

SECTION C  
MINERALS AND WASTE DISPOSAL

Background Documents - the deposited documents, views and representations received as referred to in the reports and included in the development proposals dossier for each case and also as might be additionally indicated.

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**Item C1**

**Application to extend the existing Certificate of Lawful Use to include the mechanical sorting and crushing of incoming generally inert waste material to recover a greater percentage of re-usable materials. Land to the rear of Kemberland , Fox Hill, Sturry, Canterbury, Kent.**

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A report by Head of Planning Applications Group to Planning Applications Committee on 8 September 2009.

Application Reference: CA/09/55 by Mr Martin J. Thomas seeking to extend the existing Certificate of Lawful Use to include the mechanical sorting and crushing of incoming generally inert waste material to recover a greater percentage of re-usable materials. Land to the rear of Kemberland, Fox Hill, Sturry, Canterbury, Kent.

Recommendation: Permission be Refused.

Local Member: Mr Alan Marsh

Classification: Unrestricted

**Site**

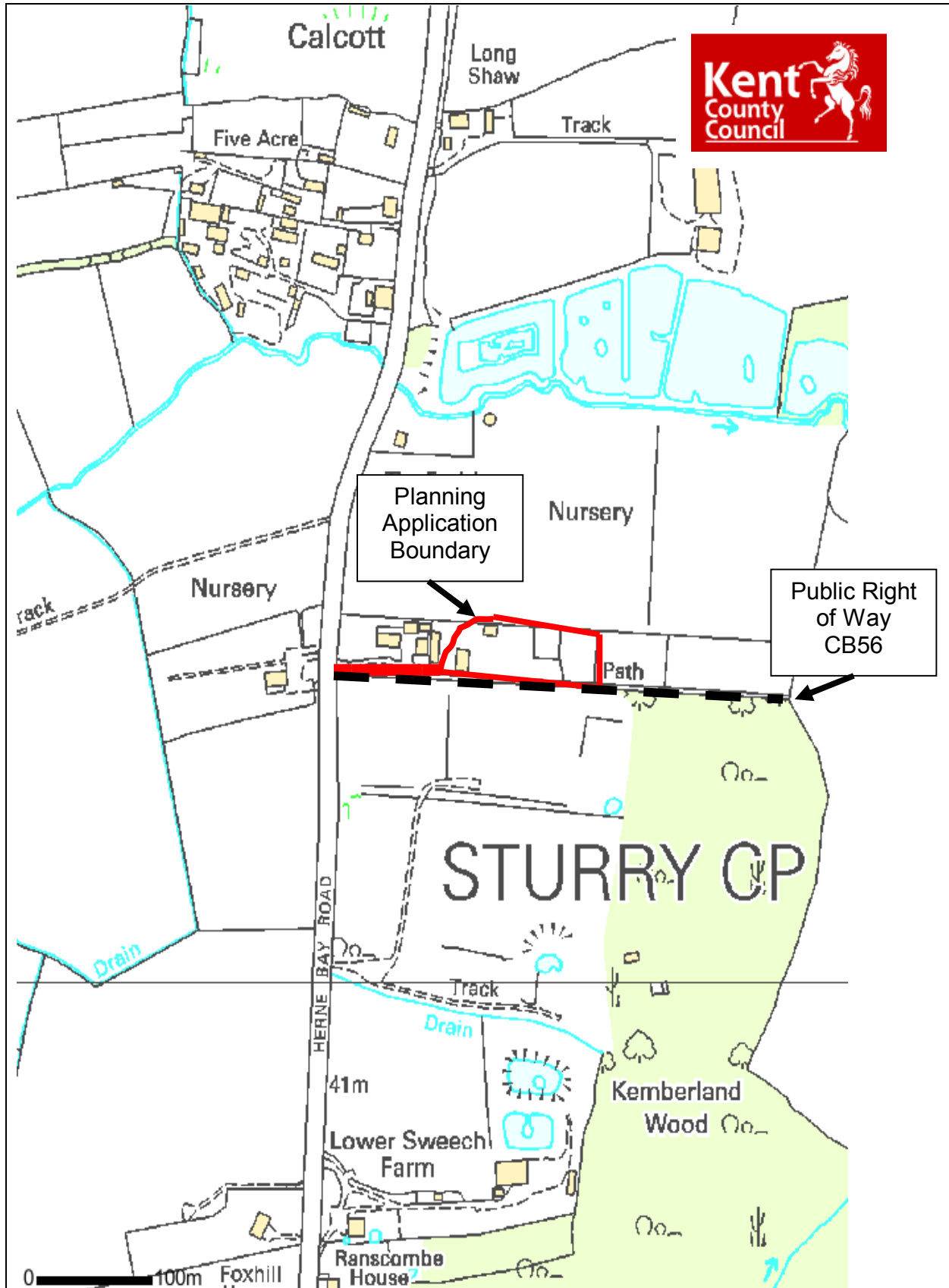
1. The site is located in open countryside adjacent to the eastern side of the A291 Herne Bay Road, north of Sturry. It consists of an existing yard used for the sorting of waste materials imported by skip and contains various stockpiles of materials including hardcore, bricks and timber. Access is via an entrance off the A291 which also serves as an access to two bungalows which are located between the highway and yard. The site is bounded to the east and south by woodland and along the southern boundary there also runs a Public Right of Way CB56.

**Planning History**

2. In August 2004 Canterbury City Council issued a Certificate of Lawful Use or Development (CLUED ) for the site as a concrete and skip business on the basis that such activities had been taking place continuously without interruption more than 10 years before the date of the application for the CLUED. In February 2006 a further application for a CLUED was made to Kent County Council in order to include additional activities not covered in the first CLUED issued by the City Council and which the applicant claimed had also been taking place at the site uninterrupted for more than 10 years. These activities included the screening and sorting of waste imported to the site by skip and the dispatchment of the sorted materials to other businesses and to landfill.

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As part of these operations it was claimed that a screener and crusher were brought on site and used as and when required. As part of its consideration of the application, whilst the County Council were satisfied on the basis of the evidence submitted that the sorting and separation of waste had taken place at the site, with regard to the crushing and screening activities it was considered there was insufficient evidence to satisfactorily demonstrate that these had also been undertaken continuously for 10 years. Accordingly when the CLUED was formally issued it specifically excluded amongst other matters any screening or crushing at the site where it was felt these would need separate planning permission in their own right.

### **Proposal**

3. An application has been submitted which in effect seeks to extend the range of plant and equipment currently authorised under the existing Certificate of Lawful Use granted by the County Council to include the mechanical sorting and crushing of incoming generally inert waste which the applicant claims would enable a greater percentage of materials to be re-used. With the exception of the permanent installation of a screener and crusher on site it is not intended that there would be any other changes to the current operational practices. Waste throughputs would remain at a maximum of 25,000 tonnes per annum generating on average some 72 vehicle movements to and from the site each day rising to a maximum of 76 movements per day. Hours of operation would remain at 0700 to 1800 hours Mondays to Fridays and 0700 to 1300 Saturdays with no operations on Sundays or Bank Holidays. In order to mitigate any adverse impacts on the local amenity it is proposed that the machinery would be fitted with full dust and noise suppression systems. In addition the applicant would be willing if permission is granted to accept a condition restricting maximum noise limits generated from the machinery to not more than 53dB (LAeq) (1 hour) freefield when measured at the southern boundary of the site. Whilst claiming that the Public Footpath which runs along the southern site boundary is rarely used and most likely only used at the weekend, the applicant would also be willing not to operate machinery on Saturday in order to reduce any impacts on the amenity of walkers using this route.

### **Planning Policy Context**

4. **National Planning Policies** – The most relevant National Planning Policies against which this application needs to be considered are set out in MPS2 (Controlling and Mitigating the Environmental Effects of Minerals Extraction in England) which Mineral and Waste Planning Authorities are required to follow in preparing Minerals and Waste Development Schemes and also in considering individual applications for minerals and waste development. In particular it provides advice and guidance on factors to be taken into account relating to dust (Annex 1) and noise (Annex 2). Planning Policy Statement 10 (Planning for Sustainable Waste Management) advises on the need for waste planning authorities to consider the likely impact on the local environment and amenity including impacts from dust and noise (Annex E). Planning Policy Statement 23 (Planning and Pollution Control)

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requires waste planning authorities to be satisfied there would be no adverse impacts on the local environment before granting permission including impacts on local air quality.

5. **South East Plan (May 2009)** – includes policies which set targets for the diversion of waste from landfill (Policy W5) and recycling and composting (Policy W6). Outside nationally designated landscapes planning authorities are encouraged to protect and enhance the diversity and distinctiveness of the region's landscape (Policy C4). Policy C6 requires local authorities to encourage access to the countryside by including amongst other matters maintaining, enhancing and promoting the Public Rights of Way system.
6. **Kent Waste Local Plan (March 1998)** – Policy W18 requires before granting any permission for a waste management operation the Planning Authority to be satisfied that noise, dust and other emissions can be satisfactorily controlled particularly in respect of its impact on neighbouring land-uses and amenity.

#### 7. **Consultations**

**Canterbury City Council:** No objections to the proposal.

**Sturry Parish Council:** No comments received.

**County Transport Operations Manager:** - No objection.

**Jacobs (Noise and Dust):** - Considers dust is unlikely to cause a nuisance to nearby residential properties provided that the dust suppression systems as detailed in the application are utilised and guidance provided by MPS2: Annex 1 is followed. With regard to noise, is of the opinion that the proposed use of mechanical sorting and crushing machinery could potentially result in detriment to the nearby residential property. Requires therefore an assessment to be undertaken by the applicant to demonstrate predicted noise levels emanating from the site comply with those contained in MPS2. The assessment should include all proposed hours that the plant would operate.

**Jacobs (Landscape):** Welcomes the intention to undertake tree planting along the Public Right of Way to help screen the site but questions whether the proposed species consisting of a series of conifers to stop up gaps in the existing hedgerow is appropriate and considers native species should be included to support the character of the native woodland.

**Environment Agency:** Raise no objection subject to the storage and sorting of waste being sited on a hardstanding, storage of any fuels, oils or other potentially contaminating materials to be stored such that there would be no discharges to ground and storage of waste on site being sealed and secured at night and when the site is not in operation.

**Natural England:** Has no comments to make on the proposal but would expect the County Council to consider the possible impacts if it falls within An Area of Outstanding Natural

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Beauty, is on or adjacent to a site of Nature Conservation Importance and whether the proposal represents an opportunity for biodiversity enhancements.

**Kent Wildlife Trust:** no comments received.

#### **Local Member**

8. The Local Member, Mr Alan Marsh, was notified of the application on 12 January 2009. No comments have been received to date.

#### **Representations**

9. The application was advertised in the local press, site notices posted on site and one property was notified which falls within 250 metres of the site. As a result some 3 letters of objection have been received from local residents. Their objections raise concerns over fires which are lit on site and the adverse impacts from noise and dust on the locality, including Longshaw Farm Coarse Fishery which lies close to the site.

#### **Discussion**

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless other material considerations indicate otherwise. In the context of this application the national policy guidance along with the development plan policies outlined under paragraphs 4 to 6 are of particular relevance.
11. In my opinion having regard to the above policy guidance together with comments made by consultees along with representations received, the main determining issues relate to the potential impacts from the development in respect of noise, dust and the local landscape.

#### **Local Landscape**

12. Given the general landscape surrounding the site which largely consists of native woodland, I am satisfied that the additional plant and machinery proposed to be brought onto the site would not result in any significant adverse visual impacts from long distant views of the site. Furthermore, whilst nearby views into the site currently exist from the Public Right of Way which runs adjacent to the southern site boundary, given the comments made by the County Council's landscape advisor, I am satisfied that should members be minded to grant permission, a condition could be imposed requiring further details of planting where gaps currently appear in the existing tree screen such that any visual impact from the development would be reduced to an acceptable level.

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#### **Dust**

13. Whilst concerns have been raised over nuisance from dust, the County Council's dust advisor has confirmed that provided the dust suppression measures proposed, which include the provision of two Renby Fogging Units on site are utilised in accordance with the guidance set out in MPS2 (Annex 1), dust is unlikely to cause detriment to the nearest residential properties. I would concur with this view, particularly given the additional mitigation that would also be served from the existing trees surrounding the site.

#### **Noise**

14. In addition to concerns raised over impacts from dust, given the nature of the machinery proposed to be employed at the site, objections have also been raised over adverse impacts from noise in the locality. Notwithstanding, that the applicant would be prepared to accept a condition as set out under paragraph 3 above restricting maximum noise levels when measured at the southern boundary of the site, the County Council's noise advisor has advised that a noise assessment be undertaken in order to be able to predict noise levels emanating from the site are able to comply with MPS2. In my opinion, given its location in open countryside where background noise levels would normally be expected to be relatively low, as a minimum such an assessment should include a background noise survey in order to determine baseline levels against which the predicted increase in levels when the machinery is in operation can be assessed. This in turn would then help identify the need for any mitigation measures that may be required to reduce noise to an acceptable level, including for example the installation of acoustic screens. The potential impact from noise is not only a material consideration in relation to the possible affects on residential properties but is also significant in terms of how this may affect the amenity of the users of the Public Right of Way which runs along the southern boundary of the site and where policy C6 of the South East Plan seeks to maintain and enhance such routes.
15. Whilst the applicant initially appeared to recognise the need for further information on the potential impact from noise, and who I was led to understand commissioned a noise consultant in order to provide an assessment of predicted noise levels as recommended by the County Council's noise advisor, to date this information remains outstanding despite a number of reminders made to the applicant.
16. Having regard to government advice and the relevant development plan policies relating to noise, in the absence of the further information on noise requested from the applicant, I would advise members that the County Council are unable to assess this element of the proposal sufficient to conclude whether there would be any adverse impacts. In my opinion under such circumstances the applicant has failed to demonstrate that the proposal would not be contrary to policy C6 of the South East Plan and Policy W18 of the Kent Waste Local Plan.
17. Finally, with regard to complaints about fires at the site, given that there is no express planning permission or conditions preventing fires from being lit, this is more a matter for

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either the Local Environmental Health Department who may be able to take action against where a statutory nuisance is being caused or the Environment Agency who regulate operations under a separate permit.

### **Conclusion**

18. Whilst there is general policy support in principle towards recycling as one of a number of means of achieving the diversion rates away from landfill as set out in the South East Plan, each application has to be determined on its merits, against which relevant government guidance and development plan policies together with any other material considerations can be taken into account. I am satisfied that issues relating to dust and visual impacts can be satisfactorily addressed by condition should members be minded to grant permission. However, given the issues that have been raised in relation to potential noise impacts from the proposal it is particularly important that sufficient information is provided by the applicant to enable the County Council to properly assess this element of the proposal, in the absence of which it is not possible to conclude whether there would be any adverse impacts. Despite a number of request for further information from the applicant in respect of a noise assessment none has been provided.
19. I would therefore recommend that the application be refused on the grounds that the applicant has failed to demonstrate that the proposal would not be contrary to Policy C6 of the South East Plan which seeks to enhance, maintain and promote the Public Rights of Way System and Policy W18 of the Kent Waste Local Plan which requires before granting any permission that noise can be satisfactorily controlled.

### **Recommendation**

20. I RECOMMEND that PERMISSION BE REFUSED to extend the existing Certificate of Lawful Use to include mechanical sorting and crushing of incoming generally inert waste materials to recover a greater percentage re-usable material on the grounds that:-
- (1) In the absence of sufficient information to enable a proper assessment of the impacts from noise having regard to the close proximity of the site to Public Right of Way CB56 which runs along the southern boundary of the site, the development is contrary to Policy C6 of the South East Local Plan which seeks to maintain, enhance and promote the Public Rights of Way System.
  - (2) In the absence of sufficient information to enable a proper assessment of the impacts from noise on neighbouring land uses and amenity the development is contrary to Policy W18 of the Kent Waste Local Plan.

Case Officer: Mike Clifton

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Background Documents: See Section Heading