

**Division Affected:** Sutton Courtenay and Marcham

**PLANNING AND REGULATION COMMITTEE**

**Application to modify or discharge Section 106 Planning Obligations to remove the existing waste catchment area and amend permissive path at Sutton Courtenay Landfill Site**

**Report by Director of Planning, Environment and Climate Change**

**Contact Officer:** Mary Hudson **Tel:** 07393 001 257

**Location:** Sutton Courtenay Landfill Site, Appleford Sidings, OX14 4PP

**Application No:** MW.0034/23 **District Ref:** P23/V0529/CM

**Applicant:** FCC Environment (UK) Limited

**District Council Area:** Vale of White Horse

**Date Received:** 27<sup>th</sup> February 2023

**Consultation Period:** 9<sup>th</sup> – 30<sup>th</sup> March 2023

**Summary**

1. This application was considered by Planning and Regulation committee on 5<sup>th</sup> June 2023 and deferred pending further information. The requested information has now been provided and considered. Therefore, the application is being brought back to the committee for decision.
2. The application is a Section 106A application to amend a legal agreement associated with an existing planning permission. The applicant proposes to remove the hinterland obligation so that there would be no geographical limitation on the source of waste. They also propose a change to the timescale for delivery of a permissive path.
3. There is no change to the recommendation of the June report. It is recommended that the application is approved, and a deed of variation is entered into to, to amend the legal agreement.

## **Introduction**

4. This report does not seek to duplicate information provided in the June committee report. This is appended as Annex 1 and sets out the details of the site, planning history, details of the application, consultation responses and representations and consideration of whether the planning obligations continue to serve a useful purpose. It concludes that both the proposal to remove the hinterland and to delay the provision of a permissive path are considered to be acceptable.

## **Further Information**

5. On 5<sup>th</sup> June, the committee deferred the decision pending further information related to the proposal to remove the hinterland obligation. This was provided by the applicant on 21<sup>st</sup> June.
6. A Planning Contravention Notice (PCN) was served on FCC Environment (UK) Limited on 29<sup>th</sup> June. This formally requires information to be provided about alleged breaches of planning control. Detailed information was provided setting out, amongst other things, the quantity of waste imported by road and rail from inside and outside the hinterland every year since 2012. Some of these figures were different to the figures previously provided in relation to this application. The applicant has confirmed that the PCN figures are correct and supersede the previously provided figures. Therefore, the PCN figures are provided below, except for the figures for 2023 (to date) which were not requested in the PCN.

### Recent Data and Road/Rail Split

7. The report to June committee contained Environment Agency data from 2021, which is the most recent publicly available data. This showed that the operator was in breach of both the hinterland restriction and also condition 52 on the consent setting a maximum annual tonnage of 600 000 tonnes. The PCN response subsequently confirmed, that another element of condition 52 had been breached as the maximum 350 000 tonnes per annum (tpa) by road was shown to have been exceeded.
8. The committee requested more recent data about waste imports. The applicant was asked to provide their own data for 2021, 2022 and 2023 to date.
9. The publicly available Environment Agency data does not specify the quantities of waste imported by road and by rail. This information is necessary to determine whether condition 52 has been complied with, in respect to total imports by road.

10. Relevant information from the PCN response provided by the applicant is set out in Table 1. Figures are given in tonnes.

<b>Year</b>	<b>Road</b>	<b>Rail</b>	<b>Total</b>
<b>2021</b>	496 777	213 995	<b>710 772</b>
<b>2022</b>	92 107	538 220	<b>630 327</b>

**Table 1**

11. The response to the request for information in relation to this application also included figures for 2023 (up to 21<sup>st</sup> June). This stated that no waste had been imported by rail and 23 633 tonnes had been imported by road.
12. The information shows that the total waste imported in 2021 was 710 772 tonnes, and the total waste imported in 2022 was 630 327 tonnes. In both years the 350 000-tonne maximum by road was breached. This data also confirms that in both years, the 600 000 tonnes overall maximum waste limit to the site was also breached.
13. Both the total amount of waste imported to the site and the split between waste imported by road and by rail, is controlled by condition 52 on the consent and therefore is not directly relevant to the application to remove the hinterland obligation from the Section 106 agreement. The breach of conditions is being dealt with separately by the enforcement team.

#### Type of Waste Landfilled

14. A query was raised at the meeting about why so much waste was being sent to Oxfordshire for landfill from other areas, and whether Oxfordshire should provide landfill capacity to areas which have failed to move waste up the waste hierarchy to treatment and recycling. Information was not available at the meeting about whether the waste being imported from other areas was proportionately more of their total waste arisings compared to the proportion of Oxfordshire's waste which is landfilled. Therefore, it wasn't clear whether landfilling in Oxfordshire was facilitating a failure to move waste up the hierarchy, or whether the waste being imported was only the proportion of waste which cannot be treated or recycled, which may have to travel further to an alternative landfill if it is not able to be disposed of at Sutton Courtenay. Therefore, further information was also requested on this.
15. The 2021 Environment Agency data showed large quantities of waste imported to Sutton Courtenay originating from outside the hinterland. For example, in 2021, 59 578 tonnes of household/industrial/commercial waste was sent to Sutton Courtenay from Hampshire and 46 702 tonnes from Portsmouth, compared with just 25 851 tonnes from within Oxfordshire. Therefore, the applicant was asked to demonstrate that the waste being

imported from areas outside the hinterland is residual waste which cannot be treated or recycled.

16. The applicant has confirmed that 'the wastes that are typically delivered to the site are residual wastes from waste treatment processes and construction projects and some municipal bulky wastes. If there are increases in municipal wastes from other authorities these are due to the planned shutdowns/unavailability of waste treatment and energy recovery facilities within these counties which means that the wastes need to come into the site as a contingency backup option while the plants undergo maintenance/repairs etc. before coming available again.' They have confirmed that their gate records show that waste from Hampshire is commercial waste rather than municipal waste and advised that this travels to Oxfordshire as there are no alternative landfills available. They state that whether waste is sent for disposal or recovery depends on availability of a suitable facility, travel distances and gate price.
17. The OCC Planning Policy team do not currently have capacity to undertake further work on understanding the waste streams entering Oxfordshire for disposal. As part of their work in preparing the new Oxfordshire Minerals and Waste Local Plan, they will identify all waste streams in and out of Oxfordshire and confirm with the relevant authority if this is intended to continue or cease in the future. However, there is not currently a timescale for the completion of this work and the scope of the work will not include consideration of whether the waste streams are residual.
18. Oxfordshire Minerals and Waste Local Plan policy W2 states that proposals for the management of all types of waste should demonstrate that the waste cannot reasonably be managed through a process that is higher up the waste hierarchy. This means that waste should not be disposed of when it could be recycled or treated instead. The low volumes of waste imported to the site from within Oxfordshire suggest that waste arising within the county is being treated at Ardley ERF wherever possible rather than being disposed of. It is less clear that waste imported from outside the county is only that which cannot be treated or recycled. However, policy W2 is considered to have limited relevance because this is not an application for a new facility. The existing consent does not explicitly restrict imports to residual waste, and it would be difficult to precisely require this as what can be recycled changes over time as new technologies become available.

#### Forecast Completion Dates

19. The report to June committee stated that on the basis of Environment Agency data on void space and imports in 2021, the remaining void would not be filled by the end date of 2030 if the existing hinterland requirements remained in force and were enforced. The committee requested forecasts to demonstrate this.

20. The forecast information provided by the applicant is available at Annex 2. This is the applicant's forecasts based on the void space as it was in March 2023 (2 016 766 cubic metres). The forecasts provided demonstrate that the remaining void would need to be filled at a rate of between 300 000 and 350 000 tonnes per annum, in order for the void to be filled by the 2030 end date. The PCN data shows the following totals for waste imported to Sutton Courtenay from within the approved hinterland area by road plus waste imported by rail. This gives an indication of the quantities of waste available when complying with the hinterland agreement:

<b>Year</b>	<b>Total: waste by rail plus waste by road from inside hinterland (tonnes)</b>
2022	279 129
2021	356 241
2020	169 163
2019	362 282
2018	274 877
2017	297 890

**Table 2**

21. The applicant has stated that with the hinterland in place, available waste arisings would be between 50 000 and 100 000 tonnes per annum. On this basis, it would not be possible to complete the landfilling by 2030 if waste was limited to within the hinterland. The applicant's forecasts suggest that at that level of importation it would take until between 2047 and 2071 (a further 17-41 years of operations) to complete the approved final landform whilst complying with the hinterland obligation. However, this does not take into account the contribution of rail borne waste, which is not limited to the hinterland. Table 2 above shows that average annual imports over the past six years, when imports by rail are also included, have been slightly less than 300 000 tpa (289 930 tpa). At this rate, the site would still not quite be finished by 2030, but it would be finished 1-2 years later. However, it should be noted that imports by rail are highly variable and some years (for example 2017, 2018 and 2020) there were no imports by rail at all.
22. The applicant has explained that their forecasts must be conservative because they do not have control over waste generation and the quantities of waste available for import by rail fluctuate greatly. They have also stated that the average road borne waste from inside the hinterland has been declining over recent years, so it cannot be assumed that waste importation from within the hinterland would continue at previous levels until 2030. Table 3 contains information from the PCN response and shows that waste from inside the hinterland by road has been lower in the past three years than the three years before that, although there was an increase in 2022 compared to the previous two years.

<b>Year</b>	<b>Waste from inside the hinterland by road (i.e. total waste imported minus waste by rail and waste from outside hinterland)</b>
2022	187 022
2021	142 246
2020	169 163
2019	265 004
2018	274 877
2017	297 890

**Table 3**

23. Whilst it is accepted that rail importation fluctuates and road borne waste from inside the hinterland has been lower in recent years, the forecasts provided by the applicant in Annex 2 showing a completion date of between 2047 and 2071, are not considered to be realistic. An importation rate of between 300 000 – 350 000 tpa would be necessary to complete the landfill by 2030. It is evident that the total importation from rail and within the hinterland in recent years have been close to but below the rate that is required. Based on the evidence provided it is evident, therefore, there is a very realistic prospect of the landfill not being completed by the required 2030 date contained with the extant planning permission by using road borne waste imported from within the hinterland and rail borne waste alone. On the basis of waste importation levels remaining similar to past levels, the landfill would take until around 2031-32 to complete. It is noted that this is longer than the permission allows, but only by a couple of years. However, the applicant has highlighted that there is less certainty over the ability for the hinterland to provide the required levels of waste as well as the fluctuating nature of rail imports to ensure completion by even the current forecast 2031-32 date as waste imports might be lower over the next few years. It is evident from the evidence provided that it is likely that FCC Environment (UK) Limited would not be able to reach the 2030 end date without waste from outside the hinterland. Alternatively, in the event that waste importation levels are higher, in which case the end date could be met without waste from outside the hinterland.
24. The applicant has also stated that it would not be possible to complete landfilling by 2030 with different restoration contours using a lesser volume of waste, because of the site topography and the need to create a final landform that provides appropriate gradients for shedding surface water.
25. The information provided supports the advice in the June report that it would not be likely that FCC Environment (UK) Limited could complete the site by the approved 2030 end date if the hinterland agreement remains in force and is enforced. However, the new information shows that the difference in end date may only be a few years, rather than many years. It also shows that it might be possible to complete the landfill by 2030, depending on how much waste is imported by rail over the coming years.

26. Since the Section 106 agreement was originally signed in 2008, Ardley Energy Recovery Facility (ERF) has been constructed and brought into use and now takes Oxfordshire's municipal waste. This has significantly changed the volumes of waste available within the hinterland. As set out in the original report, the distribution of waste facilities has changed since 2008 and the non-hazardous landfills that remain are becoming important on a regional level.
27. Overall, and on balance it is considered that the additional information provided demonstrates that the existing hinterland restriction does pose a constraint on the completion of the landfill by 2030, in line with the planning permission. Officers consider that the benefits of completion of the landfill by 2030, which removal of the hinterland restriction would help facilitate, should be given considerable weight.

### Other Matters

28. At the June committee, a question was raised about the impact of the HIF1 road scheme on the landfill restoration, as the report stated that if HIF1 went ahead it would affect the restoration of the site, and also stated that if the hinterland obligation remained in place, it seemed highly unlikely that the site could be restored in accordance with approved plans by 2030. The HIF1 application has not yet been determined and has now been called-in for determination by the Secretary of State following a Local Inquiry. However, the HIF1 scheme would not affect the restoration of the active landfill cells. It would affect the wider site, including 90 Acre Piece, an area of the site which has already been restored, and Bridge Farm Quarry.

### **Conclusion**

29. It is considered that to provide certainty that the landfilling of the site would be completed by 2030, flexibility to import road borne waste from outside the hinterland would be needed. The difference in estimated timescale for the completion of the landfill with and without this waste is not as great as suggested in the June report, as on years when waste is brought in by rail this makes a significant contribution to the total waste import, which mitigates the impact of falling waste imports by road from within the hinterland. However, there are significant fluctuations in waste imports by rail and no certainty about contracts over the next few years. Removing this restriction would ensure that the landfill could be completed and restored in a timely manner.
30. Concern about carbon emissions from waste being transported long distances by road is understood, however, there is no specific support in waste policy for controlling the source of waste through the planning system. It is considered that transport costs would prevent waste from travelling large distances where a suitable facility significantly closer to the source of waste exists. The existing condition limiting total import by road

to 350 000 tpa has the effect of limiting emissions associated with transportation of waste to the site and incentivises the use of rail. This application does not propose any changes to the total amount of waste imported to the site. This is controlled by condition and breaches of this condition are being dealt with separately. Taking into account the additional information provided, it is not considered that the hinterland continues to serve a useful purpose. There is no change to the recommendation in the June report.

## **Financial Implications**

31. Not applicable as the financial interests of the County Council are not relevant to the determination of planning applications.

## **Legal Implications**

32. There are not considered to be any legal implications arising from this report.

## **Equality & Inclusion Implications**

33. In writing this report, due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advanced equality of opportunity and foster good relations between different groups. It is not however considered that any issues with regard thereto, are raised in relation to consideration of this application.

## **RECOMMENDATION**

34. **It is RECOMMENDED that**
- i) Oxfordshire County Council enter into a deed of variation to amend the existing Section 106 legal agreement with regards to removing the hinterland restriction and amending the date for the provision of a permissive path.**
  - ii) The Director of Planning, Environment and Climate Change is authorised to enter into negotiations with the applicant and any other parties to the legal agreement with regard to making the variations set out in this report.**

RACHEL WILEMAN  
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