

Permitting decisions

Refusal

We have decided to refuse the permit application for RSPB Cliffe Pools Nature Reserve.

The proposed facility location is RSPB Cliffe Pools Nature Reserve, Salt Lane, Cliffe, Rochester, Medway, ME3 7SZ.

We consider in reaching that decision we have taken into account all relevant considerations and legal requirements.

Purpose of this document

This decision document provides a record of the decision making process. It:

- highlights [key issues](#) in the determination
- gives reasons for refusal
- shows how all relevant factors have been taken into account

Read the permitting decisions in conjunction with the refusal notice.

Key issues of the decision

Summary of our decision

We have decided to refuse the bespoke permit application for a permanent deposit of waste on land, applied for by Boskalis Westminster Limited (the “applicant”) submitted through WYG (the “consultant”) for a site at RSPB Cliffe Pools Nature Reserve, Salt Lane, Cliffe, Rochester, Medway, ME3 7SZ (the “site”).

The applicant applied for an environmental permit for an inert landfill to accept excavation waste and also applied to accept and co-dispose of non-hazardous dredging waste in it. Upon reviewing the application, the proposals do not meet the criteria under the Landfill Directive for an inert landfill. In addition, there was a failure to adequately address risks to surface water quality.

The applicant has been given the opportunity to amend the application to either meet the requirements of an inert landfill or withdraw it and submit a non-hazardous landfill application instead. They have also been asked to address the risks to surface water. The applicant has not done this, therefore we are required to refuse the application in accordance with paragraph 13 of schedule 5 of the Environmental Permitting (England & Wales) Regulations 2016 as we consider they could not operate in accordance with the environmental permit applied for.

The waste types and the potential levels of naturally elevated substances that the applicant has applied to deposit are not acceptable at an inert landfill. Some may be acceptable if they obtained a derogation to the relevant waste acceptance criteria but this has not been justified.

Due to the sensitive setting of this site, there are other issues we have identified but not been able to fully assess due to the need for a revised application. Without a revised application, we cannot be satisfied that this proposal will not have a negative impact and that the activity will be carried out without endangering human health, harming the environment or posing a risk to water, air, soil, plants or animals.

Background

The site is part of a complex of lagoons and falls within a sensitive environmental setting, including the following habitat and species designations.

Within proposed boundary:

- Special Protection Area (Thames Estuary & Marshes SPA)
- Ramsar Site (Thames Estuary & Marshes Ramsar)
- Site of Special Scientific Interest (South Thames Estuary and Marshes SSSI)
- Records for Protected Species (European Water Vole)
- Protected Habitat Saline Lagoons (Natural Environment and Rural Communities Act [2006] Section 41 habitats of principal importance)
- Protected Habitats Coastal and Floodplain Grazing Marsh (Natural Environment and Rural Communities Act [2006] Section 41 habitats of principal importance)

Within 500 – 1000m:

- Site of Special Scientific (Mucking Flats and Marshes SSSI)
- Protected Habitats Mudflats (Natural Environment and Rural Communities Act [2006] Section 41 habitats of principal importance)
- Protected Habitats Deciduous Woodland (Natural Environment and Rural Communities Act [2006] Section 41 habitats of principal importance)
- Protected Species Smelt *Osmerus eperlanus* migratory route
- Protected Species European eel *Anguilla anguilla* migratory route
- Protected Species Atlantic salmon *Salmo salar* migratory route
- Protected Species Twaite shad *Alosa fallax* migratory route
- Protected Species Allis shad *Alosa alosa* migratory route
- Protected Species River lamprey *Lampetra fluviatilis* migratory route
- Protected Species Sea lamprey *Petromyzon marinus* migratory route
- Protected Species Water Vole *Arvicola amphibius*

How we took our decision and Grounds for refusal

The application was Duly Made on 27 February 2017 and went out to consultation on 10 March 2017. On determining the application we identified a number of serious failings. Consequently, and in summary, the considerations leading to the refusal decision are:

- Compliance with the Landfill Directive.

The application that has been submitted to date is for an inert landfill site with co-disposal of dredgings. However, the proposed Waste Acceptance Criteria do not meet inert waste acceptance criteria (IWAC) for an inert landfill.

- Risks to surface water quality and compliance with Water Framework Directive

We identified potentially serious issues over water quality and the possibility of non-compliance with the Water Framework Directive (WFD).

Following discussing the key issues, the applicant agreed to revise the application in order to demonstrate that they can meet the requirements of an inert landfill under the Landfill Directive and an excluded dredgings landfill (to remain a waste operation) and address risks to ensure compliance with the Water Framework Directive. Subject to agreement from the Environment Agency, any revised proposals could have been regarded as a revised application and would have required a complete re-assessment and re-consultation. To date, no proposals to amend the application have been submitted to the Environment Agency.

Revisions on this scale normally require a new application, but we considered the circumstances exceptional because of the stakeholders involved and the complexities of the site, and so we were prepared to allow the application to be revised.

Permitted Activity and Emplacement Strategy

Landfill Directive Article 6(d) states "inert waste landfill sites shall only be used for inert waste." A landfill for inert waste can only accept waste that meets the Directive definition of inert (Article 2(e)) and the relevant waste acceptance criteria (section 2.1 of the Annex to Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC)(IWAC).

When we determine an application for a landfill permit we have to ensure that the permit that is issued, and therefore the activity it permits, is in accordance with the Landfill Directive. The application that has been submitted to date is for an inert landfill site but included proposals to co-dispose dredgings which do not meet IWAC criteria.

Landfill Directive Article 3(2) excludes the deposit of non-hazardous dredging sludges alongside small waterways (essentially any inland waterway in England and Wales) from where they have been dredged out from the scope of the Directive. We consider that the deposit of dredging waste from the Thames Estuary in this particular location could be excluded from the Landfill Directive. This means that the deposition of dredging waste might be permitted as a waste operation. This position is subject to the dredging waste being deposited separately (engineered mono cell) from waste covered by the Landfill Directive, which in this case is the non-dredged excavated waste.

In addition it was proposed to deposit excavated London Clay which does not meet the basic IWAC due to containing excessive concentrations of naturally occurring substances. It may be possible to obtain a derogation to give some specified allowances in excess of the basic IWAC if sufficient justification is provided by the applicant and this is approved by the Environment Agency. No adequate justification has been provided in this case.

In addition, the current engineering proposals (co-disposal of non-hazardous dredging waste and excavation waste) do not meet the requirements of the Landfill Directive for an inert landfill. There has been no justification for any deviation from the standards

Proposals to revise the application have not been submitted to address the above issues.

Risk to Surface Water Quality

During determination, the technical assessment identified potentially serious issues over water quality and the possibility of non-compliance with the Water Framework Directive (WFD). The receiving water body (the lagoons) is defined as a Transitional and Coastal (TRaC) water.

The information (monitoring data) provided by the applicant showed that initial chemistry levels in the lagoons are already causing non-compliance with the WFD for certain substances. The proposal of the phased depositions using either (or both) excavation waste and dredging wastes appears to raise these levels even further which will not comply with the WFD.

The application does not directly address WFD water quality in the other receiving waters (Thames Middle Waterbody via Cliffe Creek). We cannot therefore have confidence that WFD status is not at risk in the receiving waters. Even though Cliffe Creek and the River Thames Estuary are clearly defined as receptors, there is not adequate analysis of the potential impacts to those waterbodies. There will need to be a WFD assessment for these waterbodies plus the lagoons to ensure that the “no deterioration” criteria is being met.

The application as submitted does not demonstrate there will be adequate protection for surface waters and that there will not be significant pollution of the environment. The applicant has not demonstrated how the proposals will comply with the WFD.

Proposals to revise the application have not been submitted to address the above issues.

Risks to protected habitats and species

Given the fundamental concerns with this application any revision of the application would require a complete re-consultation and re-assessment of the whole application. As such it was not considered appropriate to do a full Habitats Assessment on the application submitted (for example, to meet the requirements of the Habitats Directive, and Section 281 of the Wildlife & Countryside Act 1981 as amended by the Countryside and Rights of Way Act (CRoW) 2000).

There is an adjacent complex of lagoons to the north of the proposed site. The Northern Lagoons are subject to the deposition of non-hazardous river dredging waste under the extant Environmental Permit EAWML 19392. This facility is also operated by the applicant, Boskalis Westminster Limited. As the current proposals show no control/containment engineering, of particular concern to us is the risk of lateral migration not only out but in (mainly from the Northern Lagoons). This would be exacerbated by the proposal to drop the water levels in the permitted area prior to the input of waste. This would also pose a risk to the water vole population and salinity levels.

No proposals have been submitted to demonstrate management of salinity directly relevant for the Protected Habitat of Saline Lagoons.

The submitted application contained insufficient information for us to be satisfied that there will be no likely significant effect on habitats and species. This issue would have been considered in more detail if a revised application had been submitted.

Consultation Responses

We have had consultation responses that we have not addressed in this document as we are refusing based on the above issues. Had the applicant taken advantage of the opportunity to amend its application we would have undertaken further consultation, due to the nature and extent of the revisions that would have been required.

Summary of key communications

Based on our initial technical assessment of the application, the key issues (summarised above) were raised through our emails of 15 March 2017, 23 March 2017 and letter dated 10 May 2017.

We have given the applicant a significant period of time and opportunity to revise their proposals but they have not taken advantage of this. **See Annex 1** for more in-depth summary of these key communications and the issues identified.

Annex 2 has been included to demonstrate the technical issues we had identified in 2017 and which had been brought to the applicant's attention as requiring addressing had they revised their proposals.

Summary

The submitted application does not meet the fundamental requirements of the Landfill Directive in that the application is for an inert landfill which is a waste operation but the proposals include co-disposal of non-hazardous waste which would mean it is a non-hazardous landfill and an installation which is subject to different physical and regulatory requirements. Nor did the application adequately consider the risks to surface water or address the requirements of the Water Framework Directive. The applicant has not taken advantage of the opportunity offered to revise its proposals and request amendments to the application. We communicated key concerns and technical issues through our emails of 15 March 2017, 23 March 2017 and letter dated 10 May 2017. In our letter dated 8 February 2019 we confirmed that due to the time lapse we would no longer consider holding this application or accepting a revision to the application.

Unless the applicant had clarified whether it wanted to operate an inert landfill or non-hazardous landfill which would require amended operating proposals and supporting risk assessments there was no purpose to be served in trying to assess the submitted proposals in detail or formulate requests for further information in respect of an application that in either case requires substantial revisions. We have therefore concentrated on the fundamental reasons for refusal in this document. Based on the information submitted to date we have also identified other key areas where the applicant had not yet demonstrated the acceptability of their proposals. We consider that if the applicant wishes to proceed with its proposals at this site this will now require a new application. Any such application will be assessed on its merits and further issues may be identified as part of any detailed assessment.

Given that the applicant has applied for a permit for an inert landfill, including co-disposal of dredgings, the proposed waste types and method of operation means it would not be able to comply with the waste acceptance criteria for an inert landfill and we are required to refuse the application in accordance with paragraph 13 of schedule 5 of the Environmental Permitting (England & Wales) Regulations 2016. In addition, we are not satisfied that there will not be significant pollution of the environment or that there will be no likely significant effect on protected sites or species.

On this basis we refuse this application.