

Dear Sirs

Our client: Brooklands Nursing Home Limited

Further to your e-mail of 19 November 2012, please find below our client's comments on the correspondence provided:

The process undertaken by Pembrokeshire County Council ("PCC") in preparing for submission of a planning application for New Hedges for the site of a new Civic Amenity Site has failed to apply the level of transparency and community engagement that one would expect in the context of the siting of the type of facility which is recognised by TAN 21 (Waste) as being normally sited in an industrial site or in an area away from residential areas.

The owner of Brooklands Nursing Home (which is immediately adjacent to the site) and other local landowners whose interests could reasonably have been expected to be affected by the submission only discovered the intention to apply for planning permission for the site by way of a letter from PCC hand delivered to them on 10 July 2012.

Only as a result of objections has PCC now taken steps to engage with any consultation but in reality the consultation which the Council is undertaking is simply to overcome the defect in the process and is not genuine consultation with a view to considering views expressed with the possibility of altering the decision (as amply reflected in the submission to the Petition's Committee)

The Existing Civic Amenity Site

The submission from PCC refers to the existing site at the Salterns as no longer being fit for purpose specifically because it sends around only 60% of the waste it receives for recycling whereas other in the county achieve 70% recycling rates.

- PCC should identify the rates for each other civic amenity site and what steps have been taken to collect data and to analyse such data to identify the reasons why the material submitted at the Salterns is less capable of being recycled.
- PCC has not explained why the alleged lower recycling performance at this CAS is evidence of the unsatisfactory nature of the site as opposed to the recycling behaviours of the people attending this site, the type of waste being deposited at the site (and how this relates to the behaviour of those attending the site in relation to kerbside recycling and standard waste collection service) and/or management of this particular site.
- PCC has not provided evidence of lower total recycling by the "catchment" area of the CAS (which might have been expected to have been provided by PCC if they wished to put forward a strong case).
- Even had PCC offered such evidence one would also have expected it to have been supported by critical analysis including customer feedback and consultation to confirm that the assumption (as that is all it could be in the absence of proper testing and evaluation) as to relationship with alleged deficiencies in the CAS is valid. This has also not been provided.
- PCC hasn't provided any evidence that the CAS isn't capable of taking all recyclable waste which might be expected to be delivered to it based on comparison with data from other sites and their catchment areas. No evidence has been offered of longer queuing to enter the site than at other sites or feedback from customers as to that being the reason why they don't use the site.

- Even had PCC provided such evidence one would expect PCC also to have produced a business case to identify options for overcoming the perceived deficiencies. That business case would be expected to have considered options (with detailed analysis of potential impact) of:
 - steps which might be taken to improve any of the alleged deficiencies in the site;
 - whether retention of the existing site with another smaller site being provided might be able to provide the required capacity and capability (therefore, splitting the traffic levels across two sites and providing two convenient locations for users in those areas and better satisfying a number of the criteria identified in the PCC submission regarding for example location to suit communities of Saundersfoot, Kilgetty, Begelly and Narberth without due disadvantage to Tenby residents and a site which complements locations of other CAS's across the county).

Such a business case would have been expected to include a comparison with the effectiveness of small civic amenity sites in the UK which manage to achieve higher recycling targets and whether improvements to this CAS (including management of the site) might be capable of addressing any shortcomings. The business case would then consider the various options in the context of a cost/benefit analysis. No evidence of such a business case has been provided (notwithstanding that PCC will be aware of concerns as to lack of transparency in the process they have adopted to date).

It should also be noted that the report from the Welsh Audit Office entitled "Public Participation in waste Recycling" highlights the necessity for waste authorities to collect and utilise data to demonstrate the impacts of the operational decisions in connection with waste to ensure that decisions are then properly informed. Consequently, it was essential that the business case was developed on up to date and detailed data.

Also whilst the criteria have been identified, no objectives which should have been the key drivers for the choice of criteria have been identified. There is no identification of the detailed need – for example how many additional "tipping" movements needed to be accommodated which could not be accommodated at the existing site etc. A vague requirement for "a site larger than the current facility" reflects the fact that the approach undertaken by PCC is poorly considered and insufficient and very different from the alleged "rigorous site selection process".

The identification of criteria for an options appraisal for a new site based on such vague notions without the evidence base and analysis which a business case would have provided should be considered to be unreliable and inappropriate.

Site Selection Process

It is stated that a rigorous site selection process has been undertaken but no evidence of this has been offered or produced. A number of issues would need to be explored with the benefit of the "rigorous" option appraisal report (which should be readily available to the public)

- Criteria have been identified in the submission as having been "included" in the assessment. PCC should be required to:
 - identify all the criteria which were applied;
 - the weightings used for each criterion;
- PCC should then explain how such criteria were chosen as the key criteria for the options appraisal and weightings allocated including:
 - who by;

- using what process (including whether PCC has followed Treasury guidance on option appraisal processes);
 - when;
 - are the criteria still as valid for current circumstances and current strategies and policy? It is stated in the submission that research and investigation to identify sites has taken place over a number of years and this either suggests that the criteria themselves are a number of years old or that the criteria have been developed to reflect the identification following that extensive investigation of a site at New Hedges (which would be wholly inappropriate for the purpose of a proper options appraisal in accordance with Treasury guidance);
 - were they reported to the Executive as being the chosen criteria prior to their being used for the options appraisal work (and if so PCC should provide the report to the Executive recommending those criteria) or simply produced as part of the options appraisal (in which case they would appear as a fait accompli);
 - which stakeholders were engaged in setting the criteria and weightings, how and when (and what criteria were utilised in deciding who the relevant stakeholders were);
 - do the criteria properly mirror the approved waste strategy and can this be demonstrated;
 - do the criteria properly mirror the transport strategy and can this be demonstrated (eg by making residents of Tenby travel outside the area and thereby actually contradicting one criterion of reducing number of vehicles entering Tenby – on the return journey);
 - In which of the criteria which PCC have identified and were allegedly used in the options appraisal was the issue of adverse impacts of the development of the CAS considered? The development of each site for a CAS would potentially have different impacts on the surrounding areas and uses. This would be reasonably expected to be reflected in the options appraisal? Has this taken place?
 - Similarly the development of each site for a CAS would potentially have different costs. How was cost taken into account in the criteria used and applied in options appraisal?
- PCC should be required to disclose the “significant amount of research and investigation” as a matter of meeting the requirements for transparency. Objectors have yet to be provided with anything other than a list of sites considered and a simplistic and inadequate “pro/con” style assessment which cannot amount to the “rigorous site selection process” claimed by PCC. No detailed assessments relating to the potential sites have been made available;
 - PCC should explain what site investigations have been undertaken to constitute the “significant amount of research and investigation” including:
 - when they were undertaken;
 - what resources were applied (eg. they state in the subsequent part of the submission that a local land agent had approached a number of landowners. Were all local land agents approached to investigate availability of sites? If so, when and for what period? If not, why was that decision made, by whom and when? PCC should demonstrate the period and on what terms/objectives it engaged each land agent (including any criteria which each land agent was required to adopt to identify potential sites) and confirm that all sites which had been identified by the land agents were considered under the options

appraisal process and where is the evidence of that process and consideration by the Executive – see also questions above concerning this process);

- what processes they undertook (eg did they send a written call-for-sites to all land agents and valuers or utilise any advertisements to seek suggestions. If not, why not. If they did were any of these processes renewed prior to finalising the options appraisal if, as suggested in the submission, this process has been going on for a number of years?);
- which stakeholders did they engage with, how, when and utilising what mechanisms (eg was there appropriate community engagement and consultation).

Preferred Site

The submission identifies that New Hedges was identified as the best option for a new CAS identifying a number of alleged benefits of the site. However there are a number of questions which aren't addressed:

- No details have been provided over the site selection process, who undertook it and when;
- Assuming that the site selection process took place utilising criteria referred to in the submission (about which a number of questions have been raised above) then which were the other short listed sites for the detailed option appraisal and what were the respective scores? Why has this information not been released?
- The report to the Executive Committee should be provided with the details of the reasons why New hedges was identified as the “best option” and the corresponding scores of the other sites considered in the options appraisal so that the Executive Committee could make a fully informed decision;
- Only alleged benefits have been identified in the submission which raises considerable concern as to the robustness and validity of the options appraisal. The submission does not suggest that all disadvantages were considered at the outset of the options appraisal but rather that “the main concerns that have been raised about the proposed site” suggesting this is simply a reactive consideration. This raises the fundamental question - when and at what stage in the process did PCC recognise that the property adjacent to this site was a sensitive nursing care home providing a number of specialist EMI beds? If it was not identified within the written options appraisal then the options appraisal is flawed and demonstrates that it has been used only to justify a decision which had already been taken.
- where is the consideration as to the impact on the operation of the home both in terms of a business (eg impact on attracting new customers and retaining existing customers), in terms of the impact on those customers (eg in terms of the health and well-being of the customers having regard to their specific conditions) and in operational and safety terms (eg in the event of an emergency event at the CAS then any evacuation of the nursing home could be very detrimental to the health and well-being of the residents particularly having regard to the risks associated with moving people with such conditions)?
- Why was the owner of the Brooklands Nursing Home not approached for his views and input as part of any stakeholder consultation which took place or as part of the options appraisal particularly as this is a specialist facility and PCC would have needed to understand the impacts which would have included medical advice (eg compare the position when closing down a nursing home and moving customers);
- when and how was the planning status of the site considered in the context of the options appraisal. How and on what basis (and expert advice) was it considered that the site would be

suitable in the options appraisal when the site had previously been deemed unsuitable for development as set out below:

- NP/05/347 – Application for toilet facilities for walkers – Refused 26/09/05 for reason that the proposal would constitute unacceptable development in the open countryside and would contravene policies GE1, GE2 and TO3 of the Unitary Development Plan
- PCNPA Local Development Plan – Land Allocations: Site rejected at Stage 2 (site evaluation) for the reason that development would impact on the National Park's Special Qualities. Stage two evaluation stated that development at this site *“would be intrusive within the wider agricultural landscape, and is likely to be detrimental to the special qualities of this area which forms a significant approach to coastal settlements at this area”*.
- in the circumstances it is appropriate to require sight of all instructions/directions/guidance to the persons undertaking the site selection process and require an explanation for the basis of these instructions/directions/guidance. In the absence of any instructions/directions and /or guidance then an explanation should be provided as to how the options appraisal was intended to be objective, fair and transparent;
- in identifying the alleged benefits of the site, no mention is made as to how this relates to data collected to inform the process as to the impact of the allocation of this site for CAS on the behaviours and requirements of the residents of the relevant areas in relation to their recycling behaviour including transportation

Concerns

It is alleged that PCC have undertaken a “number of face to face meetings over a substantial period” – until 10 July, the owners of Brooklands Nursing Home were unaware of the intended development of the site and have only met with PCC officials 3 times, with the first meeting being on 11 July. This must also call into question PCC’s self-assessment in terms of the process which it has adopted - “rigorous” (in connection with their site selection process) and “significant” (in connection with the amount of research and investigation carried out).

The fact that PCC states that it has taken concerns expressed by Brooklands Nursing Home into account in making changes to ensure noise and odour from the site will be kept to an absolute minimum is equally of concern. Had the option appraisal been undertaken correctly these relatively obvious issues should not have required any “change” but would have been recognised at the outset.

Noise impact reports should form part of an EIA which we consider is essential to be undertaken in respect of this site but which PCC have tried to avoid. Pembrokeshire National Park Authority have been informed that should an application be accepted without being supported by an EIA then the owners of the home have reserved the right to challenge that decision. The ground given for not requiring an EIA (namely that PNPA consider that the issues can be dealt with as part of the planning application without an EIA is not considered to be a valid ground and the reason given on behalf of PCC in support of its application for a decision that an EIA was not required is considered to have been misleading.

Notwithstanding requests for the noise reports produced as a result of the noise assessments which PCC claim to have undertaken, they have not been provided. It is considered that the noise reports will not follow guidance as to the way in which noise assessments should be carried out having regard to the fact that no request for access onto the Brooklands Nursing Home property has been requested. Furthermore in assessing the noise levels it is not identified during which periods, on how many occasions, what times of the day and even in what seasons these assessments have been carried out and how constant the noise levels have been.

The process of consulting with and involving the community in the process has been unsatisfactory. It is considered that there has been insufficient notice of community meetings to discuss the proposals and

the attempt to engage with the community has been derisory and just going through the motions, although very belatedly late (with first attempts being made only when the application was shortly expected to be lodged).

PCC should be asked to set out a detailed chronology identifying:

- when the option appraisal was carried out;
- when a decision was made that New Hedges was the preferred site;
- when a decision to apply for planning permission was made;
- when the planning authority were first approached about siting the CAS at New Hedges and details of all meetings and correspondence with the planning authority concerning New Hedges;
- details of any other discussions with the planning authority in respect of alternative sites identified in the options appraisal
- when public consultation was first commenced and notice given to all residents affected by the proposal; and
- the communication strategy/policy for the proposal and when this was adopted.

PCC should also be asked to expand their explanation of what steps they have undertaken “to reassure the local community of the rigorous process that has been undertaken to identify a new site and to put in place measures to ensure the site has as minimal an impact as possible on the surrounding area”? These should be set out and considered in the context of a decision having already been made to make the planning application.

It should be of considerable concern that PCC acknowledge that after the announcement of New Hedges as the preferred site that additional sites have been suggested which appear not to have figured in the original identification of site and appraisal. It suggests that the original process was not rigorous in identifying all suitable sites and that if the process were re-commenced on a full consultation and engagement basis that other sites might be forthcoming (rather than apparently relying on individuals to identify sites).

It is not explained whether these additional sites have been properly evaluated using the option appraisal process and scoring. It is simply stated that they were considered to be unsuitable without explaining the relative scores that the sites were allocated. However we would also highlight that as disadvantages do not appear to have been considered as part of the options appraisal (see comments above) then even had the sites been appraised in accordance with the options appraisal the process would still have been defective.

By failing to adopt a robust and properly prepared and developed process the decision to choose New Hedges as the preferred site for the CAS has inevitably relied upon assumptions and unreliable or missing information (as to the impacts on the customers/patients at the Nursing Home).

Such a cursory attempt at identifying the key issues and understanding the impacts means that the process fails to achieve what can reasonably be expected of a public body fulfilling its statutory and common law duties. The impact on the residents/customers of the Home are considered likely to amount to interference with their Human Rights

The assessment of the traffic increase requires considerably greater explanation. The basis for and assumptions made within the calculations should be set out in detail.

The calculations indicate an increase in traffic of 7% which itself would be considered a significant increase (rather than “negligible”). Also such an increase cannot be simply ignored:

- in terms of duration of noise (as more traffic will mean noise from traffic may be more constant);

- in the context of likely impact on traffic including safety in the context of queuing on and crossing a road which carries traffic at significant speeds;
- in the context of traffic entering the Home (particularly emergency vehicles) which may be badly affected in the event of queuing to enter the CAS
- in terms of impact on seasonal traffic.

The response of PCC in the submission rather re-emphasises the point that such issues are not being given proper consideration by PCC who are merely glossing over any disadvantages in the site.

There still appears to be no appreciation by PCC of the vastly more sensitive nature of the adjacent site than just a domestic dwelling. Any increase in noise or duration of noise (or even perception of noise) will have significantly greater impact on the residents/patients and those wishing to place their family members at the Home. PCC also do not appear to have undertaken any assessment on the impact of the likely noise from the site (rather than simply the traffic) and the noise impacts on the rear of the Home (where noise from traffic would be reduced but noise from the CAS would not).

The reference to no complaints having been received in respect of the Salterns is misleading as level of complaints will also relate to the period over which the site has been operating. No recent complaints in respect of a facility which has existed for a significant period is to be expected unless there had been a change in operations which increased smell. Odour impacts will depend on considerably more than mere distance and therefore if it is being alleged that there is/will be no odour caused by the CAS then this should be properly tested at each site. It is also not clear what the distance will be to the nearest container from Brooklands Nursing Home as compared with the existing CAS to the nearest house.

Please could you kindly acknowledge receipt.

Yours faithfully

HUGH JAMES