

The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009
Regulation 5(2)(c) and Regulation 6(5)

The Proposed Whitemoss Landfill (WL)
Order [2015]

***Revised Draft* DEVELOPMENT CONSENT ORDER**

[] 2015

Document Reference: WS010003/WLL/DCO Rev ExA1

2015 No.[]

INFRASTRUCTURE PLANNING

The Whitemoss Landfill (WL) Order [2015]

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(a) for an order under sections 37, 115, 117, 120 and 122 of the Planning Act 2008(b). The Secretary of State, in exercise of the powers conferred by section 114 of the Planning Act 2008, makes the following Order:

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PART 1 – GENERAL

Citation and commencement

1.—This Order may be cited as the Whitemoss Landfill (WL) Order [2015] and comes into force on [Date of issue].

Interpretation

2.—(1) In this Order—

“1961 Act” means the Land Compensation Act 1961(c);

“1965 Act” means the Compulsory Purchase Act 1965(d);

“1980 Act” means the Highways Act 1980(e);

(c) 1961 c.33. (as amended)

(d) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by Part 1 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

“1990 Act” means the Town and Country Planning Act 1990(f);

“1991 Act” means the New Roads and Street Works Act 1991(g);

“2008 Act” means the Planning Act 2008(h);

“ancillary works” means the ancillary works described in Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

“application land” means the land on which the authorised project may take place and shown edged red on the application plan;

“application plan” means plan reference WS010003/WLL/PLANS/APPLICATION BOUNDARY indicating the extent of the application land;

“authorised development” means the development and associated development described in Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order with reference WS010003/WLL/BOR “building” includes any structure or erection or any part of a building, structure or erection;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“county planning authority” means Lancashire County Council;

“the environmental statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order with reference WS010003/WLL/PLANS/LAND; “limits of deviation” means the limits of deviation referred to in article 8;

“maintain” includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, replace and improve, but not so as to vary from the description of the authorised project in Schedule 1, and not such as to give rise to any significant adverse environmental effects that have not been assessed in the environmental statement or any supplementary information and updated environmental statement supplied pursuant to The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(i), and “maintained” and “maintenance” are to be construed accordingly;

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- (e) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (f) 1990 c.8. section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (g) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (h) 2008 c.29. (as amended)
- (i) SI 2009/2263 (as amended)

“Order land” means the land shown on the land plan which is in the limits of the land to be acquired and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(j);

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“undertaker” means in relation to any provision of this Order, Whitemoss Landfill Limited and its successors in title, as well as any party to whom the benefit of the Order has been transferred pursuant to article 6;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order with reference WS010003/WLL/PLANS/WORKS.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are to be taken to be measured along that work.

PART 2 – PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—Subject to the provisions of this Order and to the requirements in Schedule 2 attached to this Order the undertaker is granted—

- (1) development consent for the authorised development; and
- (2) consent for the ancillary works,

to be carried out within the Order limits.

Maintenance of authorised project

4.—The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Benefit of Order

5.—The provisions of this Order have effect solely for the benefit of the undertaker (save in circumstances where the benefit of the Order has been transferred to a relevant third party in accordance with the terms of article 6 (Consent to transfer benefit of Order), in which case the benefit extends to that third party).

Consent to transfer benefit of Order

6.—(1) The undertaker may, with the consent of the Secretary of State—

(j) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Procedure in relation to approvals etc. under requirements

7.—(1) Where an application is made to the county planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) subject to (c) below, any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission; and
- (c) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 apply to applications for approval of any matter in pursuance of any requirement imposed by this Order.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Power to deviate

8.—The undertaker may deviate from the lines or situations shown on the works plan and the elevation plans to the extent of the limits of deviation shown on those plans.

PART 3 – SUPPLEMENTAL POWERS

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(k) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but is not to be unreasonably withheld.

(k) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99. There are other amendments to section 106 which are not relevant to this Order.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁾.
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent is not to be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

⁽¹⁾ SI 2010/675 (as amended).

Felling or lopping of trees

11.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 4 – POWERS OF ACQUISITION

Compulsory acquisition of land

12.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project, or to facilitate or which is incidental to it, including the land set out in Part 1 to the book of reference.

(2) From the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served, or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Compulsory acquisition of land – incorporation of the mineral code

13.—Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (m) (minerals) are incorporated in this Order subject to the modifications that—

- (1) paragraph 8(3) of Schedule 3 is not incorporated; and
- (2) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

14.—After the end of the period of 5 years beginning on the day on which this Order is made—

- (1) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (2) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 15 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(n).

Compulsory acquisition of rights

15.—(1) The undertaker may acquire compulsorily the existing rights described in Part 3 of the book of reference.

(2) Any person who suffers loss as a result of the extinguishment or suspension of any private right of

(m) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

(n) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

16.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order are to be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) applies.

(5) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land,
 - (ii) the undertaker's appropriation of it, or
 - (iii) the undertaker's entry onto it,

that any or all of those paragraphs are not to apply to any right of way specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is to be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

17.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981^(o) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, is to have effect with the following modifications.

(o) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(3) In section 3 (preliminary notices), for subsection (1) there is to be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is to be substituted “(1)” and after “given” there is to be inserted “and published”.

(5) In that section, for subsections (5) and (6) there is to be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there is to be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are to be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

PART 5 – MISCELLANEOUS

Defence to proceedings in respect of statutory nuisance

18.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**p**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (fa), (fb), (g) or (ga) of section 79(1) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**q**); or
- (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and control agreed

(**p**) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(**q**) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

with the county planning authority and Environment Agency as described in the requirements;
or

- (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), is not to apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

Application of landlord and tenant law

19.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Certification of plans etc.

20.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the decision-maker copies of the following plans and documents—

- (a) Sections 3 and 5 and Table ES1 of the environmental statement;
- (b) The works plan (WS010003/WLL/PLANS/WORKS);
- (c) The application plan (WS010003/WLL/PLANS/APPLICATION BOUNDARY);
- (d) The land plan (WS010003/WLL/PLANS/LAND);
- (e) Proposed restoration contours (WS010003/WLL/PLANS/ELEVATION1);
- (f) Elevations of the stockpiles and bunds (WS010003/WLL/PLANS/ELEVATION2);
- (g) Elevations of the main infrastructure including buildings (WS010003/WLL/PLANS/ELEVATION3);
- (h) The site access from White Moss Road South (WS010003/WLL/PLANS/ELEVATION4);
- (i) The phasing drawings presented in the soils handling and management scheme (WS010003/WLL/SOIL HANDLING);
- (j) Restoration proposals (WS010003/WLL/PLANS/SITE1);
- (k) Landscaping, restoration, habitat management and aftercare scheme; (WS010003/WLL/LANDSCAPING);

- (l) Soils handling and management scheme; (WS010003/WLL/SOIL HANDLING);
- (m) Proposed basal levels (Drawing reference LE00173-222); and
- (n) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

21. — Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on application of either party (after giving notice in writing to the other) by the President of the Royal Town Planning Institute for the time being.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

AUTHORISED PROJECT AND ANCILLARY WORKS

A nationally significant infrastructure project as defined in Section 14(1)(p) and 30 of the 2008 Act comprising:

(1) —The construction of a new hazardous waste landfill facility for the disposal at a direct input rate of up to 150,000 tonnes per annum of hazardous waste in the area and phases identified on the works plan including the operation of a landfill gas collection and flare system, the operation of a leachate collection, treatment and lagoon system, the extraction, stockpiling and exportation of clay, mudstones, coal and other suitable materials including general fill materials and all other associated engineering works to construct the landfill phases.

(2) —And in connection with such works and to the extent that they do not otherwise form part of any such work, further associated development and/or ancillary works shown on the plans referred to in the Requirements at Schedule 2 including:-

- (a) the continuation of the filling with hazardous waste of the existing landfill cells 2 and 3D as shown on Figure ES 4 of the environmental statement and the phasing drawings presented in the soils handling and management scheme (WS010003/WLL/SOIL HANDLING);
- (b) the operation of the interceptor waste treatment facility for the treatment of waste;
- (c) site compound;
- (d) wheel cleaning facilities;
- (e) weighbridge and weighbridge office;
- (f) offices and laboratory;
- (g) mess facilities;
- (h) garage facility;
- (i) electrical switchroom;
- (j) leachate storage tanks;
- (k) fuel storage tank;
- (l) monitoring boreholes;
- (m) security cameras;
- (n) boundary fencing;
- (o) security/operational lighting;
- (p) car parking area;
- (q) internal site roads;
- (r) bunding; and
- (s) surface and foul water management system.

SCHEDULE 2 REQUIREMENTS

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Interpretation

1. —In this Schedule—

“aftercare” means the steps necessary to manage the application land following the completion of restoration so that the quality of the land is at a satisfactory standard for the afteruse;

“afteruse” means the ultimate use of the application land as species-rich grassland/meadow, scrub pockets and broadleaf woodland with peripheral marshland/moss habitats including ponds, scrapes and ditches and the retention of the environmental management infrastructure until necessary;

“commence” means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act) excluding any operations relating to soil investigations or works in respect of land contamination archaeological investigations site clearance diversion of services receipt and

erection of construction plant and equipment the erection of temporary fencing hoardings and erection of site compound buildings and “commencement” and “commenced” are to be construed accordingly;

“completion of restoration” means the date that the county planning authority certifies in writing that the restoration of any phase of the application land has been completed;

“landscaping” means the works necessary to improve the aesthetic appearance of the application land;

“restoration” means the process which will return the completed landfill or any completed phase of the landfill to a condition suitable for its proposed aftercare, and includes design, initial landscaping works and soil spreading;

“western landfill area” means the landfill void created as part of phases A, B, C and D as shown on the works plan.

Time limits

2.—The authorised project must commence within 5 years of the date of this Order.

Commencement

3.—Notice of commencement of the authorised project must be given to the county planning authority a minimum of 7 days before the date that the authorised project is commenced.

Detailed approval

4.—The authorised project must be carried out in accordance with the sections of the environmental statement and the approved plans and schemes listed in this requirement (unless in respect of amendments as approved by the county planning authority in accordance with requirement 34)—

- (1) Sections 3 and 5 and Table ES1 of the environmental statement;
- (2) The works plan (WS010003/WLL/PLANS/WORKS);
- (3) The application plan (WS010003/WLL/PLANS/APPLICATION BOUNDARY);
- (4) The land plan (WS010003/WLL/PLANS/LAND);
- (5) Proposed restoration contours (WS010003/WLL/PLANS/ELEVATION1);
- (6) Elevations of the stockpiles and bunds (WS010003/WLL/PLANS/ELEVATION2);
- (7) Elevations of the main infrastructure including buildings (WS010003/WLL/PLANS/ELEVATION3);
- (8) The site access from White Moss Road South (WS010003/WLL/PLANS/ELEVATION4);
- (9) The phasing drawings presented in the soils handling and management scheme; (WS010003/WLL/SOIL HANDLING);
- (10) Restoration proposals (WS010003/WLL/PLANS/SITE1);
- (11) Landscaping, restoration, habitat management and aftercare scheme; (WS010003/WLL/LANDSCAPING);
- (12) Soils handling and management scheme (WS010003/WLL/SOIL HANDLING);
- (13) Proposed basal levels (Drawing reference LE00173-222); and
- (14) Any other plans or documents referred to in this Order.

Time limits

5.—The landfilling of waste and the operation of the interceptor waste treatment facility must cease by not later than 31 December 2035 and the application land (with the exception of any

facilities required for the long term management of landfill gas and leachate) must be finally restored in accordance with the landscaping, restoration, habitat management and aftercare scheme listed under requirement 4(11) by not later than 31 December 2036.

Phasing of landfill and restoration activities

6. —(1) No mineral extraction or landfill operations may be carried out except in accordance with the principles of phasing shown on the works plan and phasing plans presented in the soils handling and management scheme listed under requirement 4(9). Those operations must progress through phases A, B, C and D in accordance with those phasing plans. With the exception of the areas of the landfill which will be used for access, and areas of land that are to be used for temporary stockpiling, the landfill operations must progress from cell 3D through phases A, B, C and D, with the final phase of landfill being the access route and remaining areas of Cell 2.

(2) Capping and restoration of any phase must be completed in accordance with the landscaping, restoration, habitat management and aftercare scheme listed under requirement 4(11) within 12 months of either:

(a) the completion of landfilling operations in a phase reaching levels which will provide for the placement of capping and restoration materials (to ensure that the pre-settlement restoration contours shown on drawing reference WS0100003/WLL/PLANS/ELEVATION1 are not exceeded); or

(b) on completion of the use of that phase for stockpiling (if it to be used as such) in accordance with requirement 17.

Restoration and aftercare

7. —(1) Following certification in writing by the county planning authority of the completion of restoration in any phase on the application land, aftercare of that phase must be carried out for a period of 20 years in accordance with the Landscaping, restoration, habitat management and aftercare scheme listed in requirement 4(11).

(2) By the end of October in each year until the end of the aftercare period in the final phase on the application land, a report must be submitted to the county planning authority recording in detail:

- (a) The operations carried out on the land during the previous 12 months in respect of landfilling;
- (b) The measures taken to implement the restoration and aftercare provisions;
- (c) The intended operations for the next 12 months which will be implemented on the application land; and
- (d) The report must contain the topographical survey specified under requirement 24 to this Order.

Japanese Knotweed

8. —Prior to the commencement of the activities in Phase B of the authorised project (as shown on the works plan) a scheme for the eradication of any Japanese Knotweed identified in Phase B must be submitted for approval by the county planning authority. The extent of the Japanese Knotweed in Phase B must be confirmed and detailed as part of the preparation of the scheme. The approved scheme must be implemented prior to the commencement of the activities of Phase B and thereafter the measures must be implemented throughout the period of the development if required.

Ecology

9. —No removal of trees or hedgerows may take place between 1 March and 31 August inclusive in any year unless otherwise agreed with the county planning authority.

European protected species

10.—(1) Prior to the commencement of the operations in each of Phases B, C and D of the application land, further survey work must be undertaken to establish whether any European protected species or Common Toad are present on any of the application land, in any land affected, or likely to be affected, by the authorised project, in any of the trees to be lopped or felled, or in any buildings to be demolished, during that phase of the authorised project. The scope of the further survey work must be agreed with, and the results of the survey work submitted to, the county planning authority.

(2) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

(3) If European protected species or Common Toad are identified during the further survey work, no works within that phase may commence until a mitigation scheme has been approved by the county planning authority. The mitigation measures contained in the approved scheme must be undertaken prior to the commencement of development in that phase.

Archaeology

11.—(1) No soil stripping operations may commence until a written scheme for the investigation of areas of archaeological interest as identified in section 17 of the environmental statement has been submitted to and approved by the county planning authority.

(2) The scheme must identify areas where field work and or/a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the county planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Treatment of mine shafts and depths of excavation

12.—(1) No excavation or dewatering may take place below 48 metres Above Ordnance Datum (AOD) without prior approval by the county planning authority (such approval only to be given where necessary to create a basal sub-grade suitable for the construction of the basal lining system). This permitted depth of excavation is to include the excavation of any sumps for drainage or dewatering and the capping of any mine shafts beneath the proposed waste containment facility.

(2) Below a level of 65 metres AOD, no abstraction of water or mineral excavation may take place within an agreed stand-off horizontal distance of any mine shaft until or unless those shafts have been adequately sealed in accordance with details approved by the county planning authority in consultation with the Environment Agency and Coal Authority. The stand-off distance must be approved by the county planning authority in consultation with the Environment Agency and Coal Authority.

(3) The sealing methods must prevent against the transmission of water between any mined voids below a depth of 48 metres AOD and the proposed mineral excavation and landfill formation.

(4) The restriction on excavation and dewatering does not apply to the drilling of boreholes for ground investigation, monitoring or grouting. The restriction on abstraction of water does not preclude the taking of samples for water quality analysis or the execution of permeability tests where the latter are limited in scope and agreed by the Environment Agency in advance.

(a) SI. 2010/490 (as amended).

Water management and monitoring

13.—(1) No development, including dewatering activity, may commence until a scheme for the management and monitoring of groundwater and surface water levels, water abstraction, groundwater quality and site drainage has, following consultation with the Environment Agency, been approved by the county planning authority. The scheme must include:

- (a) the size, location, method of construction and capacity of the attenuation lagoons; and
- (b) the anticipated discharge rates to the highway drainage system and the means of controlling that discharge rate.

(2) Any variation to the approved water management and monitoring scheme must be approved by the county planning authority in consultation with the Environment Agency.

(3) The approved scheme must be implemented and maintained throughout the authorised project until dewatering has ceased, the water table has recovered and restoration of the mineral void is complete in accordance with the plans approved in accordance with requirement 4.

Trans-Pennine Ethylene Pipe

14.—No soil stripping operations may be carried out until the precise route of the Trans-Pennine ethylene pipeline adjacent to the south western site boundary has been identified. The south western perimeter bund must be located a minimum of 10m from the route of the pipeline and the south western boundary of the landfill must be located a minimum of 28m from the route of the pipeline. The route of the pipeline together with the standoffs must be clearly identified with markers prior to the commencement of the authorised project.

Rainford Drain

15.— No soil stripping operations may be carried out until a scheme setting out how the Rainford Drain will be diverted around the perimeter of the landfill has been approved by the county planning authority. The drain must be diverted in accordance with that scheme. The diverted pipeline must be constructed to a standard which provides for the effective management of water.

External lighting and control of artificial light emissions

16.—(1) All floodlighting used as part of the authorised project (including mobile units) must be directed towards the ground to minimise light spillage from the application land and, except for in emergencies, must only be operational during the working hours specified in requirement 30.

(2) No additional permanent floodlighting may be installed on the application land until a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the county planning authority.

Temporary stockpiles

17.—(1) The temporary stockpiles as shown on the plan WS010003/WLL/PLANS/ELEVATION2 must be managed in accordance with the details set out in Section 5 of the environmental statement and the soils handling and management scheme (WS010003/WLL/SOIL HANDLING) during the operation of the authorised project.

(2) Prior to the commencement of excavation in any phase, proposals for the anticipated temporary stockpiling of peat materials excavated from within that phase (where such materials are stockpiled on capped landfill areas) must be approved by the county planning authority. The proposals must include information on the following details:

- (a) the types, quantities, locations and heights of storage of the peat materials;

- (b) the duration of stockpiling, including a timescale for the removal of the stockpiled peat materials; and
- (c) details for the grading and landscaping of the peat materials for the duration of the stockpile period.

(3) Thereafter, stockpiling of the peat materials must take place in accordance with the approved details for each phase.

Soil audit

18.—(1) In accordance with the soils handling and management scheme, an annual audit of all soil materials is to be completed at the end of each soil moving season and submitted to the county planning authority.

(2) The audit is to include:

- (a) drawings and tables to identify clearly the origin, intermediate storage and final location of the different soil types. The drawings and tables are to be prepared as part of the first soil audit to a format to be agreed with the county planning authority and are to be updated as part of each subsequent audit to provide the most accurate ongoing summary of soil management at the application land; and
- (b) volumetric information which is to be included in the tables;

(3) Any recommendations resulting from each soil audit must be carried out in the timescale to be agreed with the county planning authority

Control of noise and dust emissions during construction and operation

19.—(1) During the construction and removal of the perimeter bunds and material storage mounds (as shown on the works plan) the noise levels must be controlled to meet the construction noise limits specified in Table ES7 of the environmental statement. During mineral extraction, landfilling, maintenance, restoration and aftercare operations the application land must be operated to control noise levels so that noise levels recorded in free field conditions as a result of the proposed development do not exceed $55\text{dB}_{\text{LAeq, 1h}}$ when measured from any point on the site boundary.

(2) All reversing warning systems fitted to mobile plant used on the application land must be either non audible or white noise type systems.

(3) All plant, equipment and other machinery used in connection with the operation and maintenance of the authorised project must be equipped with effective silencing equipment or sound proofing equipment to the standard of design set out in the manufacturer's specification and must be maintained in accordance with the specification at all times.

(4) Throughout the operation of the authorised project, measures are to be taken to ensure that no dust or windblown materials are carried on to adjacent property and in particular are to include the watering of all haul and access roads and the spraying of storage heaps or areas of the landfilling and restoration areas as necessary during dry weather conditions.

Blasting

20. —No blasting may be undertaken on the application land.

Crushing and screening of aggregate

21. —If crushing and screening of aggregate is undertaken on the application land all crushing and screening plant must be fitted with effective dust suppression measures including dust suppression on all conveyor outfall points.

Disposal of waste

22.—No waste materials may be disposed of or placed on the application land in such a way as would prejudice the restoration of the land in accordance with plan WS010003/PLANS/WLL/ELEVATION1.

Quantities and types of waste

23.—The maximum quantity of waste that is to be imported to the interceptor treatment facility per annum will be 20,000 tonnes and the maximum quantity of waste that is to be imported to the landfill per annum will be 150,000 tonnes. No waste materials may be accepted on the application land other than hazardous wastes or suitable waste materials for engineering and restoration purposes.

Topographical survey

24.—A topographical survey must be submitted to the county planning authority on or before 31 October in every year until the end of the aftercare period referred to in requirement 7 of this Order. The survey must have been carried out within 2 months preceding the date of the submission and must consist of a plan drawn to a scale not less than 1:1250 which identifies all surface features on the application land and is contoured at 1 metre intervals, relating to Ordnance Datum over all the application land where waste has been deposited.

Demolition

25.—(1) Subject to the following provisions of this requirement, the undertaker may at its own expense carry out any demolition works to buildings on the application land as the undertaker considers necessary or expedient for the authorised project.

(2) The residential property in Phase B must remain uninhabited from the commencement of the authorised project until the residential property is demolished prior to the commencement of the operations in Phase B.

(3) No demolition may commence until a code of construction practice has been submitted to and approved by the county planning authority. The code of construction practice must have regard to the results of any further surveys for European protected species carried out pursuant to requirement 10.

(4) All construction works must be undertaken in accordance with the approved code, unless otherwise agreed by the county planning authority.

Vehicular access

26.—The sole vehicular access for the authorised project hereby permitted is to be by way of the existing access to the application land on to White Moss Road South and as shown on plan WS010003/WLL/PLANS/ELEVATION4. The visibility splays must be maintained at the junction with White Moss Road South in accordance with plan WS010003/WLL/PLANS/ELEVATION4.

Control of vehicular movements

27.—Vehicular traffic associated with the authorised project must be controlled as follows—

(2) The undertaker must direct all heavy goods vehicles entering and leaving the application land to travel to and from the M58 motorway via White Moss Road South to the east of the application land with a direction that no such vehicles are to travel west along White Moss Road South towards Skelmersdale.

(3) Signs informing vehicle drivers of the requirements in paragraph (1) above must be maintained in a visible location near to the egress on application land throughout the term of the authorised project.

Fencing

28.—The fencing (including the gates at the site entrance and specified in the landscaping, restoration, habitat management and aftercare scheme approved under requirement 4(11)) must be maintained and/or erected on the application land prior to the commencement of the authorised project and must be maintained as necessary for the duration of the authorised project. Any temporary fencing is to be removed on completion of the authorised project.

Wheel cleaning

29.—(1) Wheel cleaning facilities installed at the application land as specified in section 5 of the environmental statement (or wheel cleaning facilities of a similar design and function) must be available for use at all times during the operations of the authorised project.

(2) The wheels of all vehicles leaving the application land must be cleansed of mud and other debris to prevent mud being carried onto the public highway.

(3) The wheel cleaning facilities must be maintained in full working order at all times throughout the authorised project.

(4) All vehicles transporting materials with the potential to give rise to airborne dust or spillage of materials must be sheeted.

Hours of operation

30.—(1) All mineral extraction and landfill construction operations, delivery of waste, waste treatment, waste disposal, levelling and restoration operations, and any associated activities must be restricted to between the hours of 07.30 and 18.30 on Mondays to Fridays and 08.00 and 12.00 on Saturdays, with no such operations being carried out on the application land on Sundays or Public Holidays.

(2) Essential repairs to plant and machinery may be carried out outside of the authorised times of operation.

(3) Environmental management infrastructure including infrastructure for the management of water, leachate and landfill gas may operate continuously.

Display of Order on-site

31.—A copy of the terms of this Order must be displayed on the application land, and all documents hereby permitted and any documents subsequently approved in accordance with this Order (or amendments approved pursuant to this Order) must be available at the site office throughout the development.

Review of void consumption

32.—No excavation in accordance with each of phases B, C and D (as set out in the phasing plans) of the authorised development may commence

(a) unless and until the undertaker has provided a review of the disposal capacity and rate of consumption of the space available for waste at the landfill facility to the county planning authority; and

(b) if the county planning authority determines (such determination to be made within 6 weeks of the submission of the review) that there has been a material shortfall in the quantities of waste accepted on the application land, such that landfilling is unlikely to be completed by 31 December 2035, then no excavation of any phase may commence unless and until

(i) the undertaker has applied to the county planning authority for approval to vary the plans and schemes listed in subparagraphs (5), (9) and (13) of requirement 4 as necessary to meet the specified

restoration date of 31 December 2036 in accordance with the restoration proposals set out in sub-paragraph (10) of requirement 4; and

- (ii) the county planning authority has approved the application to vary the plans and schemes, such decision to be made within 8 weeks of the above application

Removal of plant and machinery

33.—Except to the extent required for aftercare purposes (as approved pursuant to the scheme under requirement 4) and for any ongoing environmental management purposes, any building, plant, machinery, foundations, hardstanding, roadway, structure or erection in the nature of plant or machinery used in connection with the authorised project must be removed from the application land when they are no longer required for the purpose for which they were installed and in any case not later than 31st December 2056 upon completion of the aftercare of the land. The areas of the application land in which environmental management infrastructure are located must be restored in a manner consistent with the surrounding restoration.

Requirement for written approval and amendments to approved details

34.—Where under any requirement, details or a scheme or plan are to be submitted for the approval of the county planning authority, or where the county planning authority is authorised to approve changes to plans, schemes, drawings or other documents certified by the Secretary of State, then unless the requirement provides otherwise—

- a) those details or scheme or plan and that approval must be in writing;
- b) the details, scheme or plan must be implemented as approved;
- c) the approved details, scheme or plan are to be taken to include any amendments that may subsequently be approved in writing by the county planning authority, provided that no amendments may be approved by the county planning authority where such amendments may give rise to any significant adverse environmental effects that have not been assessed in the environmental statement or any supplementary information and updated environmental statement supplied pursuant to The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009; and
- d) where under any requirement there is an obligation to consult with a third party prior to the submission of any details, scheme or plan for approval to the county planning authority, then there is to be an obligation to consult with the same third party prior to the submission of any amendments.