

**Hampshire County Council
Director of Economy, Transport & Environment**

Applicant: C Collins

Lawful Development Certificate: processing of inert materials and builders waste for recycling and shared access at Land at the rear of Shedfield Nursery & Equestrian Centre, Botley Road, Shedfield,SO32 2HN (No. 13/02238/HCS)

(Received: 4 October 2013)

For consistency, the land edged in red on plan LAY-01 shall be referred to as the "Site" and the land edged in blue, being land within the wider ownership of the applicant shall be referred to as the "Land" within this report.

General

A certificate of lawful existing use is sought for the use of the land to the rear of Shedfield Nursery & Equestrian Centre, Botley Road, Shedfield for the importation, processing and storage of inert materials and builders waste.

The application site (shown edged in red on plan LAY-01) occupies approximately 0.34 hectares of land south-west of Botley Road. Access to the site is off Botley Road and through the existing nursery buildings which lie to the north-east of the site. The site is bounded by land currently used for the grazing of horses and pony's to the north-east, countryside to the north, a disturbed area of land to the north-west and west, and an area of land recently subject to an Enforcement Notice and land-raised using inert construction and demolition waste to the south-west. Land to the south and south-east forms part of Dagwells Farm and is currently in agricultural use.

The nearest residential dwelling to the site is Conifers which is within the wider land ownership of the applicant and lies approximately 20m to the east of land used to access the site. Rose Cottage, which fronts onto Botley Road, lies approximately 55m to the east of the sites access with the public highway. Shedfield Church Meadows SINC lies to the north-east of the site on the opposite side of Botley road at a distance of approximately 90m.

The application states that the following activities take place on the site:

- i. The importation to the site of inert builders and demolition waste including concrete, bricks, brick rubble, slates and tiles;
- ii. The storage and stockpiling of the inert builders and demolition waste;
- iii. The importation to the site and the storage on the site of soils;
- iv. The screening and processing of the inert builders and demolition waste and soils to produce crushed concrete, screened soil, and Type 1 material;

- v. The exportation from the site for use elsewhere of screened soils, crushed concrete and Type 1 material.

The applicant asserts that the average annual volume of materials imported to the site for the above purposes is 46,000m³. This equates to approximately 69,000 tonnes of material per annum approximating the weight of a m³ of construction and demolition waste as 1.5 tonnes. The applicant has stated that 30,500m³ of material is exported from the site annually, this equates to approximately 45,750 tonnes. It is claimed that the site operates between the hours of 07:00 and 18:00, 7 days a week with an average of 48 HGV movements per day, and a maximum of 100. The application does not involve the final disposal of waste on site.

This Certificate of Lawful Existing Use application is a revised application following the refusal of CLEU application 12/00714/HCS outlined below.

Planning History

Application No.	Address	Proposal	Decision	Decision Date
12/00714/HCS	Land to the rear of Shedfield Nursery & Equestrian Centre, Botley Road, Shedfield, Southampton, SO32 2HN	Application for a Lawful Development Certificate for the importation, processing, storage and distribution and use of materials, including soil screening, concrete crushing and cement production.	Refused	29 April 2013

Evidence Submitted

The evidence submitted in support of the application comprises:

- a) A statutory declaration from the applicant, Mr Chris Collins;
- b) Plan LAY-01 showing the application site edged in red and wider land within the ownership of the applicant;

The following statutory declarations:

- c) A statutory declaration from Ian Cox
- d) A statutory declaration from Conrad Collins
- e) A statutory declaration from Michael Rogers
- f) A statutory declaration from David Minton
- g) A statutory declaration from Russell Collins

The following documents:

Signed letter from Robert Bone

- Exhibit 'CIC2'
 - i. A letter from Miss J Marsh
 - ii. A letter from T-Miniskips Ltd trading as Adams Waste
 - iii. A letter from KT & TW Heath Tipper Hire
- Exhibit 'CIC3'
 - i. Two aerial photographs of the site
- Exhibit 'CIC4'
 - i. Extracts from a day diary for 2006
- Exhibit 'CIC5'
 - i. Extracts from a day diary for 2007
- Exhibit 'CIC6'
 - i. Extracts from a transport sheet record for 2008
- Exhibit 'CIC7'
 - i. Extracts from a transport sheet record for 2009
- Exhibit 'CIC8'
 - i. Extracts from a transport sheet record for 2011
- Exhibit 'CIC9'
 - i. Extracts from a transport sheet record for 2012

Additional Evidence available to the Waste Planning Authority

- a) A copy of an email and attached plan sent between the Environment Agency and Winchester City Council dated 26 October 2005;
- b) A copy of notes made as a result of a visit to the Land by Winchester City Council on 14 November 2005;
- c) An annotated plan of the Land with accompanying photo view point plan and photographs dated 14 November 2005;
- d) A copy of an email and attached letter sent between the Environment Agency and Winchester City Council dated 16 January 2006;
- e) A copy of a telephone conversation note between Winchester City Council and the Environment Agency dated 16 January 2006;
- f) A copy of an email sent between officers of Hampshire County Council, dated 16 January 2006;
- g) A copy of an internal email between officers of Winchester City Council following an external telephone conversation with an officer from Hampshire County Council on 4 May 2006;
- h) A copy of a letter sent to the applicant from Hampshire County Council on 5 May 2006;
- i) A copy of a Planning Contravention Notice response sent to Winchester City Council from the applicant date stamped as received on 12 May 2006;

Consultations

Shedfield Parish Council	Is concerned of the effects on the area of more lorries using the site.
Winchester City Council	No comment.
Environment Agency Southern	No objection.
Highway Authority	No objection.
Councillor Huxstep	No comment.

Environmental Health Winchester

No comment.

Representations

Three representations have been received from local residents. Two letters support the application and one objects. The letters in support of the application claim that the importation and processing of inert waste has taken place on the land for a significant period of time though no detail regarding intensity of the use is provided.

The letter of objection raises a number of issues regarding the merits of the claimed use, however as the consideration of this application is based on evidence these merits are not relevant to the consideration of the application.

Commentary

This Certificate of Lawful Existing Use application is for a reduced area and narrower range of activities than sought under CLEU 12/00714/HCS and is supported by the submission of new and revised statutory declarations and further documentary evidence in the form of transport sheet and day diary extracts for the majority of requisite years (2006, 2007, 2008, 2009, 2011 & 2012). Evidence submitted by the applicant offers support to the assertion that the land has been used for the claimed uses for the requisite period of 10 years, however there are periods for which for example documentary evidence has not been provided to support the claim. This is apparent in the lack of driver transport sheets for the earlier years of the alleged activity, and the absence of Waste Transfer Notes for the entirety of the claimed period.

Evidence available to the Waste Planning Authority in the consideration of the former application remains relevant and a consideration in the determination of this application and is outlined below.

Document (a) of the evidence available to the Waste Planning Authority (WPA) is a copy of an email and attached plan sent between the Environment Agency and Winchester City Council dated 26 October 2005. In this email the Environment Agency officer states that the Environment Agency "took enforcement action last year (2004) (notice to remove waste issued)", this was appealed by the applicant, who then lost the appeal "and removed the waste specified". The EA officer states that operations then "appeared to cease". The Environment Agency had since become aware that operations may have recently recommenced on site. The plan attached to the correspondence shows the approximate location of the soil screener on site, this is shown to be within the area the subject of this application. The email goes on further to state that a recent site visit suggested that waste was once again being imported and treated and that such an activity would require either a Waste Management License or relevant exemption.

Document (b) is a copy of notes made by officers following a visit to the Land by Winchester City Council on 14 November 2005 and should be read in conjunction with document (c); an annotated plan of the Land with accompanying photo view point plan and photographs dated 14 November 2005. The plan and notes detail uses and activities observed to be taking place on the Land on this date. The officers of WCC noted the presence of a soil heap and screening machine on the Land, however the location of this

was north-east of the Site the subject of this application. Furthermore the northern part of the Site was described as 'paddock', indicating that WCC officers saw no evidence of industrial uses taking place on the site. The plan shows the southern part of the site to contain a pond and WCC officers have not chosen to indicate that this was not the case at the time of the visit.

Document (d) is a copy of an email and attached letter sent between the Environment Agency and Winchester City Council dated 16 January 2006. This email provided Winchester City Council with a copy of a letter sent to the applicant following a recent site visit and meeting with the Environment Agency. The meeting was held pursuant to the renewed allegations of the importation of waste at the site detailed in document (a) above. The attached letter summarises the meeting and outlines the actions required to be undertaken by the applicant. This letter states that the applicant informed the Environment Agency that he was "carrying out the screening of imported waste (excavation spoils) to produce soils suitable for use on site". The Environment Agency stated that activities such as soil manufacture (bold) were exempt from the requirement for a Waste Management License but would require the registration of an exemption. The letter goes on to state that as part of the Duty of Care the applicant is required to keep copies of Waste Transfer Notes relating to any imported wastes. No such Waste Transfer Notes have been provided as evidence under this application. Finally the letter states that the exemption would be specifically for the manufacture of soils and would not cover the importation of waste for any other purpose. The requirements of the exemption granted for the site at that time, and detailed within document (d) were such that the manufacture of soils from construction and demolition waste was only permitted either at the place where the waste was produced or at the place where the manufactured product was to be applied to the land.

Document (e) is a copy of a telephone conversation note between Winchester City Council and the Environment Agency dated 16 January 2006 and should be read in conjunction with document (g); a copy of an internal email between officers of Winchester City Council following an external telephone conversation with an officer from Hampshire County Council on 4 May 2006. Document (e) provides evidence that on or before 16 January 2006 an Environment Agency Exemption was registered for soil screening at Shedfield Nurseries. The officer's notes of the telephone call with the Environment Agency state that no exportation was to take place (in conjunction with the soil screening) and that the soil was acceptable to be spread on the site. In document (g) the officer comments within the email that Hampshire County Council had become aware of the use of a soil screener on the site, and that they had no objection to this provided soil was not exported from the site in conjunction with its use.

Document (f) of the evidence available to the WPA is a copy of an email sent between officers of Hampshire County Council, dated 16 January 2006. In this email a Hampshire County Council planning enforcement officer comments that they have spoken with an officer of the Environment Agency who has stated that "an exemption for the screening of soils to stay on site" has been granted, and that the Environment Agency "have no evidence of the exemption being breached".

Document (h) of the evidence available to the WPA is a copy of a letter sent to the applicant from Hampshire County Council on 5 May 2006. This letter states that at a meeting at the site with the applicant on 26 January 2006 the "County Council were in

agreement that screened soils maybe used in connection with landscaping and levelling of small area of field a the nursery and equestrian centre". At this visit it was noted that the surrounding fields within the equestrian complex were used primarily for grazing and exercising of horses. The letter continues to state that the County Council received verbal confirmation from the applicant that the operations related solely to the use as just described "and that under no circumstances will any screened soils be exported from the site". It is considered that this correspondence demonstrates that the use at that time was considered to fall within the GPDO, as further supported by document (d) & (i) of the evidence available to the Waste Planning Authority.

Document (i) of the evidence available to the WPA is a copy of a Planning Contravention Notice and response sent to Winchester City Council from the applicant date stamped as received on 12 May 2006. One of the alleged breaches of planning control within this PCN was the "carrying out of a soil screening business including importing soil to the site, processing the soil and exporting the processed soil from the site". The applicant's response to the alleged breaches was that the activities on site were for the raising of the land for agricultural purposes and that some of the activities were permitted by the GPDO (General Permitted Development Order).

Summary

In summary, the Waste Planning Authority consider that there is insufficient and contrary evidence submitted by the applicant and available to the Waste Planning Authority, to support on the balance of probability, that the claimed uses have been continuing uses for the requisite 10 year period. Furthermore it is considered that in any event, that the actions of the applicant set out above, are considered to have been deliberately deceptive and misleading to the Local Planning Authority, and that some of the claimed uses alleged to have been undertaken on site benefited from permitted development rights under the GPDO.

In the case of Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council [2011] it was ruled that actions by an applicant can disentitle them from obtaining a CLU on grounds of public policy. The case confirmed that no person should be allowed to profit from his own wrong and that this precludes an applicant from relying on the time limits for enforcement action within s171B(2). Supporting this approach is the case of Fidler v (1) Secretary of State for Communities and Local Government (2) Reigate and Banstead Borough Council [2010] in which it was considered that being lenient or not disclosing everything within a Planning Contravention Notice response could serve to exemplify a course of deliberate deception.

Conclusion

The Local Planning Authority must be satisfied, on the balance of probabilities, of the matters alleged to be facts before they issue a Certificate. In light of this, and the available evidence, it is considered that there is insufficient and contrary evidence submitted by the applicant and available to the Waste Planning Authority, to support the claim that the site has been used for the processing of inert materials & builders waste for recycling & shared access for both the level of use that is claimed within the application and the requisite period of time. Furthermore there is evidence that some of the claimed uses benefited

from permitted development rights under the GPDO and in the event that this is not the case it is considered that there is sufficient evidence to confirm that such activity has continued following deception such that the application is additionally refused on grounds of public policy.

The information provided by the applicant and available to the Waste Planning Authority does not indicate that the criteria for a Certificate of Lawful Use for the use of the site have been satisfied. It is therefore considered that the application for a Certificate of Lawfulness of existing use be refused.

Authorisation

I agree that the application for a Certificate of Lawful Use (Application No.13/02238/HCS) should be refused for the reasons set out in the Conclusion above. I advise refusal of the application for a Certificate of Lawful Use in respect of the land outlined in red on the drawing hereto attached (received 4 October 2013) for the uses and materials applied for.

Date: 10/04/2014..... Solicitor ...I Austin.....

Delegation Verification

I have read the application file and in my view, this case falls within the terms of the Development Control Delegation Protocol 1993 and therefore consider it an appropriate case for decision under delegated powers. The application (Application No.13/02238/HCS) is hereby refused.

Date:10/04/2014..... Signed:P Chadwick.....

Case Officer
Rob Storey

Date...10/04/2014