

Item C3

Application for a Certificate of Lawfulness for an existing use for a concrete and skip business and sorting, separation and re-use of inert and semi-inert waste materials, with associated storage, plant, machinery and parking at Kemberland Wood, Fox Hill, Herne Bay Road, Sturry, Kent – CA/06/00523

A report by Head of Planning Applications Unit to Planning Applications Committee on 20 June 2006.

Application by Mr M. Thomas for a Certificate of Lawfulness for an existing use for a concrete and skip business and sorting, separation and re-use of inert and semi-inert waste materials, with associated storage, plant, machinery and parking at Kemberland Wood, Fox Hill, Herne Bay Road, Sturry.

Recommendation: Refuse

Local Member: Mr A.Marsh

Classification: Unrestricted

Site

1. The site is located in open countryside near Sturry on the A291 between Herne Bay and Canterbury. It consists of a yard to the east of the road from which access is taken. The site is bounded to the immediate east by a wood and to the south by a public right of way. Two bungalows are in close proximity to the yard. The site has an extended office building and a large open storage barn. Around the site perimeter are various structures and open storage areas, including piles of hardcore, bricks and timber and material storage bays. There are also parked skips and a selection of plant and machinery on the site. It is claimed that a screener and crusher is brought onto the site as required.
2. A section of the woodland has been cleared and has been the subject of tipping and negotiated remedial works. There is a garden nursery diagonally opposite the site. I attach a site location plan.

Background

3. Kemberland was purchased in October 1985 and an existing concreting business (Wee Mix Concrete) was transferred to the site. The use has continued there to date. A skip business (now Wee Skips) involving the hiring out of skips has covered a similar time span. The planning status of these two business elements was recognised in 2004, when Canterbury City Council issued a Lawful Development Certificate on the site for: *'land as a concrete and skip business'*. It is now claimed that the application for lawful status should have included an alleged situation where loaded skips returned to the site for sorting, separation, screening and crushing, followed by dispatch for re-use or landfill.

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4. This use has allegedly expanded to include loaded skips arriving on site from other construction/road haulage/building companies. Metal, timber, topsoil and concrete is apparently reused by Wee Mix Concrete for groundworks or sold in bulk to other local firms.

Application

5. A Lawful Development Certificate (LDC) is sought under S191 of the 1990 Town & Country Planning Act:

“...an existing use for a concrete and skip business and sorting, separation and re-use of inert and semi-inert waste materials, with associated storage, plant, machinery and parking.”

The application was initially submitted to Canterbury City Council in an attempt to extend the scope of the original Certificate issued by them. However, the City Council referred the application to this Authority given the waste related content.

6. In addition to the certified concrete and skip business uses, lawful status is sought for a third primary / waste related activity. That claimed use includes materials screening and crushing.

Procedure

7. In the normal course of events, applications, which come before this Committee, are determined on their individual planning merits. In this instance, an application has been made, which seeks lawful status for claimed planning uses on the site. Whether that can be successfully argued or not depends solely on the facts of the case. Issues of planning merit or demerit, enforcement aspects or development ambitions for the site cannot be taken into account. If issued, planning permission would not be granted. Instead, effective immunity from enforcement action would be acquired within the strict confines of any substantiated lawful elements.
8. To achieve lawful status, the same discrete planning use has to be carried out over the same planning unit, to the same scale and level of intensity / throughput, for a continuous period of no less than 10 years.
9. It is incumbent on the applicant to submit documentary evidence in an attempt to meet this planning law test. Verifiable evidence counts towards the granting of a LDC. Contradictory evidence within the application itself along with countervailing evidence gathered by the determining Authority detracts from the issuing of a Certificate. The County Council’s powers in responding to the current application are to either grant the certificate on the basis of the description of the use submitted; grant a certificate on the basis of an amended or substituted (by this Authority) description; or to refuse the application. The onus of proof, to the standard of “balance of probabilities” is on the applicant. A right of appeal applies.

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Evidence submitted

10. In making his claim for a further waste related lawful use on the site the applicant relies principally on 11 testimonial letters from the range of companies alluded to in paragraphs 4 and 5 of this report. In addition there are three small photocopies of aerial photographs dated 12th July 1990, 24th July 1995 and 30th April 1999. I shall make these available in the Members Suite before the Committee Meeting.

Consultations

10. I have sought the evidential assistance of Canterbury City Council, Sturry Parish Council and the Environment Agency in processing the application.
11. **Canterbury City Council:** comment that the site was visited in connection with the original Lawful Use Certificate application but unfortunately they *'have no knowledge or recollection as to whether there was or was not any sorting or separation of materials going on at the time...'*
12. **Environment Agency:** comment that *'we are unable to refute or confirm whether a skip business and waste transfer station have been operated from this site continuously and at the same intensity over the last 10 years. This is because we only become aware of raised issues through complaints made in April 2003, that waste activities were being carried out at the site.'*
13. **Sturry Parish Council:** *'has no records of the continuous and intensive use of this site, but feels that the use of this site has been growing over the years and permissions have been granted retrospectively, which is a dangerous practice'*.
14. **County Solicitor:** is in accord with Counsel's opinion, which in line with my own observations considers the evidence in the testimonial letters, which form the main documentation in the case to be *'vague, non-specific and not substantiated with evidence normally to be expected'*.

Counsel further advises that it is usual for evidence of this sort to be provided in the form of statutory declarations. In summary, Counsel has said that: *'I share the Council's view on the strength of the evidence submitted, that is it is weak and not enough to allow for granting of the certificate as applied for. I also take the view that the Council is correct to communicate with the applicant setting out its position informally before determining the application.'*

Local Members

15. The Local Members, Mr Alan Marsh was advised of the application on 10th April 2006.

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Discussion

16. The starting point for Members is the Lawful Development Certificate issued by Canterbury City Council in 2004. Additional certification is now sought for a three-way process: the importation of inert and semi-inert waste materials; on site processing (sorting, separation, screening and crushing) of materials and dispatch of recycled materials.
17. The County Council has to satisfy itself that the waste related use claimed in the current application is an independent primary use forming part of the composite use at the site. I have approached my evidential assessment on that basis.
18. As quoted in paragraph 14 of this report, Counsel in line with my own observations considers the evidence submitted in support of the application to be scant and generic in character. Points in time are mentioned but a continuity of use is not in my opinion demonstrated. There are no accompanying invoices or waste transfer notes (required by the Environment Agency to document the transit of controlled wastes) from either the applicant / landowner or customers to support the broad claims being made. In addition to this, Statutory Declarations have not been included and the black and white photocopied aerial photographs are of a scale that it is difficult to elicit any determining information.
19. In my opinion, there is no substantive evidence of continuous screening and crushing activities. Instead, an ad hoc activity is presented.
20. I have sought the evidential assistance of Canterbury City Council, Sturry Parish Council and the Environment Agency in processing the application. Canterbury City Council has adopted a neutral stance on the application and the Environment Agency apparently did not know of the site before April 2003. Sturry Parish Council is not aware of a continuous lawful use.

Conclusion

21. In conclusion, the application before Members has to be determined solely on the facts of the case as presented. My assessment of the evidence as submitted, under advice from the County Solicitor and Counsel is that lawful status for an independent waste related use at the site has not been substantiated. The City Council could otherwise advise the applicant on any further business use that might be possible on the site, as an alternative to a waste management use.

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Recommendation:

22. **I RECOMMEND** that a Certificate of Lawfulness is not issued for the claimed waste related uses at this site on the grounds that:

“The documentary evidence as submitted fails to demonstrate that a new primary waste related planning use, has been conducted on the site, to the same scale and level of throughput and intensity, continuously over the minimum 10 year qualifying period”.

Case Officer: Robin Gregory

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Background Documents - see section heading
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