

Division Affected – Chalgrove & Watlington

PLANNING AND REGULATION COMMITTEE

Date 25th November 2024

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

Report by Head of Strategic Planning

Contact Officer: Enya Dale **Tel:** 07548 103526

Location: Rumbolds Pit, Eyres Lane, Ewelme Wallingford,
Oxfordshire, OX10 6HF

Applicant: Hazell and Jefferies Ltd

Application No: MW.0171/23 **District Reference:** P23/S4255/CM

Application received date: 5th December 2023

Consultation Period: 15th December 2023 – 7th January 2024

District Council Area: South Oxfordshire

Introduction

1. This application seeks to gain a Certificate of Lawfulness of Existing Use or Development (CLEUD) under Section 191 of the Town & Country Planning Act 1990 (“the 1990 Act”) as amended. The applicant claims that the land has been in use for over 10 years as a waste transfer station at the date of the application (5th December 2023). A Statutory Declaration with supporting attachments has been submitted by the applicant in support of this claim.
2. CLEUD applications are different to planning applications as they must be determined solely on the evidence submitted to show that a use or development has, on the balance of probabilities, been carried out continuously for a period of 10 years. The planning merits of the use or development cannot be taken into account. Unlike a planning application, whether the development accords with planning policy is not relevant in the case of a CLEUD.
3. The determination of CLEUD applications is not required under the Scheme of Delegation approved in January 2024 to be exercised by the Planning & Regulation Committee and is therefore a matter delegated to the officers.

They are therefore usually determined by the Director of Planning, Environment and Climate Change jointly with the Solicitor to the Council. This is because the decision rests on the examination of evidence and not matters of planning judgement, planning merit or planning policy.

4. However in this case, the local County Councillor has asked that the application be decided by the Committee.

Site Location

5. Rumbolds Pit Waste Transfer Station is located within South Oxfordshire District, within Ewelme parish. The transfer station is approximately 1.7 km to the north of Ewelme and approximately 2.6 km east of Benson.

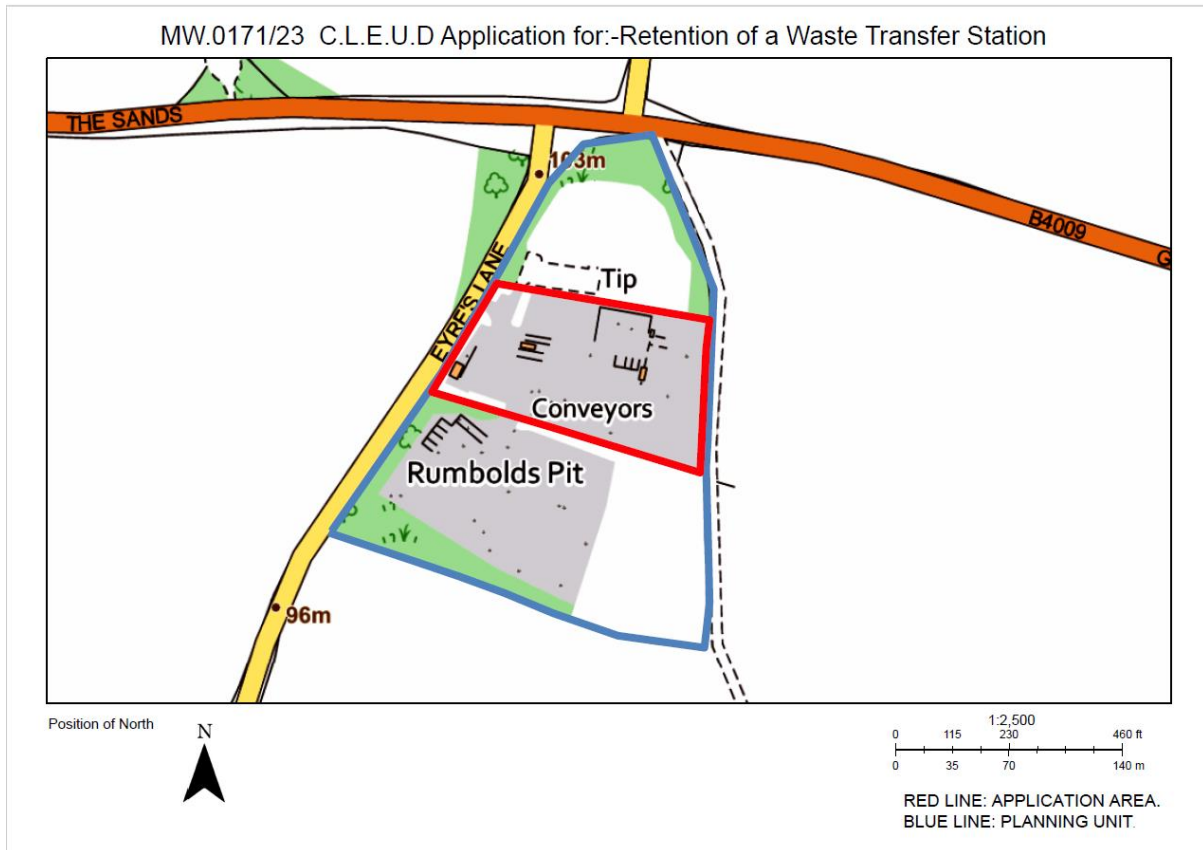


Plan 1 – Site Location

Site Setting

6. The claimed area for the CLEUD takes up approximately 1.3 Ha of the land within the transfer station, this will hereby be known as 'the site'. The site, as shown on the site location plan, is part of the wider curtilage of Rumbolds Pit which is considered by the council to be the relevant planning unit. As well as the application site, the planning unit contains operational land north of the site (0.2 Ha) which is currently used as a car park and operational land to the

south of the site (1.1 Ha) which is used to store recycled materials and skips. These areas are both in the control of the applicant. These two areas benefit from conditional planning permissions granted in 2018. The complex as a whole is approximately 2.6 Ha. The application site is outlined in red on the site location plan. The planning unit is illustrated outlined in blue on Plan 2 with the application site outlined in red.



Plan 2 – The Planning Unit (Blue) with the Application Site (Red)

7. The site, as existing, contains large infrastructure for the associated use along with stockpiles of processed and unprocessed waste. The transfer station as a whole, is screened with well established trees and vegetation along the majority of the perimeter of the entire site. The transfer station lies within the Chilterns National Landscape (formally known as an Area of Outstanding Natural Beauty) in a predominately rural area with open fields surrounding the site to the north, east and south and Eyres Lane to the west. The site is accessed from Eyres Lane, off the B4009.
8. The nearest residential dwelling is located approximately 600m south west of the site.



Plan 3 - Site and Setting

Relevant Planning History on The Site

9. The site is already subject to a pre-existing CLEUD:

Application P00/W0534/CLD was submitted to the County Council. This was for a Certificate of Lawfulness for Existing Use (CLEUD) and was issued in October 2002.

The First Schedule states the uses that were certified as lawful, these are as follows:

- The reception, storage, grading and transfer of waste materials on the Land
- The reception, storage and transfer of barley on the land
- The reception, storage and transfer of paper on the Land
- The storage of one caravan on the land
- The storage and distribution of four skip hoists and 25 skips of sizes 6 – 10 cubic yards on the Land
- The storage and distribution of 42 roll on and off containers (40 cubic yards) on the Land
- The storage and distribution of four roll on and off machinery transport trays on the Land
- The storage and distribution of four lorries of varying condition on the Land
- The storage of one Bullingdon Rural District Dust Cart on the Land
- The storage and distribution of nine trailers on the Land

- The storage of one 360 excavator on the Land
- The storage of 12 pig huts on the Land

The uses were subject to the following identified limitations;

General limitations:

- The certified uses are undertaken in all respects by no more than four persons who compromise the operator and three others.
- All materials stored on Land are not processed by mechanical means other than by using plant and machinery stored on the Land.
- The amount of material stored on the land does not exceed 40,000 tonnes.
- The site is not operated other than:
 - Between 0700 hours and 1900 hours Mondays to Saturdays; and
 - Between 0900 hours and 1300 hours Sunday and Bank Holidays
- There are, when averaged over one calendar month, no more than seven vehicle movements into the site and seven vehicles out of the Land each operating day. The number of vehicle movements into and out of the Land, on any one operating day, does not exceed thirty.
- No materials stored on the Land are stored at a height exceeding the height of the surrounding bunds.

Limitations relating specifically to waste materials:

- Waste materials are stored on the Land broadly in the following proportions:
 - Earth (25%)
 - Brick, rubble and concrete blocks (25%)
 - Fencing materials (10%)
 - Scrap metal (20%)
 - Wooden pallets (10%)
 - Timber (10%)
- Not more than 206 tonnes of waste materials are transferred off the site each week

Limitation relating specifically to barley:

- Not more than 50 tonnes of barley is transferred off site each week

Limitation relating specifically to paper:

- Not more than 20 tonnes of paper is transferred off site each week

The Second Schedule states the use hereby certified as not lawful:

- Use of the Land for tipmining for ash, glass, brass and copper

10. The use of the application site as a transfer station has intensified since the 2002 CLEUD was issued and no enforcement action has been taken.

Therefore the applicant wishes to update the planning status of the site, with a new Certificate of Lawfulness. As set out above, for a CLEUD to be granted, it must be demonstrated by the applicant on the balance of probabilities that the use has been occurring for at least 10 years prior to the date of the application. A local planning authority may choose to issue a CLEUD for a different description from that applied for, as an alternative to refusing a certificate altogether.

Planning History of the Rumbolds Pit Waste Transfer Station

Operational land to the south of the site:

11. Application P17/S4066/CM (MW.0098/17) was submitted in October 2017. This was for the change of use for the storage of recycled material on land to the south of the primary working area and proposed storage of empty waste skips in the ancillary area. This application was approved in May 2018.

Operational land to the north of the site

12. Application P17/S4069/CM (MW.0099/17) was submitted in October 2017. This was for the 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. This application was approved in April 2018.

The Claimed Uses and Claimed Operational Development

13. The application is for use of land (the site) for:
 - (a) The receipt of waste via HGV skip lorries, tipper lorries and the like; agriculture tractors and trailers and light goods vehicles such as vans and pickup trucks with or without trailers
 - (b) Sorting and segregating waste material by various mechanical methods and processes 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 for use in receiving, unloading, handling, moving, stockpiling, sorting, segregating, grading, crushing and loading waste and recycled materials. Such plant and machinery includes conveyor belt apparatus, 360-degree excavator, grab or magnet type machines, trommel machinery, screening plant, crushing plant, wheeled loading shovels and the like.

Uses ancillary to the above uses include:

- (d) Parking and maintenance of HGV tipper lorries, road sweepers and skip lorries used in connection with the waste transfer station and recycling centre.
- (e) Stationing of mobile Portacabin type offices for use in connection with the management and operation of the waste transfer station and recycling centre.
- (f) Stationing of mobile trailer type living accommodation units for operative bases at the waste transfer station and recycling centre.

The above uses fall under the generic term "Waste Transfer Station".

The Submitted Evidence

14. The applicant claims that the land has been in its current use for over 10 years. To support their claim, they have submitted several pieces of evidence. Evidence includes:

- 2 statutory declarations (Appendix 1 to this report),
- Summary sheet of skips per month since 2012 (Appendix A),
- Summary of quarterly and annual waste streams in and out of the site (Appendix B),
- Waste returns submitted to the Environment Agency over the past 10 years (Appendix C),
- A list of plant and skip lorries in 2014, 2018, 2021, 2022 (Appendix D),
- 5 aerial photographs (Appendix E),
- Various photographs of the site in the last ten years (Appendix F)
- Summary of staff and wages of staff engaged at the application site in April 2013, 2015, 2019 and 2022 (Appendix G)
- A list of plant and skip lorries in 2015, 2016, 2017, 2019, 2020, 2023 (Appendix H)

Other than Appendix G which contains personal information, these submissions are available to view on the County Council's applications website : [Planning Register | Oxfordshire County Council](#) .

Evidence Submitted by Consultees

15. The County Councillor, District Council, Parish Council, Environment Agency and Chilterns Conservation Board were invited to submit any evidence that they held to demonstrate on the balance of probabilities whether the use claimed had or had not been on going for a period of ten years. A summary of the responses are as follows:
16. County Councillor – Objection

The application is insufficient in detail with regards to the scale of the operation at the site, and in particular vehicular movements associated with travelling through the village of Ewelme.

The impact of operations on the residents of Ewelme and local highways network needs to be better considered and mitigated for.

No permission should be given without the inclusion of enforceable limitations placed on the site, including numbers of vehicle movements permitted and restrictions on time of day, to prevent continued irregular development.

17. South Oxfordshire District Council – Comments

My council's planning history offer no insight into the uses of the site over the last 10 years however, it is noted that both the Ewelme Parish Council and residents have detailed objections to the proposal. These objections include local knowledge of the use of the site and calls part of the submitted statement by the applicant into question. It would seem to me that the balance of probabilities test is not met at this stage.

18. Ewelme Parish Council – Objection

The site has been a source of contention for many years, and has grown from a small unauthorised operation to a major industrial site, for the most part without planning consent and in a largely unregulated manner.

Concerns about the omission of key details in the application. The application fails to provide an accurate picture of current and recent operations and their impact on the environment. There are no figures provided for the number of large tipper trucks and the tonnage of materials entering and leaving the site. Our own observations indicate that the scale of activity by large tipper trucks has increased significantly in the last few years.

The level of traffic travelling to and from the site along Eyres Lane and Green Lane in the last few years represents a severe disturbance and nuisance to the residents of these and surrounding thoroughfares. The continuous movement of such vehicles along Eyres Lane represents a major road safety hazard.

There is no evidence for the mobile trailer type living accommodation units for operatives based at the waste transfer station. No evidence for the number of such units or the numbers of staff so housed, or on the history of this arrangement, is presented by the applicant.

Concern for the lack of quantitative data on the scale of operation (especially vehicle movements), and the deployment of static caravans for accommodation. If a CLEUD were to be issued using the description offered by the applicant, it would appear to give carte blanche for expansion of the operation without limit, and the running of a residential caravan site.

Given the above and the potentially irreversible nature of granting of a CLEUD, Ewelme Parish Council requests that OCC refuses the current application. If this application is refused, and another application is received, EPC would request a longer consultation period than was granted for the present application. If, however, OCC is minded to grant a new CLEUD based upon this application, EPC would request that our concerns regarding the level of HGV traffic using the site, and the road safety hazard that this represents, are taken into account. We are concerned that unless strict conditions are placed upon such a certificate, it might represent a carte blanche for expansion of operations without limit.

As no claim is made by the applicants regarding:- • the hours of operation; • import of material being done only by vehicles and skips owned by the operator; and • the maximum height of the piles of material; we suggest that the conditions covering these should remain as in the 2002 CLEUD.

The parish propose specific limits on vehicle movements. We suggest that when vehicle maxima are set in a new CLEUD the operator should be required to make monthly returns to OCC of all vehicles in and out of the site each day, and in which direction they arrive at and leave the site (i.e. south via Ewelme or north via Benson).

Ewelme Parish Council considers that the continued developments at the Eyres Lane Site represent a major threat to the very nature of our small quiet village and is very concerned at the way that the activities have developed from a small unauthorised operation to a major industrial site, with greatly increased vehicular activity and an unstated number of staff living on site. This has taken place without the benefit of planning permission, and in a largely unregulated manner. We are further concerned that manner of development on this site could set a precedent for further development in the area.

19. Environment Agency – No response received.

20. Chilterns AONB – Objection

We conclude that this application lacks the necessary 'precision and clarity'. It purports to replicate an existing CLEUD, which is already enforceable and understood. To progress two CLEUDs on the same site, purporting to establish the same existing levels of use and development, renders future enforcement complex and potentially futile. This is a sensitive site on the very boundary of the AONB (now National Landscape). We fully accept that planning merits are not of relevance in such a matter. Nevertheless, the nature of a CLEUD requires scrutiny and control to ensure no further diminution in the special qualities of the AONB by any use or development that falls outside the defined lawful existing uses.

The submitted papers mention an extant CLEUD and state that the current uses 'are believed to conform with the extant CLEUD'. This renders the current application void. The planning authority will want to reassure themselves that the intensification of uses, as is mooted in the supporting statement, does not amount to a material change. The existing lawful use establishes an important baseline for assessment.

The existing waste transfer site forms the northern parcel of operations, with the southern parcel as a separate curtilage and covered by the 2017 application for the storage of recycled materials (reference P17/S4066/CM). That consent includes landscaping and other conditions to control impact. In the case of the northern parcel, that element of control rests with the precision of the consented CLEUD. We can see no reason to depart from the existing controls and if the use and operation is materially changed by intensification, then the planning authority enjoy enforcement powers under the Act.

Oxfordshire County Council's evidence

21. The site has been subject to regular monitoring visits undertaken by Oxfordshire County Council. Monitoring reports are held internally. Records of the reports on the site are accounted for since 2007. Monitoring visits have been undertaken since 2007.
22. The reports for the site provide an accurate description of how the site is operating at a specific time. They include photographic evidence of the site. The reports have been used as evidence to help determine the outcome of the CLEUD application. The monitoring reports will be hereby known as 'internal evidence'.

Third Party responses

23. Nine individual responses have been received from local residents. All are opposed to the proposal and object to the principles of the CLEUD application. A summary of the topics raised are provided below:
 - Frequency, volume, size and route of HGVs travelling to and from the site. Subsequent consequences that HGVs have caused are damage to road verges, damages to road surfaces, risk to safety of the other road users, increased pollution, increased noise, increased vibration and risk to health of residents.
 - The site causes visual impact to the surrounding area due to stockpiles exceeding bund height and flood lighting.

24. The topics outlined above refer to amenity impacts the site is causing to the surrounding environment. As planning merits are not material to assessing the merits of the CLEUD, these will not be addressed in this report.

25. Responses also state that several facts in the planning statement are untrue. The planning statement states:

'Visual intrusion has been reduced' (since the previous owner) and 'vehicle movements have been shown to be absorbed into the local highway network without difficulty, no further demands whatsoever have been placed on local services'.

Third party responses contradict this information stating that stockpiles remain over the bund height. Flood lighting has also been introduced in the last few years contributing to increased visual pollution. Third party responses contradict the statement on the vehicle movements, stating the highway network of Eyres Lane cannot accommodate the level of HGV movements and has, furthermore, caused damage to road surfaces and highways maintenance have made several repairs to Eyres Lane in the last 5 years.

26. Responses include references to the limitations placed on the 2002 CLEUD (reference P00/W0534/CLD). Limitations have been supposedly breached for over 5 years.

Further information

27. Further to the submission and consultation and in order to help address the concerns raised, the applicant was invited to submit further information including more evidence supplied for vehicles and plant on the site, more evidence about the processing (as opposed to storage) of waste on the site and the level of processing that has been sustained over the 10 year period and about the number of HGV movements in and out of the site, specifically the number of movements in and out of 32 tonne lorries including which movements were of the operators' own vehicles and which movements were of other operators. The applicant provided additional annual inventories for the vehicles and plant on site (included as Appendix H referenced above) but advised that they did not hold information with regard to the other items.

The Approach to the Consideration of this application

28. As noted above, the decision on the application rests upon the examination of evidence and not matters of planning judgement, planning merit or planning policy.

29. Section 191 of the 1990 Act states:

(1) If any person wishes to ascertain whether –

(a) any existing use of buildings or other land is lawful

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if-

(a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to planning permission has been granted is lawful at any time if –

(a) the time for taking enforcement action in respect of the failure has then - expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect, and in any other case they shall refuse the application

30. Section 171A(1) of the 1990 Act states that a breach of planning control constitutes:

(a) Carrying out development without the required planning permission; or

(b) Failing to comply with any condition or limitation subject to which the planning permission has been granted,

31. Section 171B of the 1990 Act states the specific time limits for undertaking enforcement action:

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

32. The applicant wishes to ascertain whether the existing use of the site is lawful and they have stated the use has been carried out for a period of at least ten years. Their application has therefore been made under section 191 of the 1990 Act.

33. The site benefits from an existing 2002 CLEUD, and specific enforcement action has not been taken with regards to the use of the site.

34. Intensification will not always result in enforcement action. It is a matter of fact and degree and enforcement action must be proportionate.

35. Under Section 191(2) 1990 Act a CLEUD can only be granted if enforcement action can no longer be taken as the time for which it could have been taken has expired.

36. It is evident that the site's operations have intensified since the grant of the 2002 CLEUD and therefore a new CLEUD application has been applied for.

37. In order for this application to be successful, the applicant must demonstrate on the balance of probabilities that a material change of use (including any ancillary operational development) of the planning unit has taken place over a continuous period of ten years preceding the date of the application and that no enforcement action can be taken as the time for which it could have been taken, has expired.

38. In terms of the standard of evidence, the national planning practice guidance on lawful development certificates states –

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”

This is based on case law including the case of F W Gabbittas v SSE and Newham LBC [1985] JPL 630.

Analysis - Comments of the Head of Strategic Planning

39. I will address each of the claimed uses as set out above in turn.
 - (a) The receipt of waste via HGV skip lorries, tipper lorries and the like; agricultural tractors and trailers and light goods vehicle such as vans and pick up trucks with or without trailers
40. Evidence includes a summary of the Environment Agency Quarterly Returns from 2013 – 2023 (Appendix B). This shows the site has been subject to the receipt of waste for the last 10 years with no evident breaks. Evidence includes waste returns as submitted to the Environment Agency (Appendix C). This again shows the site has been subject to the receipt of waste for at least 10 years from January 2013 to June 2023. Evidence includes a table that shows the number of skips per month invoiced from 2012 (Appendix A). The table indicates that every month since January 2012 to October 2023 several hundred skips have been invoiced for. It is reasonable to conclude that the site has been subject to the receipt of waste via skip lorries for at least the required 10 years. Evidence includes a list of plant and vehicles that are owned by the site in years 2014 to 2023 (Appendices D & H). This shows the site has had several vehicles owned, and with probable assumption, used in connection with the site for the previous 9 years.
41. Taken as a whole, there is sufficient evidence to conclude that the site has been subject to the receipt of waste via skip lorries over at least 10 years. This can be included in the CLEUD.
42. Limitations should be included in the First Schedule to the CLEUD to specify how much waste can be received on the site. Based on the evidence provided with the application, and excluding 2020 which would have been affected by the COVID pandemic, the site has been receiving a minimum of 16,406 tonnes of waste annually for the last ten years.
43. It is concluded that Appendices D & H cannot be solely relied upon to demonstrate on the balance of probabilities that the site has been subject to

importation of waste via HGV skip lorries, tipper lorries, agricultural tractors and trailers, light goods vehicles such as vans and pick up trucks with or without trailers for at least the ten year period required. This is because there is a year gap in the evidence (with no evidence submitted for 2013) which could suggest there have been breaks in operations.

44. The use of the words 'and the like' have been removed from the description set out in the First Schedule as these words are too vague.. Only the vehicles listed in description (a) shall be considered lawful and therefore included in the CLEUD.
45. The phrase 'light goods vehicle such as vans and pick up trucks with or without trailers' shall be amended to 'light goods vehicles (including vans and pick up trucks only) with or without trailers'.
46. No evidence has been provided with regard to the number of daily vehicle movements generated by the claimed use of the land. In response to a Planning Contravention Notice served in November 2008, the site operator (and now applicant) advised that the use of the land had intensified since the issuing of the CLEUD in 2002. It was stated that the site generated up to 50 (25 in, 25 out) movements per day excluding staff personal cars and that up to 14 staff worked at the site at peaks of activity and that there was a shared travel scheme. Assuming a minimum of two people sharing, this would equate to 14 (7 in, 7 out) staff vehicle movements per day. The applicant has advised that it holds no information over the ten year period for which the current CLEUD is applied with regard to vehicle movements. In the absence of any more recent information to the contrary, It is therefore considered that the CLEUD should be subject to the above limitations on daily HGV and staff vehicle movements derived from the 2008 PCN response.
47. Similarly, in the absence of any information provided with regard to hours of operations and the heights of stockpiles, it is considered that the limitations on this should remain as set out in the 2002 CLEUD.
48. With regard to staff numbers, Appendix G demonstrates that a minimum of 19 staff have been employed over the ten years period and therefore the CLEUD should be subject this limitation.

(b) Sorting and segregating waste material by various mechanical methods and processes for either transfer off site as waste, to other processors or to landfill, or for recycling on site by crushing, grading and washing to produce usable secondary aggregates for the building, construction and civil engineering industries.
49. The applicant has provided a document of waste returns as submitted to the Environment Agency over at least ten years (Appendix C). The document states the amount of waste removed from the site and the type of destination

facility. The type of destination facilities include recycling, reprocessing, landfilling and incineration.

50. Evidence includes aerial photographs of the site from 2010, 2014, 2017, 2019 and 2022 (Appendix E). All the photographs show waste deposited on land (waste piles), several pieces of machinery and processed waste piles (stockpiles). The county council's own evidence on the site includes reports containing photographs of the site since 2012. Photographs show waste deposited on land, several pieces of machinery and processed waste piles. Therefore, on the balance of probability the site has been used for the sorting and segregating of waste.
51. The phrase 'by various mechanical methods and processes' is vague and therefore it is concluded that the 'various mechanical methods and processes' are those set out in description (c) of the claimed use. Please refer to description (c) for the identified mechanical methods and processes that have been concluded as lawful.
52. Evidence includes a document setting out a list of plant and vehicles owned by the site in 2014 - 2023 (Appendices D & H). The document shows various plant and machinery associated to the site which would assist the use for the sorting and segregating of waste. The document only shows equipment associated to the site for 2014 to 2023. This does not therefore demonstrate on the balance of probabilities that these pieces have been used continuously for a ten year period on the site. However, combined with evidence displayed in Appendices C & E and the council's internal evidence, on the balance of probabilities, it is reasonable to conclude that the site has been subject to the sorting and segregating of waste material by various mechanical methods and processed for either transfer off site as waste to other processors or to landfill, or for recycling on site by crushing, grading and washing to produce useable secondary aggregates for the building, construction and civil engineering industries. This use has been scoped into the First Schedule to the CLEUD.

(c) Stationing of both static and mobile plant and machinery for use in receiving, unloading, handling, moving, stockpiling, sorting, segregation, grading, crushing and loading waste and recycled materials. Such plant and machinery includes conveyor belt apparatus, 360-degree excavator, grab or magnet type machines, trommel machinery, screening plant, crushing plant, wheeled loading shovels and the like.
53. It is apparent in the evidence submitted by the applicant and from the council's internal evidence that 'receiving, unloading, handling, moving, stockpiling, sorting, segregation, grading, crushing and loading waste and recycled materials' has taken place at the site. Stockpiles of both unprocessed and processed waste are shown in the images from years 2010, 2012, 2013, 2014, 2017, 2019, 2020 and 2022 provided in Appendices E and F. It is also considered highly probable from Appendix C that for the last ten

years there has been handling, moving, sorting, segregating, grading and processing happening on site as waste is arriving on site and being transported off site to be disposed at specialist facilities or as a recycle. It is therefore reasonable to conclude that during the time the waste is on site, it is being processed. Appendices D and H include a crusher as one of the listed machines for the site throughout 2014 to 2023 therefore there on the balance of probabilities crushing waste has also been carried out on site. Given that the use is evident on site, it is highly probable that both static and mobile plant has been used on site to facilitate the processing. 'Stationing of both static and mobile plant and machinery for use in receiving, unloading, handling, moving, stockpiling, sorting, segregation, grading, crushing and loading waste and recycled materials' can be scoped into the First Schedule to the CLEUD.

54. The statement includes plant and machinery as listed; 'conveyor belt apparatus, 360-degree excavator, grab or magnet type machines, trommel machinery, screening plant, crushing plant, wheeled loading shovels'. The evidence includes a document of a list of plant and vehicles owned by the site in years 2014 to 2023 (Appendices D & H). From these documents, the plant and machinery that has been accounted in these years are: crusher, loading shovel, rubber duck, 3 way screener, generator and tractor. Although there is a gap in the time periods where these machines have not been accounted for, together with Appendix C it is considered likely probable that the machines have been stationed on site in the last ten years as Appendix C shows there have not been breaks in operations. The plant and machinery to be scoped into the First Schedule to the CLEUD are crusher, loading shovel, rubber duck, 3 way screener, generator and tractor.
55. Evidence included in Appendices E and F show various images of the site from several years. The years that show a clear image of the presence of a conveyor belt are in 2012, 2013, 2014 and 2019 and 2020. Internal evidence of monitoring reports on the site show presence of a conveyor in 2022. Accordingly on the balance of probabilities the conveyor has been present on site throughout the ten years and therefore it has been scoped into the First Schedule to the CLEUD.
56. For plant and machinery including 'grab or magnet type machines' and 'trommel' it is considered that there is insufficient evidence to demonstrate on the balance of probabilities their presence continuously on site for a period of ten years. They have not been included in the First Schedule to the CLEUD.

(d) Parking and maintenance of HGV tipper lorries, road sweepers and skip lorries used in connection with the waste transfer stations and recycling centre

57. The evidence includes documents listing the plant and vehicles at the site in years 2014 - 2023 (Appendices D & H). This evidence indicates that one 32 tonne HGV, seven 18 tonne HGVs and two 7.5 tonne HGVs have been at the

site in the years 2014 to 2023. The photographs of the site in Appendix F from 2012, 2019 and 2020 show HGV tipper lorries and skip lorries parked on site.

58. Appendices D, H and F together show that, on the balance of probabilities, both HGV tipper and skip lorries have been present at the site in the last ten years. Given their presence at the site and the volume of waste being transported in and out of the site, it is considered that, on the balance of probabilities, the skip lorries are used in connection with the waste transfer and. 'Parking and maintenance of HGV tipper lorries and skip lorries used in connection with the waste transfer station' is included in the First Schedule to the CLEUD with a limitation on the amount of HGVs to be parked and maintained on site as set out above.
59. There is not sufficient evidence to suggest that on the balance of probabilities, a 'road sweeper' has been present at the site for the last ten years and therefore it should not be included within the First Schedule to the CLEUD.

(e) Stationing of mobile Portacabin type offices for use in connection with the management and operation of the waste transfer station and recycling centre

60. The location plan does not contain information as to where the 'mobile portacabin type offices' are located on site. Analysing both internal evidence and evidence submitted with the application, it is concluded that there are two portacabin offices on site currently. One on the western boundary and one located to the east of the site. Appendix F shows the presence of both the portacabins in photographs from August 2012, January 2019 and December 2020, there is also the presence of an eastern cabin in the photograph from 2013 (the second cabin on the western boundary is not shown possibly due to camera angle). The only clear picture in Appendix E which clearly shows the presence of both the portacabins is the aerial picture in 2017. Internal evidence shows the presence of the eastern portacabin in 2016. Considering both evidence submitted with the application and internal evidence, it is considered that on the balance of probabilities both the cabins have existed at the site for the last ten years.
61. As the site is in a rural area not in the vicinity of other developments and the portacabins are located on the waste site, there is a high probability that they are used in connection with the management and operation of that site. It is concluded that on the balance of probabilities, the cabins have been stationed at the site for the previous ten years, used in connection with the waste site and therefore they have been scoped in the First Schedule to the CLEUD.

(f) Stationing of mobile trailer type living accommodation units for operatives based at the waste transfer station and recycling centre.

62. Evidence has been submitted in the form of various photographs of the site over the past 10 years (Appendix F). There is photographic evidence of 4 caravan / mobile trailers on site from August 2012, January 2019, December 2020. In these pictures there is a view of the units. Evidence has been submitted of Aerial photographs of the site from the past ten years (Appendix E). Although the photographs do take a snapshot of the entire site at points over the previous ten years, the photographs are not clear enough to depict the presence or location of caravan / trailers.
63. Although there is photographic evidence in Appendix F of a caravan/mobile trailer situated on site in 2012, 2019 and 2020, the evidence is insufficient to demonstrate on the balance of probabilities the presence of a mobile trailer type living accommodation at the site for the last ten years. There is no evidence provided to substantiate that these have been used continuously as living accommodation by operatives based at the waste transfer station (or by anyone else) throughout the ten year period. Therefore, this use is not to be included in the First Schedule to the CLEUD.

Financial Implications

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

Legal Implications

64. Legal comments and advice have been incorporated into the report.

Equality & Inclusion Implications

65. In accordance with Section 149 of the Equality Act 2010, in considering this proposal, due regard has been had to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

66. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

RECOMMENDATION

67. It is RECOMMENDED that a Certificate of Lawful Existing Use or Development is GRANTED for the MW.0171/23 application site (as shown on the attached Location Plan), for the uses set out in Schedule 1 (Part 1).
68. 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 transporting material 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.”