

Permitting decisions - Refusal

We have decided to refuse the permit for Scot Bros. Limited.

The proposed facility location is Thorpe Thewles, Land Adjacent to Durham Road, Thorpe Thewles, Stockton on Tees, TS21 3JN.

We consider that 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
- summarises the decision making process in the [decision considerations](#) section to show how the main 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

On 11 September 2020 we received application EPR/JB3700MC/A001 which was duly made on 4 December 2020.

The supporting information stated that the application was for a bespoke permit for the permanent deposit of waste to land under a waste recovery activity. The site relates to an historic landfill for a parcel of land of approximately 2.7 hectares. *“The primary purpose of the waste activity is to raise the level of the agricultural land by approximately 1 metre (in some areas) in order to re-profile depressions in the land and to ensure sufficient coverage of appropriate capping material above the in-situ*

landfill. The character of the site would change from rough grassland to pasture, which is considered appropriate to the landscape setting of this site.”

A Waste Recovery Plan (“WRP”), was included within the application for approval.

Following an initial assessment of the WRP, on 21 May 2021, the Environment Agency (“the Agency”) sent a Notice (“the Notice”) for a Request for Further Information Notice issued under Schedule 5 of the Environmental Permitting (England and Wales) Regulations 2016 (“EPR 2016”) to Scott Bros. Limited (“the applicant”) requesting an updated Waste Recovery Plan (“WRP”) in line with our guidance (“the Guidance”), “Waste Recovery on Land”:

<https://www.gov.uk/government/publications/deposit-for-recovery-operators-environmental-permits>

Because the list of information we required to determine the application was so extensive, we sent an email¹ to the applicant together with the Notice² to provide advice in setting out the information we were seeking from the revised WRP:

On 25 June 2021 we received the applicant’s response to the Notice dated 21 May 2021.³

An assessment was made of the revised information. We made the decision that the applicant’s proposal did not meet the substitution test in line with our Waste Recovery Guidance, nor had they provided sufficient information to demonstrate financial viability. The applicant did not provide any further information for us to conclude that the activity would be carried out using non-waste. In order to demonstrate that this is a recovery activity they need to show that they are substituting a non-waste with a waste. In addition, they also stated that *“profit is not the overriding reason for carrying out the works.”* *“The overriding concern in this case is not profit but rather achieving improved restoration of the former landfill.”* No further information on financial gain was provided.

On 21 December 2021, a further Notice⁴ (“the Notice”) for a Request for Further Information Notice issued under Schedule 5 of EPR 2016 was issued to the applicant requesting an updated waste recovery plan which included *“a breakdown of the financial viability of using non-waste to show how this proposal would go ahead if waste recovery was not an option.”* We also required the applicant to explain the end use of the land and benefits, provide updated cross sections based on the minimum amount of waste to be used and differing layers, construction methods and standards to be used and for the WRP to be amended

¹ Appendix 1: Email dated 21 May 2021 from the Environment Agency to the Applicant.

² Appendix 2: Schedule 5 Notice dated 21 May 2021

³ Appendix 3: Applicant’s response to the Notice dated 21 May 2021

⁴ Appendix 4: Schedule 5 Notice dated 21 December 2021

to take into account calculations to remove the area of land that had already had waste deposited on it.

On 27 January 2022 the applicant responded to our Notice dated 21 December 2021. In response to question 1 they stated *"The truth is that it is unlikely that the project would go ahead if there was a requirement to use virgin materials....."* and detailing the costs as *"a little over £200,000. These funds are not readily available to the landowner and the increased yield that this will make possible will not return a profit of this amount in the short term but will take many years."*

In addition, wastes have already been deposited on site without the benefit of a permit for which the applicant was found guilty and fined £36,000. The applicant confirmed that the waste will not be removed from the site but did not incorporate this deposit of waste within their WRP. Consideration of the previously unpermitted waste deposit needs to be taken into account and not included as recovery of waste in the applicant's proposals.

We were still not satisfied that the applicant met the recovery criteria in our [Waste Recovery Guidance](#), we issued a second Schedule 5 notice to give the applicant the opportunity to provide sufficient information to meet the recovery criteria.

On 27 January 2022, we received the applicant's response to the Notice dated 21 December 2021⁵. Again, there was insufficient information to demonstrate financial gain using non-waste materials.

The applicant confirmed in the response that should they not be granted a recovery permit that it was unlikely that the project would go ahead with non-waste materials, as the funds to complete the works with non-waste are not readily available (as previously stated).

On 3 February 2022 we wrote to the applicant⁶ by email to ask them to confirm the payback period of using non-waste materials for their proposal.

On 9 February 2022 the applicant responded⁷ by email explaining that they could not demonstrate financial gain in this case by stating that:

"The cost of non-waste was calculated in the application at a little over £261,000, based on buying in virgin soils at £8.75 a tonne. The payback period would therefore be prohibitively long, beyond our lifetimes."

⁵ Appendix 5: Applicant's response to the Notice dated 21 December 2021

⁶ Appendix 6: Letter from the Agency to the Applicant dated 3 February 2022

⁷ Appendix 7: Letter from the Applicant to the Agency dated 9 February 2022

Consequently, the applicant's WRP failed to meet the substitution test as set out in our Guidance on Waste Recovery Plans.

We are unable to issue a permit for the proposed activity as the applicant failed to demonstrate that their proposal to deposit waste is a recovery activity. We have not carried out a full assessment of the application as the activity has been deemed disposal. This ensured that we did not cause any further delay or expense to the applicants. Therefore, if the applicant were to re-apply, they must take this into account if re-submitting the same information or updating it. This information may not be sufficient for a re-submission and if the activity were deemed recovery in the future, a full assessment of the application, its documents and full consultation would need to be carried out. Consideration must be given to any potential problems with the old landfill such as the additional weight, drainage and gassing.

Description of the facility

The proposed application relates to a site situated on a parcel of land of approximately 2.7 hectares to the north of the residential property "Fairview", and to the west of Durham Road, which is at the northern edge of the village of Thorpe Thewles.

The site is an historic landfill (closed in early 1970's).

The applicant stated that the primary purpose of the proposed waste activity is to raise the level of the agricultural land by a maximum of approximately 1 metre, in some areas, to re-profile depressions in the land and to ensure sufficient coverage of appropriate capping material above the in-situ landfill. The applicant has stated that the character of the site would change from rough grassland to pasture, which they consider appropriate to the landscape setting of the site.

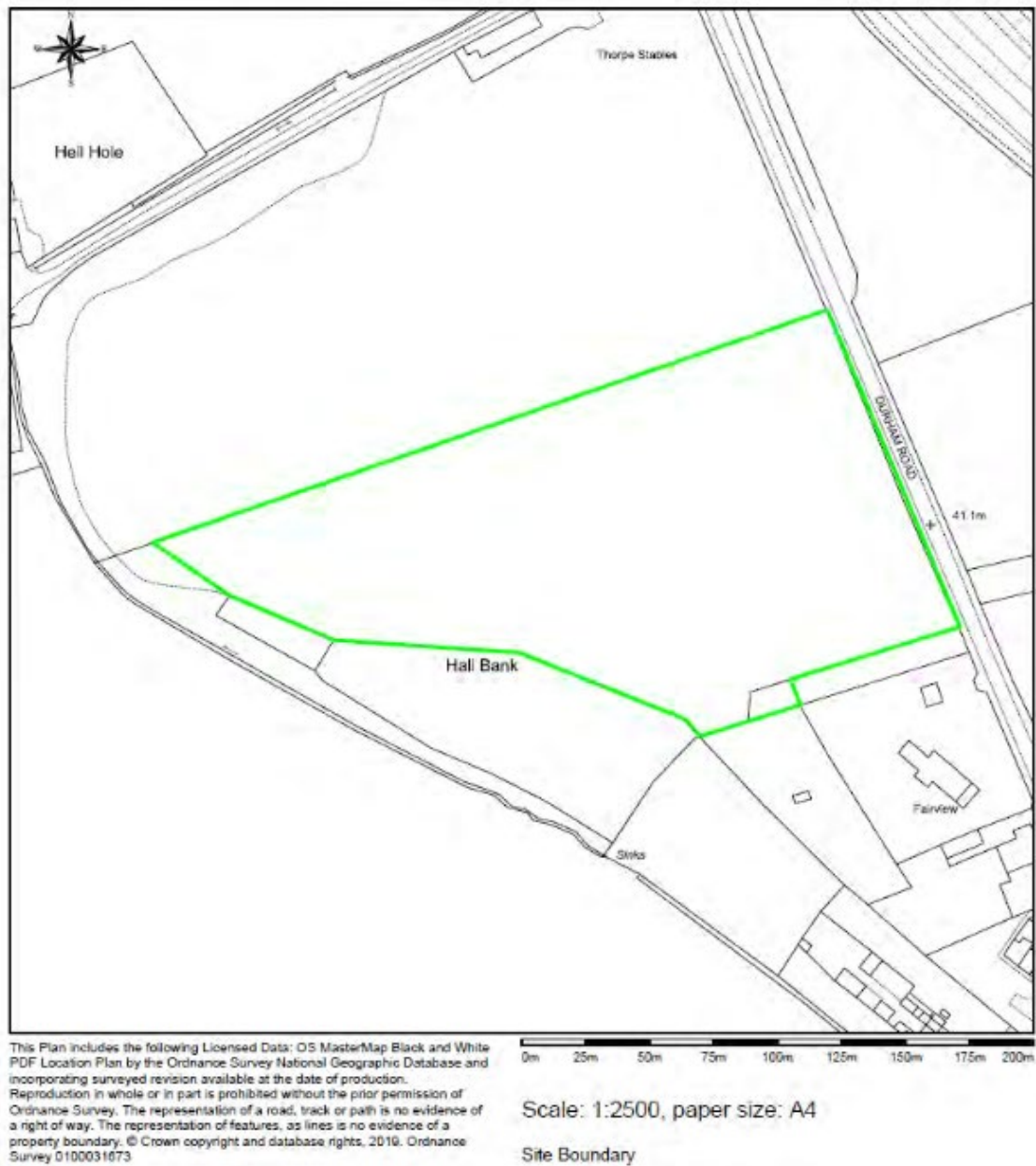
The applicant proposes the development would comprise the placement of approximately 16,425m³ of inert, uncontaminated soils over an area of about 27,000m³ – an average depth of approximately 0.6m across the site. There would be a small element of cut and fill, but the majority of the soil would be imported waste.

Existing topsoil would be stripped and stockpiled for reuse following placement of inert soils across the site. However, there is a shortfall of available topsoil on site, and some further non-waste topsoil would need to be imported. Approximately 2,400m³ of topsoil would be imported to supplement that stockpiled on site. Such

imported soil would only be used in the top 0.3m of the restoration, providing a depth of 20 to 30cm of topsoil across the site.

The purpose of the proposal is to firstly provide a minimum of 1m depth of soils above the landfill to allow for future subsoiling (deep cultivation) of field drainage installation by the farmer. Secondly, the works would be to level out the hollow, to provide an even surface across the site and enable easier access by agricultural machinery. This would in turn increase the crop yield.

The site location and boundary is provided below:-



Reason for refusal

We do not agree with the assessment that this operation is a recovery activity. Insufficient evidence has been provided to support the case that the proposed activity meets the substitution test outlined in our guidance on [Waste Recovery Plans](#), and therefore we cannot confirm that this is a recovery operation.

The applicant's proposal did not meet the substitution test in line with our Waste Recovery Guidance, nor had they provided sufficient information to demonstrate financial viability.

The applicant has not proved that the waste is being used as a substitute. They have stated that if they could not use waste, they would not complete the proposed works in the same way with non-waste materials as it would not be financially viable. Therefore, there would be no financial gain using non waste materials and therefore they cannot demonstrate financial viability.

Consideration of Recovery

Is the waste being used as a substitute for non-waste material?

Our guidance includes factors an applicant can use to demonstrate they would carry out the scheme using non-waste:

1. Financial gain by using non-waste materials
2. Funding to use non-waste (not-for-profit organisations)
3. Obligation to do the works

The applicant has stated in response to a request for further information that it is unlikely that non-waste would be used to complete these works. Funding is not readily available to the landowner, and the increased crop yield that the works would provide would not return a profit "*within our lifetime*" (*as stated previously*). There is also no obligation on the landowner to carry out these works.

As the applicant is unable to satisfy us that this scheme would otherwise go ahead with non-waste, this activity does not meet the substitution test outlined in our [waste recovery guidance](#).

Is the material suitable for its intended use?

Further clarification would be needed in any future waste recovery plan submission regarding how and where the proposed waste would be used in the

scheme. They should refer to our '[Check if your waste is suitable for deposit for recovery](#)' guide including the typical uses and criteria for these wastes.

We would carry out further assessment of any proposed waste types based on the sensitivity of the site location as part of a permit determination. 'Recovery vs. Disposal' assessment considers what waste types *may* be suitable, not what waste types *will* be deemed suitable following technical assessment.

What is the purpose of the works?

The applicant must explain the need or driver for this function and provide evidence to demonstrate that the function will be delivered by the proposed works, and the extent of the resultant benefits.

The proposed works are based on flattening the landscape to benefit grazing and to act as 'capping' for the current historic landfill upon which the site is situated.

Information has been provided by the applicant in which they state that there is a need for these works to be carried out to generate revenue by increasing usable grazing land on the farm. However as the payback period is "*infinite*" we are not satisfied that the applicant has provided sufficient information to satisfy the Financial Gain test. Further technical assessment would have taken place as part of the wider permit determination to confirm that these works would not have an impact on the historic landfill beneath.

Is the minimum amount of waste being used to deliver the function?

The applicant must confirm and provide justification with evidence that they only intend to use the minimum amount of waste necessary to carry out the intended function that would otherwise be provided by non-waste. They must consider the proposals that could use a smaller amount of waste to achieve the same function.

Calculations and cross sections have been provided and supporting justification. However, the planning permission is unclear as to what waste types are permitted to be used to restore the site so consequently the amount of waste could change if the types of waste changed.

Any future waste recovery plan would require further clarification from the planning authority on the waste types authorised for use to restore the site for us to deem the proposal a recovery activity.

Will the proposal meet a quality standard?

The applicant must describe the construction methods and/or standards that will be followed to ensure that the proposed operation will be finished to an appropriate standard, so that the function will be delivered.

The information provided in the waste recovery plan shows that the proposed scheme would adhere to the correct regulations. However, as the wastes proposed may not meet the planning permission requirements, the standards could be different were the applicant to amend their proposal. Any future assessment of an amended waste recovery plan would need to consider this.

Disposal Advice

We do not agree with the assessment that this operation is a recovery activity. The applicant has not demonstrated that the scheme would be financially viable using non-waste material. We do not consider that the proposal meets the recovery test as defined in the Waste Framework Directive and outlined in our [guidance](#).

The legal framework

In assessing proposals to permanently deposit waste on land we apply the legal definitions of waste ‘recovery’ and waste ‘disposal’ set out in the Waste Framework Directive (2008/98/EC). We are assisted in doing so by online guidance we have developed – ‘Waste recovery plans and permits’, available at:

www.gov.uk/government/publications/deposit-for-recovery-operators-environmental-permits/waste-recovery-plans-and-deposit-for-recovery-permits

Article 3(15) of the directive defines ‘recovery’ as meaning:

“any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or the wider economy. Annex II sets out a non-exhaustive list of recovery operations”.

Article 3(19) defines ‘disposal’ as:

“any operation that is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations”.

Environmental Permitting Guidance: The Waste Framework Directive. The Guidance is to assist in our understanding of the European Community (“EC”) Directive 2006/12/EC on waste, as it relates to permitting waste operations in England and Wales.

In addition, the Waste Framework Directive 2008/98/EC – Article 13 sets out certain objectives that need to be met. Waste must be recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil plants and animals,
- without causing a nuisance through noise and odours,
- without adversely affecting the countryside or places of special interest.

The objectives are delivered through Schedule 9, Part 1, Paragraph 3 of the EPR 2016.

For the purposes of implementing the Water Framework Directive and the Groundwater Directive, the regulator must in exercising its relevant functions, take all necessary measures:-

- a) to prevent the input of any hazardous substance to groundwater, and
- b) to limit the input of non-hazardous pollutants to groundwater so as to ensure that such inputs do not cause pollution of groundwater.

Any direct discharge of hazardous substances to groundwater, would be in contravention of Schedule 22, Paragraph 6.

Environmental issues: likelihood of pollution

As the applicant did not demonstrate that this proposal to deposit waste is a recovery activity, we are unable to issue a permit for such an activity in this case.

We cannot be satisfied that overall, this application will not have a negative impact and the activity will be carried out without endangering human health, harming the environment, or posing a risk to water, air, soil, plants or animals.

Any future application must assess and mitigate potential risks as per current guidance. A full assessment of the application, its documents and full consultation would need to be carried out.

Operator Competence

In November 2018, the Environment Agency attended at the site of a former landfill near to Thorpe Thewles, Stockton-on-Tees Scott Bros. Limited in response to a report of waste being deposited on the land. Environment Officers discovered that almost 4,000 tonnes of material had been illegally deposited on the site.

Scott Bros. Limited pleaded guilty to offences relating to the illegal deposit of waste on the site of a former landfill outside Thorpe Thewles, Stockton-on-Tees and were fined £36,000⁸. Scott Bros. Limited explained that the landowner had concerns regarding the subsidence on site and requested the company's assistance in raising the land levels with inert soil and stone to improve the land's use for grazing.

⁸ Appendix 8: Previous conviction

Despite obtaining conditional planning approval from Stockton-on-Tees Borough Council in May 2018, Scott Bros. Limited then failed to apply to the Environment Agency for an environmental permit before starting the work even though Scott Bros. Limited held environmental permits for five other sites situated in the North-East of England.

Decision considerations

Section 108 Deregulation Act 2015 - Growth Duty

We have considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 100 of that Act in deciding whether to grant this permit.

Paragraph 1.3 of the guidance says:

“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”

We have addressed the legislative requirements and environmental standards to be set for this operation in the body of the decision document above. The guidance is clear at paragraph 1.5 that the growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections. This also promotes growth amongst legitimate operators because the standards applied to the operator are consistent across businesses in this sector and have been set to achieve the required legislative standards.

Conclusion

We are not satisfied that the applicant has demonstrated that it would undertake its proposed works with non-waste and hence that waste would serve a useful purpose by replacing other materials which would otherwise have been used to carry out the proposed works. Consequently, we do not consider that the applicant has demonstrated that the recovery test is met. In those circumstances we are not satisfied that the applicant could comply with a waste recovery permit were we to grant one, and the application must be refused.

The applicant has not demonstrated that the project would be financially viable with non-waste.

We have considered the additional benefits claimed from undertaking the proposed works namely:

- To raise the level of the agricultural land by a maximum of approximately 1 metre
 - In some areas, to re-profile depressions in the land and to ensure sufficient coverage of appropriate capping material above the in-situ landfill.
- And,
- To change the character of the site from rough grassland to pasture to benefit grazing.

However, these additional benefits are uncertain and unquantified.

In light of this, we are not satisfied that the proposed activity would amount to a recovery activity. The application is therefore refused.