

20 January 2009

The Chief Planning Officer:
County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Council of the Isles of Scilly;

The Town Clerk, City of London;

The Chief Planning Officer,
National Park Authorities in
England;
The Broads Authority

Dear Chief Planning Officer,

Large-scale Landscaping Development Using Waste

Ministers in Communities and Local Government have recently been made aware of cases where planning approval has been given to large-scale landscaping developments using waste, which may be wrongly classed as waste recovery operations. This practice is primarily associated with golf course development but other examples are now being noted. The cases involve planning permission being granted for such development without properly considering whether the landscaping proposals are needed for the development, and whether the associated importation of construction and demolition wastes is for the purpose of 'waste recovery' (associated with a genuine use in construction) or is for the 'disposal' of waste on land i.e. landfill. There are a number of concerns surrounding this issue, including which planning authority should consider such proposals in two-tier areas, in particular the need for closer liaison between District councils and the waste planning authority, and the need for closer liaison with the Environment Agency.

Planning Policy Statement 10: Planning for Sustainable Waste Management states that all planning applications relating to the use of land (and buildings) or the erection of buildings, plant or machinery for the purposes of waste management are 'county matters' and are to be determined by the County Council. The development of a waste facility by a district council on its own land would remain a district function. PPS10 also states that difficulties may arise in respect of applications that are properly to be decided by a district planning authority but which involve the use of large amounts of engineering fill for such purposes as levelling or landscaping of sites or the construction of bunds or embankments. In such cases, it may be

appropriate to question developers about the purpose of certain types of proposed development.

The Government's policy is to encourage the recovery of waste (which includes the re-use and recycling of waste, e.g. for construction), with an overriding objective to ensure that waste recovery and disposal are carried out so as to prevent harm to human health or pollution of the environment in accordance with Article 4 of the Waste Framework Directive. The Directive makes it clear that any deposit of waste that does not constitute recovery is considered a waste disposal operation. The disposal in or on land may be subject to additional controls of the Integrated Pollution Prevention and Control Directive and the Landfill Directive depending on the size and scale of the operation and subject to the grant of a permit by the Environment Agency.

Both CLG and Defra consider that landscaping developments of the scale of the current examples involving importing over 100,000 tonnes of waste would not have been undertaken if the material used to construct the landscaping were not waste. Therefore, given the quantity of waste being used such developments are unlikely to constitute recovery operations, but are more likely to be waste disposal operations.

If such developments *are* considered to be waste disposal operations, then in two-tier authority areas there is a clear case for the decision for applications to be considered by the waste planning authority – i.e. the County Council. In unitary authorities it is equally important that such applications are considered in the context of the authorities' planning policies for waste. Planning authorities should also ensure any proposal meets the environmental objectives of Article 4 of the Waste Framework Directive and Article 5 (establishment of an adequate and integrated network of disposal installations) and Article 7 (waste management plans) insofar as is appropriate in carrying out their functions.

If there is any doubt as to whether a proposed development constitutes waste disposal then in two-tier areas the District council should liaise closely with the waste planning authority. All planning authorities are advised to ensure they consult the Environment Agency in advance of approving these developments.

Clearly for some developments there may be a degree of judgment to be made regarding the detail and scale of the proposed development, and whether the predominant purpose of the development involves either waste disposal (for its own sake) or engineering. The quantity and volume of materials proposed to be imported and deposited for a development would provide an indication on the scale of that development, and in turn determine the most appropriate planning authority for its determination.

You will also wish to note that Defra has recently completed a consultation on revised exemptions to environmental permitting that proposes to significantly restrict the scope of the current exemption from the need for an environmental permit. This can be found at:

<http://www.defra.gov.uk/corporate/consult/waste-exemption-review/consultation.pdf>

Subject to the outcome of the consultation, it is proposed that revised exemptions will be introduced in October 2009.

If you have any queries, then please contact Charlotte Palmer at Communities and Local Government on charlotte.palmer@communities.gsi.gov.uk or 0207 9443865.

Yours faithfully,

Dr Stephanie Hurst
Deputy Director
Planning – Resources and Environment Policy