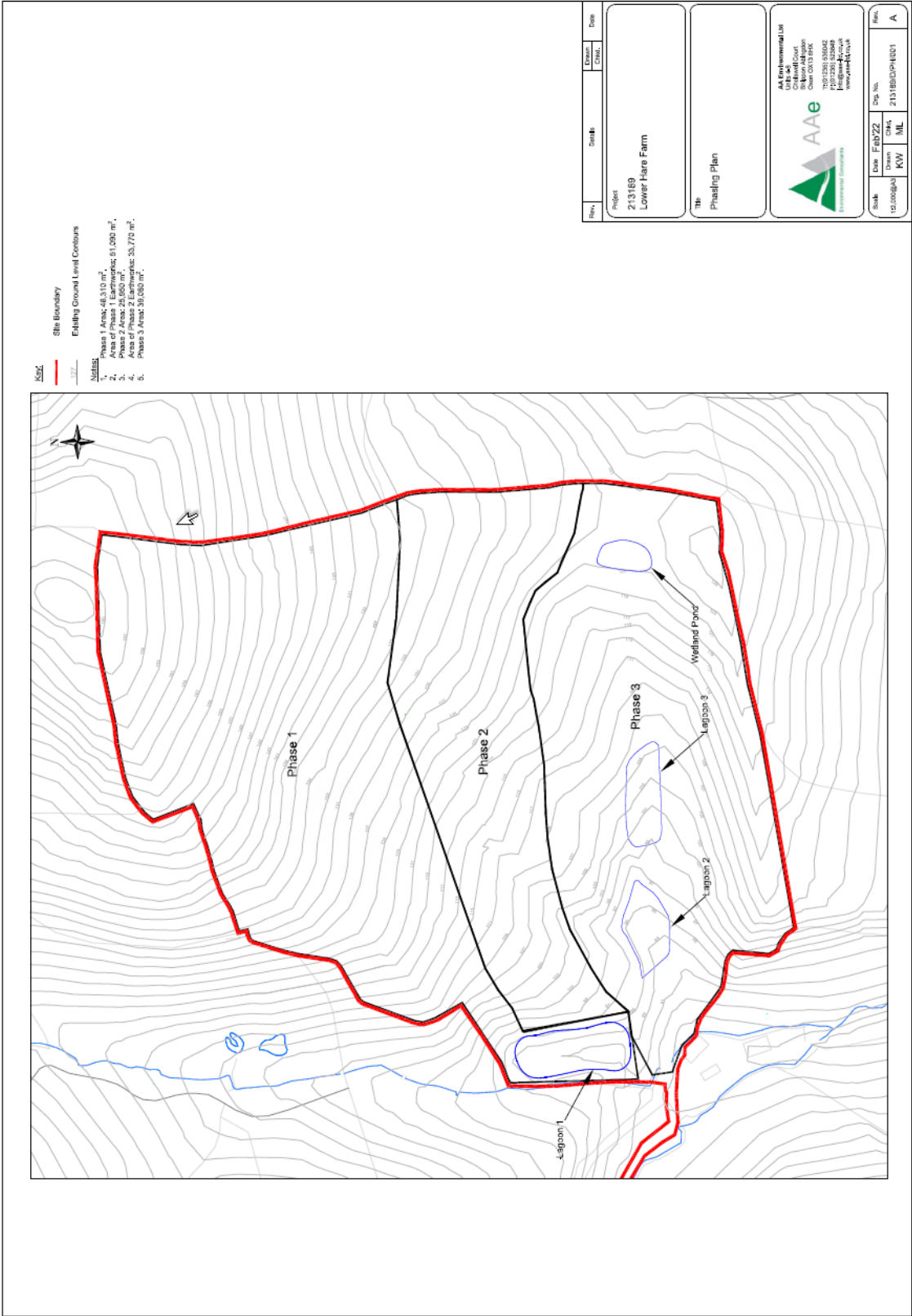
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	Head of Climate Change, Environment and Transportation	Development Management Committee	date July 2022	scale 1:8,000
		Location Plan County Matter: Waste Teignbridge District Council: Variation of Conditions 4, 19, 21 and 24 of Permission DCC/4101/2018 (19/00207/DCC) - Land raising at Lower Hare Farm, Whitestone, Exeter, Devon		
Application No: DCC/4293/2022 22/00940/DCC				



Plan 2 Proposed Revised Phasing



Planning Conditions

[deletions from the conditions within the existing planning permission DCC/4101/2018 are shown ~~struck through~~ and additions are underlined]

COMMENCEMENT

1. The development shall commence within three years of the date of this permission.

REASON: In accordance with Section 91 of the Town and Country Planning Act 1990.

TEMPORARY PERMISSION

2. The deposit of inert waste materials within the area identified on the approved drawings for land raising shall cease no later than ten years from the date on which waste is first deposited, and the restoration scheme shown on drawing 4073/PL23213189/PL/D/007 shall be fully implemented within 12 months of cessation of deposit of inert waste materials.

REASON: To minimise the impact of the development and to ensure the timely completion of restoration of this part of the site in accordance with Policies W18 and W20 of the Devon Waste Plan.

NOTIFICATION OF STAGES OF DEVELOPMENT

3. Written notification shall be provided to the Waste Planning Authority no later than 14 days after the following events:
 - (a) commencement of the development;
 - (b) installation of the datum control point required by Condition 11;
 - (c) commencement of the deposition of waste materials within the proposed land raise area;
 - (d) completion of each of the ~~seven~~three phases of the development; and
 - (e) completion of final restoration of the inert land raise area.

REASON: To enable the Waste Planning Authority to control the development and to monitor the site to ensure compliance with the planning permission and to comply with Policies W12 and W20 of the Devon Waste Plan.

STRICT ACCORDANCE WITH PLANS / DOCUMENTS

4. The development shall be carried out in strict accordance with the details shown on the approved drawings and documents numbered/titled:
 - Location and Ownership Plan (1073/PL34 Revision D)
 - ~~Phase 1 & 2 Plan (1073/PL11)~~
 - ~~Phase 3 & 4 Plan (1073/PL12)~~
 - ~~Phase 5 & 6 Plan (1073/PL13)~~
 - ~~Final Phase and Ecological Management Plan (1073/PL14)~~
 - ~~Cross Sections (1073/PL15)~~

- Restoration and Ecological Management Plan (1073/PL23)
- Phasing Plan (213189/D/PH/001 Rev. A)
- Phase 1 Overview Enabling Works (213189/D/PH1/001)
- Phase 1 Topographical Detail (213189/D/PH1/002)
- Phase 1 Cross Section Detail (213189/D/PH1/003)
- Phase 2 Overview Landfill North Construction (213189/D/PH2/001A)
- Phase 2 Overview Landfill North Restoration (213189/D/PH2/001B)
- Phase 2 Topographical Detail (213189/D/PH2/002)
- Phase 2 Cross Section Detail (213189/D/PH2/003)
- Phase 3 Overview Landfill South (213189/D/PH3/001)
- Phase 3 Topographical Detail (213189/D/PH3/002)
- Phase 3 Cross Section Detail (213189/D/PH3/003)
- Restoration Plan (213189/PL/D/007)
- Planning (Environmental) Statement V7.1 (submitted October 2020)
- Document Titled - Lower Hare Farm Regulation 25 request for further information response (Submitted February 2020)
- Document Titled - Lower Hare Farm Regulation 25 request for additional information 02/04/2020 (Submitted October 2020)
- Supporting Statement (April 2022)
- Environmental Statement Addendum (April 2022)
- Note of Clarification (June 2022)
- Transport Statement (DMM/AJB/G.033 – Dated 1 July 2019)
- Farm Access Technical Note (Dated 26 February 2016)
- Clarification from Agent regarding Highways England comments (email dated 11 February 2019)
- Ecological Assessment Report (SWE090 – Dated 20 September 2018) *As amended by information subsequently provided under Regulation 25.
- Ecology Addendum (SWE164 – Dated 22 October 2019)
- Ecology Addendum 2 (SWE089 – Dated 21 June 2019) *As revised October 2020
- Ecology Addendum 3 (SWE089 – Dated 21 January 2020)
- Landscape and Visual Impact Assessment (Dated October 2018)
- Response to County Landscape Architect's comments (Dated 19 March 2019)
- Review of 2018 LVIA (April 2022)
- Landraising Phases (1073/PL32 Rev. B)
- Level 2 Flood Risk Assessment and Surface Water Drainage Proposals (514/FRA2 V1 – Dated 18 September 2019)
- Flood Risk Appendix (Dated September 2019)
- Noise Assessment (Dated September 2018)
- Air Quality and Dust Assessment (J3692A/1/F2 - Dated April 2019)
- Hydrogeological Risk Assessment (Dated January 2019)

REASON: To ensure that the development is carried out in accordance with the approved details.

PRE-COMMENCEMENT CONDITIONS

5. No part of the development hereby permitted shall be commenced until an operational traffic and environmental management plan/scheme has been submitted to and approved in writing by the Waste Planning Authority. This scheme shall include the following:
- (a) details of the routes to be used by vehicles travelling to and from the site and measures to be taken to secure compliance with these routes, including penalties for noncompliance;
 - (b) measures for traffic management (e.g. waiting places within the site for unloading);
 - (c) signage strategy;
 - (d) location of loading, unloading and storage of plant, equipment and materials;
 - (e) areas for parking of vehicles of site personnel, operatives and visitors;
 - (f) measures for control of mud and dust on the road; and
 - (g) details of environmental protection measures.

The approved scheme shall be implemented for the duration of the proposed land raising and restoration works.

REASON: To ensure adequate access and associated facilities are available for vehicles and to minimise the impact of operations on nearby residents and the local highway network in accordance with Policies W17 and W18 of the Devon Waste Plan and Policy S9 of the Teignbridge Local Plan.

6. Prior to commencement of construction of any part of the new internal haul road, a scheme detailing its construction, management, maintenance and removal shall be submitted to and approved in writing by the Waste Planning Authority. This scheme shall include the following:
- (a) timetable/programme of works;
 - (b) measures for construction traffic management [including routing of vehicles to and from the site, details of the number/frequency and sizes of vehicles];
 - (c) days and hours of building operations and deliveries; including any further restrictions on noisy operations;
 - (d) construction dust management and mitigation measures;
 - (e) details of monitoring and maintenance once the haul road is constructed; and
 - (f) details of the removal of the haul road.

The approved scheme shall be implemented for the duration of the proposed land raising and restoration works.

REASON: To protect local communities and the local environment from potential adverse impacts of construction of the haul road in accordance with Policies W11 and W18 of the Devon Waste Plan and Policies S1 and S9 of the Teignbridge Local Plan.

7. No part of the development hereby permitted shall be commenced until a detailed Restoration and Aftercare scheme and a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Waste Planning Authority. The LEMP shall provide details of proposed creation and management of existing and new planting and habitats, and shall include:

- (a) the intended purpose and structure/composition at end of the maintenance period of each vegetation type and intended ultimate size once mature, with clear composition targets;
- (b) timings and frequencies of maintenance/management interventions including identifying any restrictions on timing of operations and responsibilities for necessary permissions/licences;
- (c) measures for the maintenance and management of other landscape elements that are critical to the way the landscaping scheme functions, including fencing, surfaces, sustainable drainage features and culverts;
- (d) measures for the control of invasive weeds;
- (e) arrangements for the use and storage of chemicals for Landscape Maintenance Operations/Control of Substances Hazardous to Health; and
- (f) arrangements for reporting and monitoring, which shall be consistent with the approved landscaping scheme and any relevant development consents and licenses.

REASON: To ensure the appropriate management of the site during its operation and following its restoration in accordance with Policies W11, W12 and W20 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.

8. No part of the development hereby permitted shall be commenced until the following flood risk and surface water drainage information has been submitted to and approved in writing by the Waste Planning Authority:
- (a) a detailed drainage design based upon the approved Flood Risk Assessment;
 - (b) proposals for the maintenance of the surface water drainage system, including maintenance of the existing pond;
 - (c) a plan depicting surveyed levels of the eastern and southern boundaries;
 - (d) confirmation of the proposed flow control type and size;
 - (e) confirmation of the proposed graded basin sides; and
 - (f) details of the existing pond including pond invert level; maximum water level; minimum water level; side slopes; type of any lining; type of any existing plants; and restoration timeframe.

The development shall be implemented in accordance with the approved details.

REASON: The above condition is required to ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in accordance with Policy W19 of the Devon Waste Plan and Policy EN4 of the Teignbridge Local Plan.

9. No part of the development hereby permitted shall be commenced until a reptile translocation and mitigation statement has been submitted to and approved in writing by the Waste Planning Authority. This statement shall include details of the method of reptile translocation, the translocation site and the future management on the translocation site, and the development shall be undertaken in accordance with the approved statement.

REASON: To ensure that the proposed development does not have an unacceptable impact upon a protected species in accordance with Policy W11 of the Devon Waste Plan and Policy EN11 of the Teignbridge Local Plan.

10. No part of the development hereby permitted shall be commenced until a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures has been undertaken. This shall be submitted to and approved in writing by the Waste Planning Authority and any identified measures shall subsequently be implemented.

REASON: To ensure that the proposed development does not have an unacceptable impact upon a protected species in accordance with Policy W11 of the Devon Waste Plan and Policy EN11 of the Teignbridge Local Plan.

SURVEYING AND MONITORING

11. Prior to the deposit of any waste materials within the area proposed for land raising, a control datum point shall be installed in a location that shall first have been agreed in writing by the Waste Planning Authority. This control datum point shall be retained for the duration of land raising and restoration operations.

REASON: To enable the Waste Planning Authority to control the development and to ensure that the approved restoration scheme is achieved in accordance with Policy W20 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.

12. A survey of levels of the land raise area shall be carried every two years from the date on which waste materials are first deposited within the land raise area until the cessation of land raising operations and restoration of the site. A copy of each survey shall be submitted to the Waste Planning Authority within 21 days of being undertaken.

REASON: To ensure effective management of the site to minimise the impact upon the local landscape in accordance with Policies W12 and W20 of the Devon Waste Plan.

13. Prior to the construction of the water settlement ponds and the deposit of any waste materials within the area proposed for land raising, the results of the baseline survey to establish the existing ground conditions shall be submitted to the Waste Planning Authority. If any contamination is found to be present, no further development shall take place until this has been suitably remediated in accordance with details that shall first have been submitted to and approved in writing by the Waste Planning Authority.

REASON: To ensure that if any contamination is associated with the area of previous filling is suitably and safely remediated in accordance with Policy W16 of the Devon Waste Plan and Policy EN7 of the Teignbridge Local Plan.

14. No new permanent fencing shall be erected within the site unless details of its height, materials and colour have first been submitted to and approved in writing by the Waste Planning Authority.

REASON: To ensure that any proposed fencing is effectively integrated within the local landscape in accordance with Policy W12 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.

OPERATIONAL CONDITIONS

15. The types of waste disposed of at the site shall be limited to inert waste soils.

REASON: To ensure that only appropriate waste types are disposed of at the site, in accordance policies W7 and W18 of the Devon Waste Plan.

16. The site shall only operate between the hours of 0730 to 1800 on Mondays to Fridays, apart from maintenance and emergency works which shall also be allowed to occur between 0800 and 1300 on Saturdays. There shall be no operations on Sundays or Public Holidays.

REASON: To protect the amenity of nearby residents in accordance with Policy W18 of the Devon Waste Plan and Policy S1 of the Teignbridge Local Plan.

17. No processing of waste, including crushing or screening, shall take place at the site.

REASON: To protect the tranquillity of the area and the living conditions of nearby residents in accordance with Policy W18 of the Devon Waste Plan.

18. Waste imported to the site shall be incorporated into the area of filling as soon as practicable. No stockpiling of waste shall occur.

REASON: To ensure that the development does not have an unacceptable impact on landscape and visual amenity in accordance with Policy W12 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.

19. The disposal of waste shall take place in a phased manner as indicated by the approved phasing plans. No filling shall take place in any phase until the filling of the previous phase has been substantially completed. There shall be no filling in Phase 3 until the hedgebank at the lower end of Phase 1 has been completed and planted and the fields to the north restored to pasture.

REASON: To minimise the magnitude of visual impact at any one time in accordance with Policy W12 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.

20. If any archaeological objects or features are uncovered during the stripping of topsoil on site, then operations shall cease, and the find shall be reported to the Waste Planning Authority. In such instance, operations shall not resume without the express permission of the Waste Planning Authority.

REASON: To ensure that any archaeological finds are investigated and recorded in accordance with paragraph 199 of the National Planning Policy Framework and Policy W13 of the Devon Waste Plan and Policy EN5 of the Teignbridge Local Plan.

21. Following their implementation, no works shall take place within the ~~ecological~~habitat buffer zones defined on drawing ~~073/PL23213189/PL/D/07.~~

REASON: To ensure that the proposed development does not have an unacceptable impact on ecology/biodiversity in accordance with Policy W11 of the Devon Waste Plan and Policies EN8 and EN9 of the Teignbridge Local Plan.

22. Noise emanating from the development shall be controlled in accordance with the recommended mitigation measures outlined in section 5 of the approved Noise Assessment (dated September 2018).

REASON: To protect the amenity of nearby residents and the tranquil nature of the rural environment and to comply with policies in the Development Plan, in particular Policies W12 and W18 of the Devon Waste Plan and Policy S1 of the Teignbridge Local Plan.

23. Dust suppression and monitoring shall be carried out in accordance with the recommended mitigation measures outlined in section 6 of the approved Air Quality and Dust Assessment (dated April 2019).

REASON: To protect the amenity of nearby residents and the environment and to comply with policies in the Development Plan, in particular policies W11 and W18 of the Devon Waste Plan and Policy S1 of the Teignbridge Local Plan.

ECOLOGY, LANDSCAPING AND RESTORATION

- ~~24. Progressive restoration shall be carried out in accordance with the approved drawings. Filling of phase 3 shall not commence until phase 1 has been restored; filling of phase 4 shall not commence until phase 2 has been restored; filling of phase 5 shall not commence until phase 3 has been restored; filling of phase 6 shall not commence until phase 4 has been restored; filling of phase 7 shall not comment until phase 5 has been restored.~~

~~REASON: To minimise the magnitude of visual impact at any one time in accordance with Policy W12 of the Devon Waste Plan and Policy EN2A of the Teignbridge Local Plan.~~

- ~~25~~24. In the event that the inert land raise operations permanently cease prior to the approved final levels being reached, a revised restoration scheme shall be submitted to the Waste Planning Authority within three months of the Authority giving written notice of a requirement for such a scheme. The revised restoration scheme shall be fully implemented within 12 months of the approval of the scheme by the Waste Planning Authority.

REASON: To ensure effective restoration of the site in the interests of the local landscape and biodiversity in accordance with Policies W11, W12 and W20 of the Devon Waste Plan.

- ~~26~~25. No vegetation clearance or other works which could affect ground nesting birds shall take place during the bird nesting season (1 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.

REASON: To ensure that the proposed development does not have an unacceptable impact upon a protected species in accordance with Policy W11 of the Devon Waste Plan and Policy EN11 of the Teignbridge Local Plan.

~~27~~26. No seeding shall take place within the 'ecological~~habitat~~ buffer zones' unless details of a locally sourced seed mix shall first have been submitted to and approved in writing by the Waste Planning Authority. All seeding shall be undertaken in accordance with the approved details.

REASON: To ensure that the proposed restoration will be implemented to an acceptable standard, in accordance with Policy W20 of the Devon Waste Plan.

SOIL MANAGEMENT

~~28~~27. No topsoil, subsoil or soil making material naturally occurring on the site shall be removed from the site.

REASON: To ensure suitable soils are available to restore the site in accordance with Policies W16 and W20 of the Devon Waste Plan.

~~29~~28. No waste materials shall be deposited within any part of the inert land raise area until a soil strategy has been submitted to and approved in writing by the Waste Planning Authority. This strategy shall include details of:

- (a) the stripping and storage of existing topsoil, including heights of stockpiles and measures for their temporary seeding and prevention of weeds; and
- (b) the proposed restoration method including subsoiling operations, spreading of soils (which shall be carried out only when there is sufficient soil moisture deficit so as to prevent any degradation of soil structure), and the soil profile and soil specification for each vegetation type, to ensure effective establishment of new seeding and planting and subsequent agricultural use.

The approved soil strategy shall be implemented for the duration of land raise, landscaping, restoration and aftercare operations.

REASON: To ensure that the landscaping and restoration proposals conserve and enhance soil resources and agricultural land quality in accordance with Policy W16 of the Devon Waste Plan.