

PLANNING & REGULATION COMMITTEE

MINUTES of the meeting held on Monday, 25 November 2024 commencing at 2.00 pm and finishing at 3.15 pm

Present:

Voting Members: Councillor Ian Snowdon – in the Chair

Councillor Stefan Gawrysiak (Deputy Chair)
Councillor Robin Bennett
Councillor Felix Bloomfield
Councillor Imade Edosomwan
Councillor Mohamed Fadlalla
Councillor Bob Johnston
Councillor David Rouane
Councillor Geoff Saul
Councillor Peter Stevens

Officers:

Whole of meeting

David Periam (Development Management Team Leader), Enya Dale (Assistant TDM Officer), David Mytton (Solicitor) and Lucy Brown (Senior Democratic Services Officer)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with [a schedule of addenda tabled at the meeting] and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda and reports [agenda, reports and schedule/additional documents], copies of which are attached to the signed Minutes.

23/24 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

Apologies for absence were received from Councillor Les Sibley, and Councillor Ted Fenton joined the meeting remotely and was aware that he was unable to vote on decisions taken by the Committee.

24/24 DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE BELOW

(Agenda No. 2)

Councillor Bob Johnston advised the Committee that, in the interests of transparency, he wished to declare that he knew two members of the audience that had joined the meeting for Item 5.

Councillor Felix Bloomfield advised the Committee that, in the interests of transparency, he wished to declare that he was the Ward Member for the neighbouring area, and therefore had good local knowledge of the area.

25/24 MINUTES

(Agenda No. 3)

Resolved: that the minutes of the meeting held on 2 September were approved as an accurate record of the meeting and signed by the Chair.

26/24 PETITIONS AND PUBLIC ADDRESS

(Agenda No. 4)

The following speakers requested to address the Committee on the following items on the agenda:

Item 5: Application for a Certificate of Lawfulness of Existing Use or Development for retention of a Waste Transfer Station

- Cllr Freddie VanMierlo, Chalgrove & Watlington
- David Soloman, on behalf of Ewelme Parish Council
- Frank Dixon, agent of Hazell & Jefferies (applicant)
- Christopher Stanley, General Manager, Hazell & Jefferies (applicant)

27/24 APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT FOR RETENTION OF A WASTE TRANSFER STATION

(Agenda No. 5)

David Periam, Planning Development Manager introduced the application which sought to gain a Certificate of Lawfulness of Existing Use or Development (CLEUD) under Section 191 of the Town & Country Planning Act 1990 as amended. The applicant had claimed that the land had been in use as a waste transfer station for over 10 years at the date of the application (5 December 2023) and a Statutory Declaration with supporting attachments submitted by the applicant in support of the claim was attached to the report.

He highlighted the differences between the CLEUD and planning applications and outlined the remit of the Committee to consider the evidence put forward by the applicant, third party responses and the Local Authority. It was noted that determination of a CLEUD would usually be taken by the Head of Strategic Planning jointly with the Solicitor to the Council, however in this case, the local County Councillor had asked that the application be decided by the Committee.

He drew the Committee's attention to the published addenda which provided a response to Ewelme Parish Council and a subsequent change to the recommendation as noted below.

The Committee were presented with slides detailing the geographical landscape and the Committee was advised that Application P00/W0534/CLD was submitted to the County Council in October 2002, and the report outlined the uses that were certified as lawful and also the uses that were subject to identified limitations.

The recommendation to the Committee was as follows:

It is RECOMMENDED that a Certificate of Lawful Existing Use or Development is GRANTED for the MW.0171/23 application site (as shown edged red on the attached Location Plan and described in the certificate as “the Land”), for the uses set out in Schedule 1.

The claimed uses, as set out in Schedule 1, are considered lawful within the meaning of Section 191(2) of the 1990 Act. Oxfordshire County Council considers that there is, on the balance of probabilities, sufficient evidence that the claimed use has been carried out on the Land for the past 10 years. The issue of a Certificate of Lawful Existing Use and Development on the terms set out below is accordingly justified.

First Schedule

The uses hereby certified as lawful are:

- (a) The receipt of waste via HGV skip lorries, tipper lorries, agriculture tractors and trailers and light goods vehicles (including vans and pickup trucks only) with or without trailers.
- (b) Sorting and segregating waste material by various mechanical methods and processes (as set out in description c) for either transfer off site as waste to other processors or landfill, or for recycling on site by crushing, grading and washing to produce usable secondary aggregates for the building, construction and civil engineering industries.
- (c) Stationing of both static and mobile plant and machinery at the land for use in receiving, unloading, handling, moving, stockpiling, sorting, segregating, grading, crushing and loading waste and recycled materials at the land. Such plant and machinery only includes conveyor belt apparatus, crusher, loading shovel, rubber duck, 3 way screener, generator and tractor.
- (d) Parking and maintenance of HGV tipper lorries and skip lorries used in connection with the waste transfer station.
- (e) Stationing of mobile Portacabin type offices for use in connection with the management and operation of the waste transfer station.

Throughout this Certificate the uses set out above are referred to collectively as a “waste transfer station.”

Subject to the following identified limitations

General limitations:

- The amount of waste received on the Land does not exceed 16,406 tonnes per annum.

- No materials stored on the Land are stored at a height exceeding the height of the surrounding bunds.
- The site is not operated other than:
Between 0700 hours and 1900 hours Mondays to Saturdays; and
Between 0900 hours and 1300 hours Sundays and Bank Holidays
- There are no more than 50 movements per day (25 in 25 out) of operational vehicles into and out of the Land.
- There are no more than 14 movements per day (7 in 7 out) of vehicles relating to staff movements into and out of the Land.
- There are no more than 19 employees at the site.
- All materials stored on the land are not processed by mechanical means other than by using plant and machinery stored on the Land.
- The static and mobile plant stationed on the Land are only used in connection with the Waste Transfer Station.
- One conveyor belt apparatus is stored at the site and operated on the Land. The conveyor belt apparatus is only used in connection with the Waste Transfer Station.
- One Tractor is stored at the site and operated on the Land. The Tractor is only used in connection with the Waste Transfer Station.
- One 360-degree excavator is operated on the Land. This 360-degree excavator is only be used in connection with the Waste Transfer Station.
- One screening plant is stored at the site and is operated on the Land. This screening plant is only used in connection with the Waste Transfer Station.
- One crusher is stored at the site and is operated on the Land. This crusher is only used in connection with the Waste Transfer Station.
- One loading shovel is stored at the site and operated on the Land. This loading shovel is only used in connection with the Waste Transfer Station.
- One generator is stored at the site and operated on the Land. This generator is only used in connection with the Waste Transfer Station.
- Only seven 18 tonne skip HGVs are parked and maintained at the site and operated from the Land.
- Only two 7.5 tonne Canter HGVs are parked and maintained at the site and operated from the Land.
- Only one 32 tonne HGV tipper is parked and maintained at the site and operated from the Land.
- Only two Portacabins are located on the site. One on the western boundary and one to the east of the Land.

Limitations relating specifically to waste materials:

- Waste materials are transferred onto The Land broadly in the following proportions:

Mixed construction and demolition (70%)
Soils and stones (minor non-hazardous) (16%)
Wood (3%)
Mixed metals (1%)
Gypsum based construction material (4%)
Mixed municipal waste (6%)

Reasons:

The details provided by the applicant, third parties, site visits, aerial photographs and the Council's files demonstrate on the balance of probabilities that the uses and associated operational development described in the First Schedule to this certificate have been continued on the Land for a period of 10 years preceding the application date of the 5th December 2023.

Second Schedule

The uses hereby certified as not lawful are:

- Plant and machinery including a 'grab or magnet type machine' and 'trommel' stored and operated on the Land.
- Parking and maintenance of a road sweeper used in connection with the Waste Transfer Station on the Land.
- Stationing of mobile trailer type living accommodation units for operatives based at the Waste Transfer Station on the Land.

Reasons:

The uses set out in the Second Schedule have not been demonstrated on the balance of probabilities to be lawful uses within the meaning of section 191(2) of the 1990 Act as there is insufficient evidence that they have been carried out on the Land with sufficient continuity over a ten year period to preclude enforcement action for the breach of planning control.

For the avoidance of doubt this Certificate relates to the area shown on the plan submitted with the application and as shown in red on Plan 2 but does not control either of the following areas within the planning unit shown in blue on Plan 2:

- i) the use of the land to the south which is the subject of planning permission no. P17/S4066/CM (MW.0098/17) for "*change of use for the storage of recycled material on land to the south of the primary working area. In addition to storage of recycled materials it is proposed to store empty waste skips in the ancillary area;*" or
- ii) the use of the land to the north which is the subject of planning permission no. P17/S4069/CM (MW.0099/17) for "*change of use of a small part of the application site to allow motor vehicles to park on land to the north of the primary working areas.*"

The Committee were addressed by the following registered speakers:

- Councillor Freddie VanMierlo addressed the Committee as Councillor for the Chalgrove & Watlington Division. He advised that he had asked for the application to come to the Committee in the interests of transparency, and to give the Parish Council an opportunity to voice their concerns. He addressed his own concerns with the lack of enforcement that had taken place allowing the development to operate in an irregular manner, and in particular vehicular movements through the village. In response to questions from the Committee he confirmed his agreement with the report and recommendation as submitted and welcomed the opportunity presented to Ewelme Parish Council to address their concerns directly to the Committee.

- David Soloman, Chair of Ewelme Parish Council thanked the Committee for allowing them the opportunity to express their views. He advised that the Parish Council agreed with the recommendation submitted within the addenda and outlined their original concerns which had since been addressed in the response received by the Officers and asked that the Committee approve the proposed CLEUD subject to the incorporation of the enclosed addenda. He outlined some remaining concerns regarding the issue of mud on the public road, the problems of monitoring the compliance of the conditions of the CLEUD, and the problem of enforcement which has proved an issue in the past.
- Frank Dixon, Planning Consultant and agent for Hazell & Jefferies addressed the Committee to object to the recommendation as set out in the published committee report and highlighted that the report contained certain errors which should be the subject of negotiation between the applicant and the Council. As an example, he identified that operating hours had been listed as a limitation, and questioned the validity of this evidence, as they had not submitted any evidence of operating hours. He highlighted that if the CLEUD was agreed by the Committee, the company would be in breach of the issued CLEUD from the next working day.
- Christopher Stanley, General Manager of Hazell & Jefferies addressed the Committee to object to the recommendation as set out in the published committee report and advised that they had not received the addenda that had been published. He thanked Councillor Freddie VanMierlo for his explanation as to why the application had been brought to Committee. He advised that he would welcome any requests from Councillors to visit the site, and as yet had not received any such requests. In response to comments raised regarding vehicle movements, he advised that it would not have been possible to provide evidence on the number of vehicles coming to and from the site over the past 10 years, as this was not information they would hold or have to provide evidence of for tax purposes or to the Environment Agency. He expressed his concern regarding some of the limitations applied to the CLEUD and questioned how some of the evidence had been provided for in the report and asked the Committee to instruct Officers to engage with the applicant's comments and reconsider the report based on those comments.

In response to questions asked by the Committee, Frank Dixon and Christopher Stanley clarified the following:

- Most of the lorries would be 4-axle vehicles with sheeted covers carrying a maximum load of 18 tonnes, however not all vehicular movements would be carrying waste to and from the site.
- They had only received notification of the schedules in the last week, and did not feel they were given adequate time to review these and had not received any representations via the Council's Planning Portal from third parties.
- Whilst there were no fixed operating hours, the usual start time for skip lorries leaving the site would be from 0600 hours, however wished to note that there were many other lorries using the neighbouring roads around the site at the same time. He advised that although the report had stated operating hours between 0700 hours and 1900 hours, these times would not be acceptable due to issues with traffic etc, and an earlier start time would be the most efficient for the business. In response to further questions, the Committee were advised that the company does not adhere to any strict timings, and were dependent on need, but

as shown by the evidence and comments made, have been operating above those hours listed.

- Statutory Declarations from staff would be the only type of evidence that could be submitted by the company to support evidence of operating hours and the use of living accommodation on the site. The company had already submitted a Statutory Declaration from the Managing Director of the Hazell & Jefferies and asked if the validity of this document was being called into question.
- The site would be lit for health and safety reasons if there were people working on site.
- The report stated that there were to be no more than 50 movements per day of operational vehicles transporting material into and out of the Land, however that low number would not be viable for the company.
- As highlighted above, when the number of vehicle movements in and out of the Land during the past 10 years had been requested by the Council in September 2024, the company had advised Officers that this type of information was not available due to the nature of the business.
- The site was purchased in 2002 with the benefit of a Certificate of Lawfulness, and following advice received from the agent, the level of operation had been increased without a material change of use, the Council had monitored the site over this time and had made the suggestion to apply for an updated CLEUD in order to regularise the position which had become irregular. For the application to be considered unlawful, the Council would have to demonstrate this and start enforcement action.

In response to questions from the Committee, David Periam, Planning Development Manager and Enya Dale, Assistant TDM Officer advised the following:

- The operating hours as per the schedules contained within the Certificate of Lawfulness form part of the planning history of the application of the site and the Council had not received any other evidence to provide alternative hours than those applied from the original Certificate attached to the site.
- The addenda had been published on Friday and apologised that this had not been provided to the applicant, however advised that this amendment had only clarified the recommendation with the use of 'Land' and its meaning and a small change to the wording of the limitation on vehicle movements but not to the daily numbers of operational vehicle movements. In particular he advised that the addendum had not amended the Recommendation with regard to the limitations on the hours of site operation.
- The number of vehicle movements had been derived from a response to a Planning Contravention Notice issued in 2008, and no other evidence had been received from the applicant who had advised they did not hold this information.

Cllr Ted Fenton left the meeting and did not return.

- There had not been any evidence received to conclude that a trommel had been in use at the site for the 10-year period.
- There was no evidence presented in any of the Council's monitoring reports that provided information on the operating hours or number of vehicle movements to and from the site.

- It was confirmed that operating hours were contained within the existing Certificate attached to the site, and if the CLEUD was agreed with the existing operating hours in place and the applicant was not in agreement with these, they would have the standard right of appeal.

David Periam advised the Committee that they have been asked to take a view on the evidence provided before them in applying the CLEUD as set out in the recommendation published in the addenda, and if they felt that there was insufficient evidence provided to enable them to do so, they could delegate the decision to Officers on receipt of any additional evidence received. If this was the case, the Parish Council could be provided an opportunity to review any additional evidence provided by the applicant on the specific points raised regarding operating hours and vehicle movements, prior to any decisions being taken by Officers.

Councillor Felix Bloomfield proposed to **REJECT** the Officers' recommendation in the addenda which was seconded by Councillor Bob Johnston and requested that the application be deferred for the applicant to provide additional evidence and brought back to the Committee with the additional evidence provided. The Parish Council would be given the opportunity to comment on the additional evidence.

On the above being presented to the Committee and put to the vote, the following was agreed: For = 6, Against = 3, Abstain = 1, and the motion was carried.

..... in the Chair

Date of signing