4.1 Application to Extract Sand and Gravel: Former Swinderby Airfield –
Correction: Page 8 of supplementary report under ‘2) Need’, fifth paragraph should read Tonge’s Farm not Tong Farm.

Following the advice received from Legal Services and information contained in an email from the Environment Agency, a letter was sent on 21 April 2011 to those raising concerns over drainage matters. In response to the letter dated 21 April 2011, four further letters of objection/comment have been received, the content of which is summarised below:

- “Cemex are discharging trade effluent not water onto our land”;
- the discharge licence from the Environment Agency states it is for trade effluent. Trade effluent is identified as discharge of water which is used in a process;
- the letter from the Environment Agency dated 14 November 2007 states:–
  “If granted, a Consent under Schedule 10 of the Act, covers water quality considerations only. It does not give any right or permission to discharge where land is not owned, by the applicant. In addition, for discharges to watercourses, it does not imply the suitability with regard to volumetric capacity, of the receiving watercourses. It is the responsibility of the applicant to identify and negotiate, with the riparian owners as necessary, any requirement for downstream improvement works. Failure to do so could result in flooding and a Common Law action by the riparian owner”.
- Risk of flooding due to gravel extraction adding to already full dykes during the wet seasons;
- Water from the dewatering process all running towards the Witham rather than some running towards the Trent.
- The field next to the extraction site is sandy and too dry to grow high yield spring crops, but is ideal for sugar beet. The crop, however, requires lots of water in June/July to reach full potential. The objector asks “Would dewatering lower the water table and reduce crop yield”?


- The majority of the neighbouring farm is clay loam which lies wet in the driest of times. Questions are asked over the impact of more water going into the dyke raising water tables. Higher water tables could result in flooding or water logging and the ability to work the land both in the autumn and early spring. The fields can be too wet by the end of September to mid April. Reduced time for working the land would mean greatly reduced yields.

- The grass field next to the dyke is very wet and has limited grazing days. Any increase in water levels would result in further reductions in the productivity of the land for grazing.

- Concerned about the environmental impacts of grazing, noise, dust and general disturbance.

- The movement of ground water could result in subsidence.

- The endless flow of quarry vehicles.

- Water courses were moved during the Second World War which resulted in drainage problems and stability of land being affected.

- Can the drainage ditches cope with the additional water?

- Property prices will go down, who will compensate?

- Too little investigation work has been carried out by CEMEX.

- Consider an investigation and enquiry be held into the matter;

- The council should take direct responsibility for drainage matters.

- The environment has already been scarred by extensive quarrying.

- The quarry companies should be stopped.

- There are too few safeguards in place to protect residents.

- The airfield is rumoured to have had nuclear weapons stored on it. Contamination fears.

- Who is going to undertake long-term maintenance, especially on water courses?

- Response from applicant on drainage matters, letter from Brian Greenwood of Osborne and Clark is appended to this update.
A letter from Wilkin and Chapman on behalf of one of the landowners is appended to this update.

Letter from applicant re-contents of Wilkin and Chapman’s letter.

The applicant has further commented that:

− the blockage of current drainage pipes on the airfield would be considered as part of the water management plan;

− the ditches are more than adequate to accommodate discharge far in excess of the actual discharge. The statutory consultees have no objection and with regard to Swinderby the measures in place to mitigate against negative impacts of the development will provide protection for landowners.

Cemex has been engaged in an ongoing dialogue with the parish and landowners. Several offers have been made to clear ditches, improve culverts and to consider any genuine agricultural claim.

Cemex has had no response to date (05.05.2011) to the offers to clear ditches and improve culverts nor has a claim been received for agricultural loss.

Cemex has detailed four offers made between 23.03.2011 and 05.05.2011.

**Head of Planning’s Comments** – legal advice has been sought on the matter of drainage and this is set out in the supplementary report. However, following various comments received, further detail was sought and this is set out below. The Environment Agency also advised that legal advice should be sought on the relationship between Discharge Permits and land drainage matters.

The legal advice received is as follows:-

There are two aspects to the issue one being the Common Law position and the other the Statute Law.

**Common Law**

The Common Law position goes back many years and has remained virtually unchanged since the case of Mason & Hill in 1833 which stated:-

“The possessor of land through which a natural stream runs, has a right to the advantage of that stream flowing in its natural
course, and to use it when he pleases for any purpose of his own not inconsistent with the similar rights in the proprietors of the land above and below. A proprietor above cannot diminish the quantity or injure the quality of water which would otherwise descend, nor can a proprietor below throw back the water without his licence or consent”.

**Statutory Law**

At present the Statutory position seems to be embodied in the Water Resources Act 1991 (the 1991 Act) which has introduced the forms of discharge consents, and the Environment Act 1995 which passed the administration processes to the Environment Agency (EA), (and certain other water undertakes), including the management of non-tidal watercourses.

The EA has powers that include the issuing of discharge consents authorising discharges of effluent into watercourses.

Effluent is defined by s.221(1) of the 1991 Act as “any liquid, including particles of matter and other substances in suspension in the liquid”. Substance is further defined as “including micro-organisms and any natural or artificial substance or other matter….”

The section also goes on to define Sewage effluent and Trade effluent.

Over a period of time Statute has eroded the Common Law principles and by 1906 a case of Edinburgh Water Trustees –v- Sommerville & Son established that where an Act of Parliament has authorised interference with the natural flow, the original rights of the riparian proprietors are impaired only so far as the reasonable exercise of statutory rights have that consequence.

The word “natural” means that even if the water only contains natural substances it is still called “effluent”, and consequently such water needs an effluent discharge consent.

The words in the second paragraph govern a situation where there is in existence a discharge consent properly granted by the EA under its statutory powers but the extent of the discharge is in excess of what would be considered as reasonable.

The landowner would seem to have some comeback if he/she is able to establish the discharge is beyond what would be reasonable under the terms of the discharge consent. Additionally there may be provisions in the consent giving the EA statutory or other rights against the consent holder in respect of unreasonable discharges.
The Water Management Agreement contemplated under the conditions to be attached to the proposed decision notice should require Cemex to obtain an appropriate consent from the EA and comply with its terms.

The regulating of discharges during inclement weather etc would have the effect of regulating the flow so as not to breach the “reasonableness” test.

The recommended conditions require that discharge levels are maintained at Greenfield run off levels, compliance with such a requirement would mean that discharge levels would not compromise Common Law rights. If the level of discharge were to be greater than Greenfield rates, the approval would be required from the riparian owners downstream from the point of discharge. The recommended condition is also supported by a requirement in the Section 106 agreement that is proposed.

It would appear that there is a difference of opinion over the point of discharge and therefore the level of agreement required. The applicant considers that the discharge is into Thurlby Lake which at the point the pipe outflows into the lake is owned by the applicant.

The matters raised in the letter from Wilkin and Chapman at point 2 do not therefore relate to the planning application before the Committee.

It is understood that Wilkin and Chapman’s letter relates to issues concerning discharge from Tonge’s Farm and Norton Disney Low Wood Quarries rather than the application site. Further to this, it is also understood that the drain concerned is not the drain for the Swinderby site, but a tributary drain to the south.

The point at which water leaves the lake is seen by local landowners as the discharge point into the water course. The lake at the east end is owned by another party.

The recommended conditions, coupled with the legal agreement set out in part (A) of the recommendation, are designed to protect the Common Law rights and provide a framework which would enable the implementation of an appropriate drainage solution for the area.

It is recommended that an additional informative be attached with regard to land drainage.

‘It is the responsibility of the applicant to negotiate with the riparian owners as necessary, any requirement for downstream improvement works’. 
With respect to specific issues raised not related to drainage, most are covered in the report. A response to outstanding issues raised are set out below:-

The draw down of water would result in the field next to the application site becoming drier.

- The JBA consulting report prepared in 2010 specifically makes comment on the field concerned; “The field has a subsurface drainage system (shown on plans provided with the response from [the landowner] to Lincolnshire County Council in August 2008). These drains are likely to be a key component in determining the moisture levels in the soil zone. As long as the water table is deeper than around 1m below ground level during the growing season, its depth is unlikely to have much affect on crop growth (some deeper rooting crops such as wheat may have roots down to 1m”).

- Predicted draw down on the field would be between 0.25m and 0.7m. The current water table is on average 3m below the surface.

The airfield was rumoured to be used to store nuclear material.

- RAF Swinderby was between 1942 until its closure a training base, firstly a conversion unit to heavy bombers and in its post Second World War years for junior aircraftmen. A site north of Swinderby station, formerly known as RAF Swinderby until the airfield was constructed, was a bomb store and in use until 1958. The site known as RAF Norton Disney served RAF Scampton and RAF Waddington, providing a rail head for the supply of munitions to the area.
Jason Smalley
Legal Director
CEMEX UK Operations Limited
CEMEX House
Coldharbour Lane
Thorpe
Egham
Surrey
TW20 8TD

Our reference    BJG_PROPERTY/O11750861/SF
Your reference

4 May 2011

Dear Mr Smalley

CEMEX UK Materials Limited - proposed development at the former Swinderby Airfield site
(planning reference N76/0606/08)

You have asked us to provide an independent legal opinion with regard to certain queries that have
been raised by the consenting authority, Lincolnshire County Council, in relation to the above. In brief
we understand that CEMEX UK Materials Limited, (CEMEX), has submitted an application for the
development of the southern half of the former Swinderby Airfield site as an extension to the existing
quarry at Norton Disney - planning reference N76/0606/08. As part of that development proposal, and
indeed in connection with the existing quarry operations, CEMEX enjoys the benefit of a discharge
consent for trade effluent - essentially deriving from dewatering activities on site . That consent being
granted by the Environment Agency in 2003 and varied in March 2008 in connection with ongoing
operations at Tonge’s Farm Quarry.

The consented discharge is into a tributary of the river Witham, which we understand flows from
CEMEX’s land through agricultural land owned by third parties, (the “Landowners”). The Landowners
have complained historically of flooding and other issues allegedly arising from CEMEX’s authorised
discharge into this watercourse and have now objected to the current planning application. We are
informed that that basis of their claim is that the discharge from the CEMEX operations can only flow
through the watercourse on their land with their approval.

You have, therefore, asked us to advise whether or not CEMEX is required to seek and obtain
permission from the Landowners downstream for the discharge into the watercourse.

Environmental Permitting Regulations 2010

The Environment Agency originally granted CEMEX consent to discharge trade effluent, essentially to
accommodate dewatering activities on site (subject to a number of conditions), on 1 September 2003.
This consent was subsequently varied by a “Variation of Consent to Discharge” dated 19 March 2008
(the “Discharge Consent”). The conditions attached to the original Discharge Consent were revised in
their entirety by the terms of the new consent.
Prior to 6 April 2010, the discharge of trade effluent into a watercourse was governed by Part III and Schedule 10 of the Water Resources Act 1991 (the "WRA 1991"). Under s85 of the WRA 1991 it was an offence "to cause or knowingly permit" a discharge of trade effluent into controlled waters (which includes inland streams etc) although there was a defence if the discharge was authorised by the appropriate regulatory body, essentially the Environment Agency, (s88 of WRA 1991).

These provisions were repealed on 6 April 2010 and the discharge of trade effluent into a watercourse now falls under the Environmental Permitting Regulations 2010 (the "EPR Regs"). Under the EPR Regs CEMEX requires an environmental permit for the discharge of trade effluent derived from dewatering activities on site into a watercourse (it does not fall within any of the limited exemptions listed in the EPR Regs).

The EPR Regs include transitional measures for existing consents under the former environmental regimes now covered by the EPR Regs. Under these measures the Discharge Consent automatically became an environmental permit on 6 April 2010 for the purposes of the EPR Regs and it is subject to all the conditions attached to the Discharge Consent.

Defra's guidance on Environmental Permitting defines an environmental permit as "a permit granted by the regulator allowing the operation of a regulated facility subject to certain conditions". The purpose of the Agency granting an environmental permit is to authorise and regulate an otherwise illegal activity. In effect the Agency has granted CEMEX a "licence" to discharge trade effluent – subject to conditions - into a defined watercourse, in a defined manner, at a defined point and in defined volumes. Condition 1.6 importantly imposes limits as to the chemical composition of the discharge – e.g. that is "shall not contain more than 30 milligrammes per litre of suspended solids (measured after drying at 105 degrees centigrade)" (1.6.1).

If CEMEX had not obtained this consent, then any discharge made by the Company into the tributary would have been unauthorised and the Company would thereby have been committing an offence.

The Discharge Consent

The Discharge Consent states that;

The Discharge of trade effluent shall be derived solely from dewatering operations for the prevention of interference with the extraction of sand/gravel at the above premises.

The daily volume of the discharge may not exceed 5,000 cubic metres and the rate must be controlled "to prevent any scouring of the bed/banks of the receiving watercourse or any downstream flooding as a result of the discharge." We understand that the actual daily discharge is in the region of 1,900 cubic metres (i.e. significantly below the permitted daily volume).

In their objection the Landowners have referred to an extract of the covering letter from the Agency to CEMEX accompanying the Discharge Consent (dated 19 March 2008) which states that:

"This Consent covers water quality considerations only and does not relate to land drainage or any other requirements. A Consent under the Land Drainage Bylaws may also be required and/or approvals under other legislation. The Consent does not give any right or permission to discharge where land is not owned by the Consent Holder."

Firstly it is worth stressing that this letter is only a covering letter setting out informal guidance to assist CEMEX and does not form part of the Discharge Consent. The first sentence highlighted by the Landowners summarises the purpose of a discharge consent, namely that it is to regulate discharges so as to prevent the watercourse being polluted and makes it clear that it does not relate to other

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1 EPR Regs (SI 2010/675) Schedule 21 – Water Discharge Activities
2 EPR Regs, reg 69
3 Environmental Permitting: List of Guidance, Glossary and Code of Practice on Guidance – May 2010 (version 3.2)
requirements such as land drainage. The second sentence acknowledges that there may, depending on the circumstances, be other relevant consents required under Local Bylaws or other relevant legislation. It does not mean, however, that the approval of all landowners downstream is required. The final sentence merely states that the Discharge Consent does not authorise CEMEX to discharge at a point outside its landholding. It does not mean that CEMEX is not entitled under the Discharge Consent to discharge into a watercourse that subsequently passes through another landowner’s land without their prior approval.

It is our view that the discharge consent, as issued by the Environment Agency, is patently not invalid, as the Landowners claim. There is no requirement on CEMEX, nor the Agency for that matter, to obtain the consent of riparian owners downstream in relation to the issue of a discharge consent. There is a clear statutory process with which CEMEX has to comply before it can obtain such a consent. As far as we are aware, there has been full compliance with this process. Similarly, we have seen nothing to indicate that the Agency did not comply with all proper procedures in issuing the consent. The consent system under the former WRA 1991 regime included publicity requirements (which we understand CEMEX followed) and the Agency was obliged to take into account timely written representations when deciding whether or not to grant the consent.

There is no requirement under the statutory regime (as set out in Schedule 21 of the EPR Regs) for either CEMEX (as the applicant) or the Agency (as the regulator) to obtain the consent of riparian owners downstream. Further, we are not aware that at any time during this formal statutory process was either CEMEX or the Agency challenged in relation to the issue of the consent. We should perhaps add that any challenge now would have to be directed at the Environment Agency – not the County Council - and is, of course well outside the three month challenge period.

In conclusion - the discharge consent authorises CEMEX to discharge trade effluent derived solely from its dewatering activities on site into the defined watercourse provided that it complies with the properly imposed conditions.

As far as the issue of the consent itself is concerned, we have seen nothing to conclude other than that the County Council have acted entirely correctly and within the law.

Yours sincerely,

Osborne Clarke

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F +44 (0) 20 7105 7131
Brian.greenwood@osborneclarke.com
Dear Mr Freeman

OUR CLIENT: H HUSTLER & SON
RE: CEMEX (UK) LIMITED PLANNING APPLICATION REF: N76/0606/08
COMMITTEE MEETING 09.05.11 AT 10.30AM

We are instructed by the above named and ask that this letter kindly be placed before the Committee for its deliberations on the morning of 9 May. This letter is written having reviewed your letter of 21 April 2011 sent to Mr Hustler. We have considered the application report you detail within that letter at the hyperlink address.

1. Background

The open report by Mr Richard Wills summarises the concern of a local landowner regarding the current issue of flooding upon his land from a site run by the applicant, Cemex. Our letter can only deal with the objection as raised by our client and the issue of water damage which is currently being caused to his land by the current operations of Cemex.

2. Factual Position

Cemex have been put on notice as to a claim either for an injunction and/or damages to prevent the continued flooding to our client's land. Details of a claim are being formulated and will be presented to Cemex it is anticipated within the next 7 to 14 days. The historic permission that Cemex has from the Environment Agency to discharge water is clear in its nature and extent. We attach a letter of the Environment Agency dated 28 April 2011, received on 5 May 2011, which clarifies the nature and extent of the permit provided. Cemex does not have any right or permission under such a permit to discharge where the land is not owned by them. In this instance, our factual assertion is that the land is not owned by them but by our client and the permit therefore does not give any legal right to discharge unless permission has been granted by Mr Hustler. Unless Cemex wish to indicate that such permission has been granted, they have none. If they assert the same, no doubt they will provide documentation in support.

3. Legal Position

Our understanding is that matters were adjourned on 11 April 2011 for legal opinion to be obtained upon drainage matters and those opinions to be presented to the next Committee. Unless mistaken, we have not had access within any of the hyperlink documentation to show what opinion is actually being given.
The summary as provided in your letter of 21 April (attached) to our client is not of great assistance to the Committee in clarifying what we would assert is the legal position. We accept the position is subject to the common law and to case law which has dealt with similar fact cases. We can only set out what we perceive as the correct legal position, not having the opportunity of seeing what documentation County Legal Services wish to rely upon in asserting what they say is the position.

(a) The common law position appears to state that where nature of itself causes water from a higher to a lower area to flow, then such water should be received subject to it being reasonable.

(b) The proposed discharge of water in this instance cannot by its very nature be said to be natural as it is being created and must therefore be outside of what is said to be any common law principle of a natural flow.

(c) The owner of land has the right to protect their property from flooding. Evidence has already been presented of historic flooding taking place.

In summary, Cemex have no right under their current permits to discharge onto our client's land. We assert there is no common law right as to what is an unnatural discharge created for commercial purposes to discharge into our client's land. Even were there such a right, it is a right which is subject to the test of reasonableness. At the moment, it cannot be reasonable as flooding takes place as to historic usage. It is a matter of expert evidence but we assume it is accepted that additional water would merely add to the current level of flooding and not prevent it in any way.

4. Way Forward

Our client's continued objection can only be specific to the points made in this letter. There are other issues of objection raised by varying third parties. We contend, as the position has been set out clearly from our perspective, that the Committee, before it makes its deliberation, has the benefit of any written report upon the legal position from Lincolnshire Legal Services which our client should also have access to. Bearing in mind that our client has already intimated the claim in compensation for damage and loss caused by historic flooding, the Committee must be satisfied as to whether the grant of any application is going to lead to an increased level of water which we assume is then going to lead to an increased level of flooding.

Please acknowledge receipt of this letter and its attachments. Please confirm it will be available to the Planning Committee. Please clarify if there is any written documentation from Lincolnshire Legal Services which is to be made available to both the Committee and ourselves/client.

We thank you for your consideration.

Yours sincerely

Andrew Holt
Partner
WILKIN CHAPMAN LLP
E-mail: aholt@wilkinchapman.co.uk
Direct Dial: 01522 515940
Direct Fax: 0870 4602560
Mr. Alan Freeman  
Head of Spatial Planning  
Lincolnshire County Council  
City Hall, Lincoln   LN1 1DN

6th May 2011

Your Ref:

Dear Mr. Freeman,

**Mr. Hustler - Land at Norton Disney**

Further to a letter received by the Planning Authority dated 5th May 2011 from Wilkin Chapman on behalf of their client Mr. Hustler, I would make the following comments.

1. The factual position is incorrect. CEMEX do possess a discharge consent and the discharge point is situated on land belonging to CEMEX. I attach the relevant consent for your information.

2. The Legal position differs not only from the view provided by Lincolnshire County Council but also the view held by CEMEX and an independent legal advisor. I attach the independent advice provided by Osbourne Clarke on this matter.

3. Finally, the land referred to and within the ownership of Mr. Hustler does not fall within the (Swinderby Airfield) application area, nor does the route of the proposed discharge from Swinderby Airfield run through any land owned by Mr. Hustler. The land referred to in the letter is connected solely to our Norton Disney operation and is in no way linked to Swinderby Airfield.

In summary, CEMEX do have a right to discharge and adjoining landowners are not required to provide their consent, moreover the land in question will not form part of the Swinderby application nor will it form part of the proposed discharge route. For these reasons it is considered that the letter dated 5th May from Wilkin Chapman can not be considered as material to the application for Swinderby Airfield.

Yours sincerely

Stephen woods  
Development Manager

Encs.  Legal advice – Osbourne Clarke  
Discharge consent
Dear Mr Holt,

Cemex Discharge – Tonges farm Quarry – Norton Disney

I write following your letter dated 26 April 2011 in which you asked for clarification as to whether or not an Environmental Permit gives either the right or permission of the discharger to discharge where the land is not owned by the consent holder.

I have consulted our legal department and confirm that the purpose of the Permit is to cover water quality considerations only. It does not give any right or permission to discharge where land is not owned by the discharger. In addition, for discharges to watercourse, it does not imply the suitability, with regard to volumetric capacity, of the receiving watercourse. It is the responsibility of the applicant to identify and negotiate, with relevant land owners as necessary. This point is made clear during the permit application process.

I hope this answers the questions your questions. If you require any further information then please do not hesitate to contact me on 01522 785984 or at david.hutchinson@environment-agency.gov.uk

Yours sincerely,

David Hutchinson
Senior Environment Officer (Kesteven Team)
Dear Alan

OUR CLIENT: H HUSTLER & SON

I respond to your email of 6 May timed at 12.01. In utilising your own numbers I clarify:-

1. The dispute is in relation to both sites. The Tongues Farm development causes a current water flooding problem. Cemex are indicating a continued operation for at least two more years. The Swinderby Camp development we are advised is to be drained and dry quarried. This drain will pass under the road, back into the existing pits and then either into the dyke of our client or that of a neighbour. The effect is the same upon our client as the neighbour's dyke, after a short distance, becomes our client's dyke. Any issue as to water flow therefore affects our client.

2. Yes. We are instructed that Cemex appear to have joined onto part of the dyke that has an underground pipe.

Our client's submission is material to the current application in that he has the right to raise objection for the reasons he has asserted. The reasoning for his objection is merely the issues that he has at this point. The proposed application if granted in theory is going to add to those issues to which he can then object.

Please confirm that our correspondence is indeed being placed before the Committee. We would not wish to be in a situation whereby we have argument but it has not even been submitted but censured at this point. We are sure that will not happen.
Thank you in anticipation.

Yours sincerely

Andrew Holt
Partner
WILKIN CHAPMAN LLP

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Direct Fax: 0870 4602560
4.2 Head of Planning – following representations made by the applicant and to ensure the proposed conditions are enforceable due to the fact that the application is partly retrospective make the following amendments:-

- Proposed Condition 1 is deleted and replaced by the following condition:-

Commencement

(1) The development and use hereby permitted shall cease and all buildings, plant and equipment and materials brought onto the site associated with this development shall be removed within 12 months of any one of the following requirements not being met:

(i) Within 6 months of the date of this permission full details relating to the soft landscaping of the site shall be submitted for the written approval of the Waste Planning Authority (WPA). The soft landscaping details shall include information on the plant/tree species to be planted within the site, locations, numbers, spacing, protection and 5 year aftercare. Should any tree die, become diseased, be damaged or removed they shall be replaced with the same species. The scheme shall be implemented in accordance with the approved details.

(ii) Within 6 months of the date of this permission full details relating to the location, height design, sensors and luminance of any external floodlighting to be erected within the site shall be submitted for the written approval of the WPA. The development shall thereafter be carried out and fully implemented in accordance with the approved details and be maintained whilst ever the development hereby permitted subsists.

(iii) Within 6 months of the date of this permission full details of the atomiser/vapour spray odour suppressant system and any additional odour reduction systems (as recommended in the approved Bioaerosol Assessment including Odour Report) shall be submitted for the written approval of the WPA. The development shall thereafter be carried out and fully implemented in accordance with the approved details and be maintained whilst ever the development hereby permitted subsists.

(iv) Within 6 months of the date of this permission details relating to the installation of barn owl nesting boxes within the site shall be submitted for the written approval of the WPA (as recommended by Section 7 of the Ecological Assessment – Appendix 4 of the Environmental Statement). The details shall
include information on the number, size, type and locations of the barn owl boxes to be installed and the approved scheme shall thereafter be implemented and maintained whilst ever the development hereby permitted subsists.

(v) All works comprised in the scheme (i) – (iv) above as approved shall have been implemented and completed within the timetable set out in the approved schemes.

- New Condition 2 is added:

Before the in-vessel composting and anaerobic digestion facilities hereby permitted are brought into use, full details of the additional noise mitigation and sound proofing measures to be employed to reduce the noise levels from the in-vessel composting and anaerobic digestion facilities (as recommended in the approved Noise Assessment Report - defined by Condition 3 below) shall be submitted to and approved in writing by the WPA. The development shall thereafter be carried out and fully implemented in accordance with the approved details and be maintained whilst ever the development hereby permitted subsists.

- Condition 2 becomes Condition 3.

- Condition 3 becomes Condition 4.

- Condition 4 becomes Condition 5 and is amended as follows:

Permitted Wastes and Quantities

(5) The maximum quantities of wastes permitted to be imported, handled and processed by each of the different facilities of the development hereby permitted shall be restricted to the following:

(a) In-vessel composting (IVC) and anaerobic digestion facility (AD) –60,000 tonnes per annum (combined);

(b) Dry recyclables facility – 20,000 tonnes per annum;

(c) Biomass chipping/pelletisation plant - the maximum quantities of wastes that may be imported for specific use in association with the biomass chipping/pelletisation plant shall be restricted to 10,000 tonnes per annum. Any other wastes or oversized materials handled and processed shall be limited to those already on site and associated with the existing permitted open-windrow composting operations and those operations and activities hereby permitted.
All waste materials brought to the site shall be weighed at the weighbridge within the site and weighbridge records shall be retained for at least two years and be available for inspection by the WPA upon request.

Permitted Wastes and Quantities

- Condition 5 becomes Condition 6.
- Condition 6 becomes Condition 7 and is amended as follows:-

Hours of Operation

(7) (a) All external site operations and activities authorised or required in association with this development (excluding vehicular traffic) shall only be carried out between the following hours:

07:30 to 18:00 - Monday to Saturday;
No external site operations and activities authorised or required in association with this development shall take place on Sundays, Public and Bank Holidays.

(b) No HGV/HCVs or vehicles associated with the delivery of waste materials or export of products and materials shall enter or leave the site except between the following hours:

Monday to Friday - 07.30 to 18.00 hours
Saturdays - 07.30 to 16.00 hours
Sundays, Public and Bank Holidays for the delivery of waste materials only - 07.30 to 12.00 hours

- Condition 7 becomes Condition 8.
- Conditions 8, 9 and 10 are deleted.
- Condition 11 becomes Condition 9.
- Condition 12 becomes Condition 10.
- Condition 13 is deleted.
- Condition 14 becomes Condition 11.
- Condition 15 becomes Condition 12.
Condition 16 becomes Condition 13.
Condition 17 becomes Condition 14.
Condition 18 is deleted.
Condition 19 becomes Condition 15.
Condition 20 becomes Condition 16.
Condition 21 becomes Condition 17.
Condition 22 becomes Condition 18.

Reasons

1 and 2 – to ensure that schemes relating to the matters specified in the Condition are submitted for the written approval of the Waste Planning Authority within a reasonable timescale. As the development is partly retrospective, in the event that the schemes are not submitted the development will be unauthorised, development shall cease and the land restored to an appropriate condition.

Reasons 3 – 18, amended in accordance with the above schedule of amended condition numbers.

Informative – procedural matters.

The validity of the grant of planning permission may be challenged by judicial review proceedings in the Administrative Court of the High Court. Such proceedings will be concerned with the legality of the decision rather than its merits. Proceedings may only be brought by a person with sufficient intent in the subject matter.

Any proceedings shall be brought promptly and within three months from the date of the planning permission. What is prompt will depend on all the circumstances of the particular case but promptness may require proceedings to be brought at some time before three months has expired. Whilst the time limit may be extended if there is good reason to do so, such extensions of time are exceptional. Any person considering bringing proceedings shall therefore seek legal advice as soon as possible. The detailed procedural requirements as set out in the Civic Procedure Rules Part 54 and the Practice for Directives for those rules.

5.1 Head of Planning – applicant has provided more information regarding lighting issues. The District Council Environmental Health Officer has indicated that concerns and request for the information relate to the use of the floodlights after 23.00 hours when standards are more stringent.
As it is proposed that floodlights would be turned off by 22.15 hours this would ensure the concerns of the District Council are unfounded. Therefore the application can be determined without the need to delegate the decision to the Executive Director.