

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.

**Item C1**

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 12/01041/AS**

A report by Head of Planning Applications Group to Planning Applications Committee on 7 June 2013.

Application by Highview Park Limited for Development of a facility for the processing and storage of End of Life Vehicles (ELV), with construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012

Recommendation: Permission be refused.

Local Member: Mr M.Angell

Classification: Unrestricted

**Site**

1. Glebe Farm is situated in the Parish of Shadoxhurst, approximately 2.5km to the south east of the urban area of Ashford. It is in a rural location outside the confines of Shadoxhurst however the sole route of access is through the village, and then 500m down Duck Lane via Church Lane. The immediate area is a mixture of woodland (much of which is designated Ancient Woodland), agricultural land and buildings, and residential properties. The application site is within the 'Woods and Meadows near Shadoxhurst' Local Wildlife Site' (LWS-AAS56). The Ashford Draft Landscape Character Supplementary DPD (Jacobs 2009) describes the Shadoxhurst area as being mixed farmland, with little intensive land use, and a field pattern defined by an extensive woodland framework. The mixed woodland and hedgerows create a strong sense of enclosure, with field ponds and narrow stream corridors along narrow wooded valleys. Roads are typically ditch-lined and enclosed by woodlands and hedgerows.
2. The application site is a portion of land, of approximately 0.31ha in area, which extends into the woodlands of Colebran/Colham Wood, at the end of Duck Lane. The site is functionally linked to the adjacent Glebe Farm House and outbuildings. It consists of a crushed hardcore level base throughout, bordered by a 2.4m weld mesh green fence,

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with access off Duck Lane through gates to the eastern boundary. There are no buildings on site, but a couple of posts mark the location of the site of a collapsed shed. The northern edge is bounded by a strip of trees between the application site and a tributary to the River Beult. To the west there is recovering woodland, which has previously been stripped back. The southern edge is bordered by more woodland and a Public Right of Way (PROW), which divides the site from Glebe Farm and the rest of the applicant's land.

3. It is worth noting at this point that the developed area which makes up the application site is in fact larger than the red line area within the application. This is in order to restrain the planning proposal within the area of a 1996 Lawful Development Certificate (which I will explain in greater detail within discussion of the planning history).
4. Glebe Farm House is the nearest dwelling, within 20m, with Glebe Retreat 50m to the east and a number of agricultural buildings beyond. The Glebe Farm area is approached via Duck Lane, a single lane public road of approximately 500m. Duck Lane is bordered by a number of residential properties, hedgerows, agricultural fields and an established business 'Kent Tractors'. The lane is single width along its entire length, with a drainage ditch along one side. It ends at Glebe Farm at the point of the bridge over Whitewater tributary, and public access continues either along the PROW which bisects the applicant's land and leads south west, or east along a byway track which then heads South towards extensive wooded areas and a Site of Special Scientific Interest (SSSI).
5. As stated above the application site is at the end of Duck Lane, which is accessed via Church Lane within Shadoxhurst. This junction is at the centre of a Conservation Area which includes the nearby houses (many of which are Listed Buildings), focussed around the St Peter and St Paul's Church, and a small area of village green with a Grade II listed Village Pump.
6. Glebe Farm is divided into two portions of land, partitioned by the PROW, and each forms a distinct planning unit with uses acquired over time and formalised with Lawful Use applications determined by Ashford Borough Council. Both are under ownership of the applicant. Establishing the planning history is important in performing a proper assessment of the proposal, and understanding how the site has established into what it is today.

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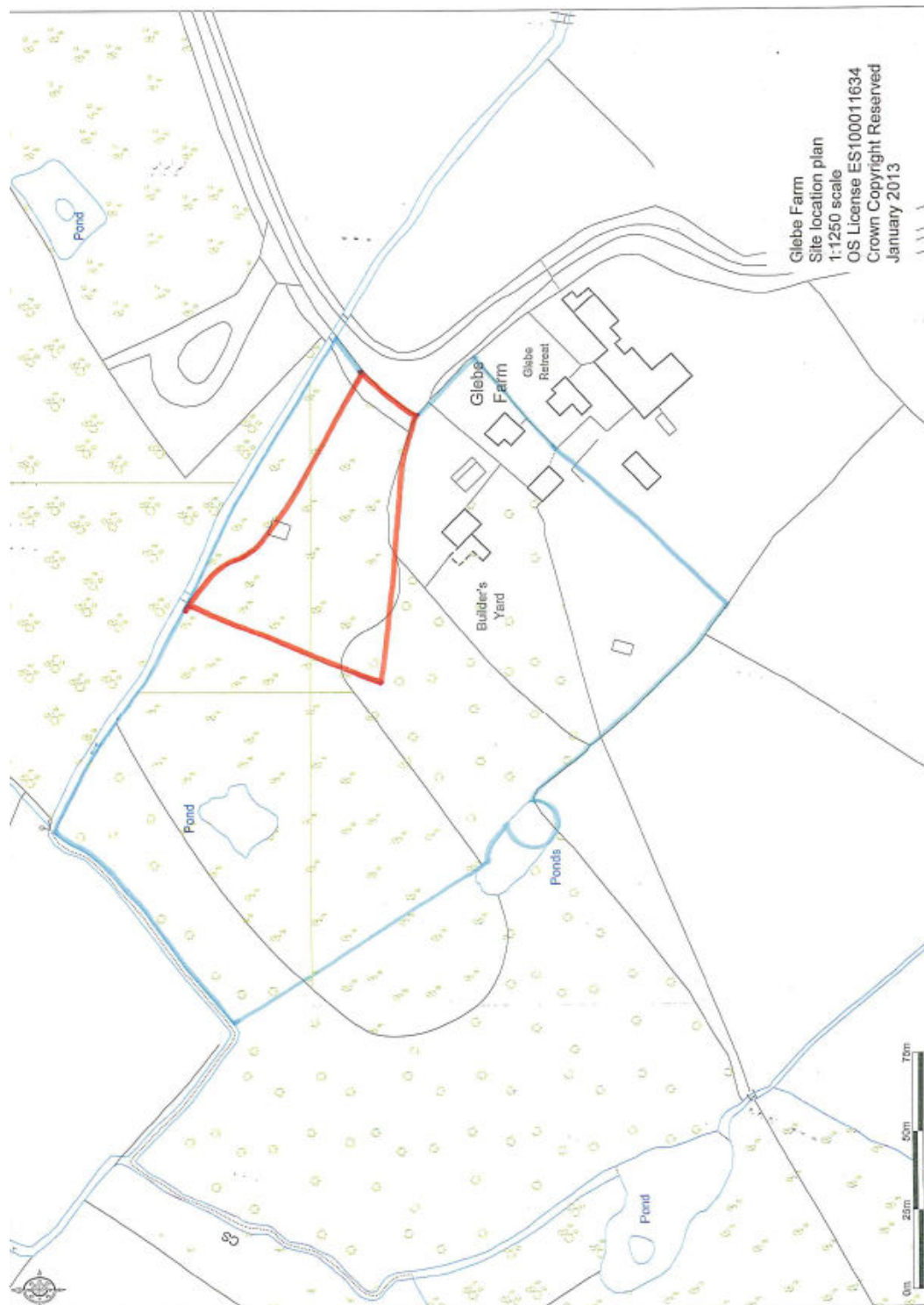
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Fig. 1 - General Location Plan



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**Fig. 2 - Site Location Plan**



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8. In 1996 the then site owners applied for a Lawful Development Certificate (LDC) for the 'parking and storage of cars and commercial vehicles servicing of cars and commercial vehicles and retailing of bathroom equipment, building materials etc, retail sales of up to six second hand cars and use as a builders yard'. The LDC was issued in 1998 by Ashford Borough Council confirming that at the point of application, the uses listed within the LDC first schedule has been in for a period in excess of 10 years and is therefore immune from enforcement action. It is worth noting that although the description within the LDC, as quoted above, includes the 'retailing of 6 second hand cars', this part of the use was omitted from the approved description within Schedule 1 of the LDC. Analysis of the background documents and discussions given to us by the Borough Council does not account for this discrepancy. Therefore it could be legitimately argued that the LDC decision notice confirms the car sales element. The LDC is included as an appendix.

Both Sites

9. In 2011, following complaints to Ashford BC, a part retrospective application was submitted for the 'erection of security fence and gates and hard surfacing, together with replacement storage containers at existing commercial area'. This was subject to a number of objections, and was approved in December 2011. The Borough case officer confirmed within the application report that the fencing and hardstanding was approved on the basis that it covers only the LDC area, and that only the LDC uses can take place within this area. The hard surfacing covers all of the Southern Site, the current application site and the PROW. The fencing encloses both sites separately. The application was approved with a landscaping condition which has been discharged by Ashford BC. The condition required the landscaping to be undertaken within 1 year of the date of approval, which has not taken place. No enforcement action has been taken by the Borough Council.
10. Within the application site the hard surfacing and fencing has been constructed to cover an area of approx. 3780sq.m and goes beyond the boundaries of the approved LDC area (3060sq.m). Additionally, the security fencing has been erected outside the approved area, abutting the nearby tributary. The approved plans (and LDC limits) allow the fencing to follow a line set into the site, thereby leaving a strip of vegetation and trees which form part of the Ancient Woodland. This situation was brought to our attention at the outset by Ashford BC. No enforcement action against either the fencing, hard surfacing or the unimplemented landscaping scheme has been taken by the Borough Council.

Site Disputes

11. A number of representations from local residents, and a petition, raise complaints about the establishment of the current situation on site, including the planning history and the way it has developed. The general insinuation, particularly from those who have lived in the area a number of years, is that the LDC was granted under misrepresented information and that the uses made lawful by the LDC either never took place, or only

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took place in the immediate vicinity of the Glebe Farm House. Representations have stated that the application site has only been used for tipping of unwanted materials, and no commercial activities have taken place.

12. The application methodology (to be discussed below) is to compare the proposal against baseline activities allowed under the LDC. This has also provoked objections, primarily on the grounds that not only did the LDC uses never take place in this area, but that they never were undertaken at the level of intensity which the application compares. Local residents have also argued that the site has largely been unused over the past 10 years, until the applicants took ownership. At that point, the new owners removed up to 90 tonnes of rubbish from the LDC area, burned off rubbish, stripped the site back and covered it with hard surfacing. These complaints prompted an investigation by Ashford BC which resulted in the part-retrospective application being submitted and approved in 2011.
13. Ashford BC originally submitted objections relating to the amenity impacts of the proposal. However, over the course of processing the application, we received further representations from the Borough Council stating that they have obtained legal advice and are of the opinion that the uses under the LDC have been abandoned. We have viewed this legal opinion, and all other evidence given to us by the BC, and sought legal advice on this ourselves and have come to the conclusion that we - on the face of the evidence put before us and in the absence of formal action from Ashford BC – cannot agree that the use has been abandoned. The legal status of the LDC cannot properly be challenged through the determination of this planning application, and would require formal enforcement action from the determining authority. Therefore, I am of the opinion that the LDC exists for the purpose of establishing the baseline planning history and determining this proposal. If no LDC were in place, then due to the location and constraints, planning policy would presume against development in this area and this application would have been discouraged pre-submission. The Borough Council also approved the 2011 application for fencing and hardstanding, with objections, and within the officer's report it was stated that the use had not been abandoned and this was a fundamental reason for granting approval, and an informative was included reminding the applicants that only the activities contained within the 1996 LDC could take place within the site, thereby formally affirming the uses within a site assessment. Arguably, had there been no lawful use within the site, the fencing and hardstanding would not have development plan support.
14. The LDC as granted – and interpreted by the applicants – places no restrictions other than the uses listed within Schedule 1 on the LDC decision notice. Therefore, there is no mention of operational limits such as throughput, hours of operation, vehicle movements and other key considerations, that would normally be controlled by condition within a planning application for a commercial land use such as that allowed under the LDC. In planning terms, it is broad and unspecific, as unlike a planning permission an LDC is a statement of legal fact at a point in time, and we as a planning authority are not able to 'look behind the LDC' to ascertain approved plans, and other approved documents, which would give an indication as to activity levels. Therefore, the benefit of having a planning application put forward for this site is that if Members

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are minded to grant planning permission restrictions could be imposed by condition which would allow the planning authority to gain some control over the amenity impacts of the site.

### **Proposal**

15. The applicant, Highview Park Ltd., is proposing to develop a metal recycling facility within the northern site of Glebe Farm. The submission has been subject to amendments following the first round of consultation, and the proposal explanation below is reflective of these changes. It should be noted that the applicant has been very willing to provide additional surveys and documentation in response to planning concerns raised.
16. The facility would process, depollute and sort scrap metal primarily from End of Life Vehicles (ELVs), although the application indicates that some waste would come on site in the form of Waste Electrical and Electronic Equipment (WEEE) and 'other scrap metal'. The exact proportions have not been explained however would be controlled through an Environmental Permit. In general the proposal suggests an annual throughput of 20,600tpa (400 tonnes per week). Scrap would be transported to the site by Heavy Goods Vehicle (HGV), and received via a weighbridge and site office. The proposal incorporates a 93sq.m 'pollution control building' which would be used for the removal of contaminants (oils, fluids etc) from vehicles and other scrap, before the remaining scrap metal is crushed and sorted for onward transportation. Processing activities are proposed to take place on a concrete base, in order to trap surface water and spills, which would then drain to an interceptor for pollution control. The site layout plan indicates the general arrangement, and a large proportion of the site is presumed to be used for storage of unprocessed vehicles; however, details such as stockpile heights and storage arrangement have not been confirmed. The applicant states that the LDC currently allows for unrestricted stockpiles of scrap, but they are willing to accept a restriction on this by condition to levels requested by the Environment Agency and the County Planning Authority.
17. The pollution control building is proposed to be of a simple functional design, creating a floor space of 93sq.m. It is proposed to be constructed within the north eastern corner of the concrete base and to be of a simple functional design – steel framed construction, with a pitched roof and clad in steel sheeting, approximately 4.8m in height at the apex, and 3m at the eaves. There would be an access door to the south eastern elevation and open sided to the north western elevation. The finish has been stated to be dark green, and this could be controlled by condition.
18. The operational site area would be enclosed by the erection of 2.4m weld mesh powder-coated fencing. The submitted plan shows that this would enclose a reduced area to the existing hard surfacing and fencing, and would formalise the area which is subject to the LDC. The applicant has not put forward information for the future plans for the remaining land, or as to whether the excess fencing and hardstanding would be removed.

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19. The applicant states that the proposal would provide a reuse of an existing employment site and provide local jobs in a rural area, in accordance with planning policy on rural employment and the principles of sustainable development within the NPPF.

Comparison with Baseline

20. As stated above, the applicant has submitted this proposal working from the baseline position of the existence of the LDC. The methodology employed to assess potential amenity impacts from the proposal, is to compare the proposal against what they believe could lawfully take place on site without the need for further planning permission. In October 2012 we sought the opinion of the determining authority of the LDC as to what level of activity they believe the Certificate allows, and as to whether the levels argued by the applicant are representative. The Borough Council had submitted comments that they believe the site to be abandoned, but to date had not commented on the levels of activity allowed under the LDC.

*Highways*

21. The original Trip Report submitted with the application proposed that the number of vehicle movements generated by the operation of this facility would be 58 per day, of which 32 would be in the form of HGVs. This assumes that scrap metal would arrive on site on skip lorries, and processed material would leave in 20 tonne tipper HGV, or roll-on-off container, with a maximum throughput of 400 tonnes per week. The report suggests that this would result in a net decrease in the 'existing' vehicle movements. This conclusion has been calculated by dividing the total land area of the LDC between the various lawful uses within the LDC description, and using the TRICS database (a database which assesses the potential transport impacts of development – Trip Rate Information Computer System) to calculate the likely vehicle movements for each use. This method worked from a number of assumptions, including that the LDC would operate with a 100sq.m building and a 300sq.m external working area.
22. The Trip Report concludes that the LDC allows for an existing use generating 128 vehicle movements per day, of which 23 movements would be HGVs. The proposed use is suggested to reduce the net daily vehicle movements by up to 70 however the number of HGV movements would increase by 9 per day. It is stated that this represents a 'worst-case scenario' by assuming that delivery HGVs leave the site empty.
23. The original Trip Report referred to above received objections from consultees, including KCC Highways & Transportation, on the grounds that the methodology was not robust in predicting the level of 'existing' trips from the baseline planning history. Despite the baseline, the Trip Report predicted an increase of daily HGV movements, which raised objections on the grounds of highways safety. In response to this, the applicant amended the methodology.
24. The original Trip Report assumed a mixed use applied over the entire site, made up of assumed proportions of the listed LDC uses, then working from a 'first principles'



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approach calculates the likely level of vehicle movements. The Revised Report changed this methodology to isolate the 'builders merchants' use and operate this over the entire site, due to the external nature of the storage and therefore no need for buildings and further planning permission. The resulting calculations raise the predicted existing daily movements from 128 to 429, and the HGV movements from 23 to 33. The new figures are calculated for a builder's merchant over the entire site area of 3080sq.m, but the report also includes figures for a 2500sq.m site area with the remainder dedicated to movement and parking – 348 total daily movements of which 27 are HGVs.

25. The revised Report states that the application proposal would result in 58 total vehicle movements of which 32 would be HGVs, which would account for a reduction from the existing of 290 residual daily trips, but an increase of 5 HGVs (when working from the smaller 2500sq.m calculations). The conclusion being that although there would be a slight increase in HGV movements, overall there would be a benefit from operating the proposal at the site above that of the LDC. Members should *note that Kent H&T has challenged the number of proposed HGV movements and considers that an estimate of 44 (two-way total) HGV movements per day is more appropriate.*

*Noise*

26. The noise impact assessment submitted adopts a similar methodology to the highway trip report – calculating the baseline permitted impacts generated under the 'existing' uses, including operational activities, vehicle movements and assumed plant and machinery which are likely to have been operated with the lawful uses. These calculations have been compared to the proposed uses and activities.
27. The noise assessment concludes that the uses under the LDC would result in a noise level of 80dB<sub>L<sub>aeq</sub></sub> at the nearest noise sensitive receptor – Glebe Farm House approximately 20m to the south of the application site boundary. This assumes the operation of a wheeled loader, tracked excavator, forklift, 32 tonne HGVs, 10 tonne van/lorries and cars. The report calculates that the proposed use - using a crusher, loader, excavator, forklift, 32 tonne HGVs, 10 tonne van/lorries and car – would also result in a noise level of 80dB at the nearest receptor. The conclusion is that the proposed waste metal processing facility, when compared with the 'existing' ambient noise levels allowed by the lawful use of the site, should not have an adverse impact on residential amenity.
28. In response to comments received from technical consultees, the applicant submitted an addendum to the noise assessment to take into account other sources of noise, in particular the loading of waste material into metal containers. The resulting calculations predict an increase of 1dB above that already presented in the original assessment. The conclusion is that the resulting noise level of 81dB is not a significant increase above the 'existing' 80dB predicted to be allowed by the LDC. A further response from the Applicant's noise consultants comments on the appropriateness of using BS:4142 to consider the proposals and the possible use of mitigation measures. It remains of the view that BS:4142 (as used by the Council's advisor) is not the appropriate assessment

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tool for assessing this proposal and that proposed mitigation measures would significantly reduce any noise experienced at nearby residential properties. These measures include rubberised lining of containers and bins and the possibility of a 3-4m acoustic screen. It affirms the view that the proposal will reduce noise levels.

*Visual Impact and Design*

29. The general position of the application is that the proposed development would not have an adverse impact on the visual amenity of the area, that it is appropriate to the context of the established uses in the area, and that the development in combination with the hard surfacing and fencing would result in an overall improvement to the site in comparison to when it was purchased. The applicant states that this site is 'within an established commercial area' which is bounded by woodland, of a level topography and enclosed by well designed fencing. Also, that since purchasing the site, they have removed and cleared a significant amount of rubbish from within the woodland and surfaced the area to a high standard. The applicant asserts the position that the proposal should take into account the clear-up operation and improvement to the LDC area. The planning statement states that the operational development proposed is appropriate for the rural setting, would be viewed as being set within the existing hardstanding and would be no different to the visual impact of the activities which could lawfully take place within the site.
30. The site lies within the 'Shadoxhurst Wooded Farmland Low Weald' character area, and a Local Wildlife Site. The applicant states that the impact on these designations would be positive by enclosing the site and providing security and an ordered layout, which would also prevent fly-tipping and anti-social behaviour to an area vulnerable to these activities. Secondly, the applicant states that as they also own large areas of woodland adjacent to the application site that they are able to improve tree planting.
31. The application has been submitted with a planting scheme, which the applicant states will mitigate the visual impact of the site, as well as provided benefits in re-establishing tress within the historic Ancient Woodland area and general benefits to biodiversity. It should be noted that the submitted planting/landscaping scheme is made up of the same plans and specifications submitted to Ashford BC under the 2011 permission for fencing, hardstanding and containers. This scheme was approved by condition and should have been implemented within one year.

*Flood Risk*

32. The submitted application is accompanied by a Flood Risk Assessment due to its location within Flood Zones 2 and 3.
33. The applicant states that the site was purchased with the benefit of the LDC verifying that a wide range of uses may be carried without the need to obtain further permission. At each stage of the process they state they have been willing to engage the regulatory authorities in order to address concerns, including the expense of traffic and noise

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surveys. They have made a substantial investment in purchasing and clearing the site prior to pursuing planning permission. The conclusion of the application is that the proposal would have no greater effect than the existing lawful uses, is in accordance with the rural employment provisions of the NPPF and there is no conflict with the Development Plan.

**Development Plan Policies**

34. The most relevant Government Guidance and Development Plan Policies summarised below are pertinent to the consideration of this application:

**National Planning Policy Framework (NPPF)**

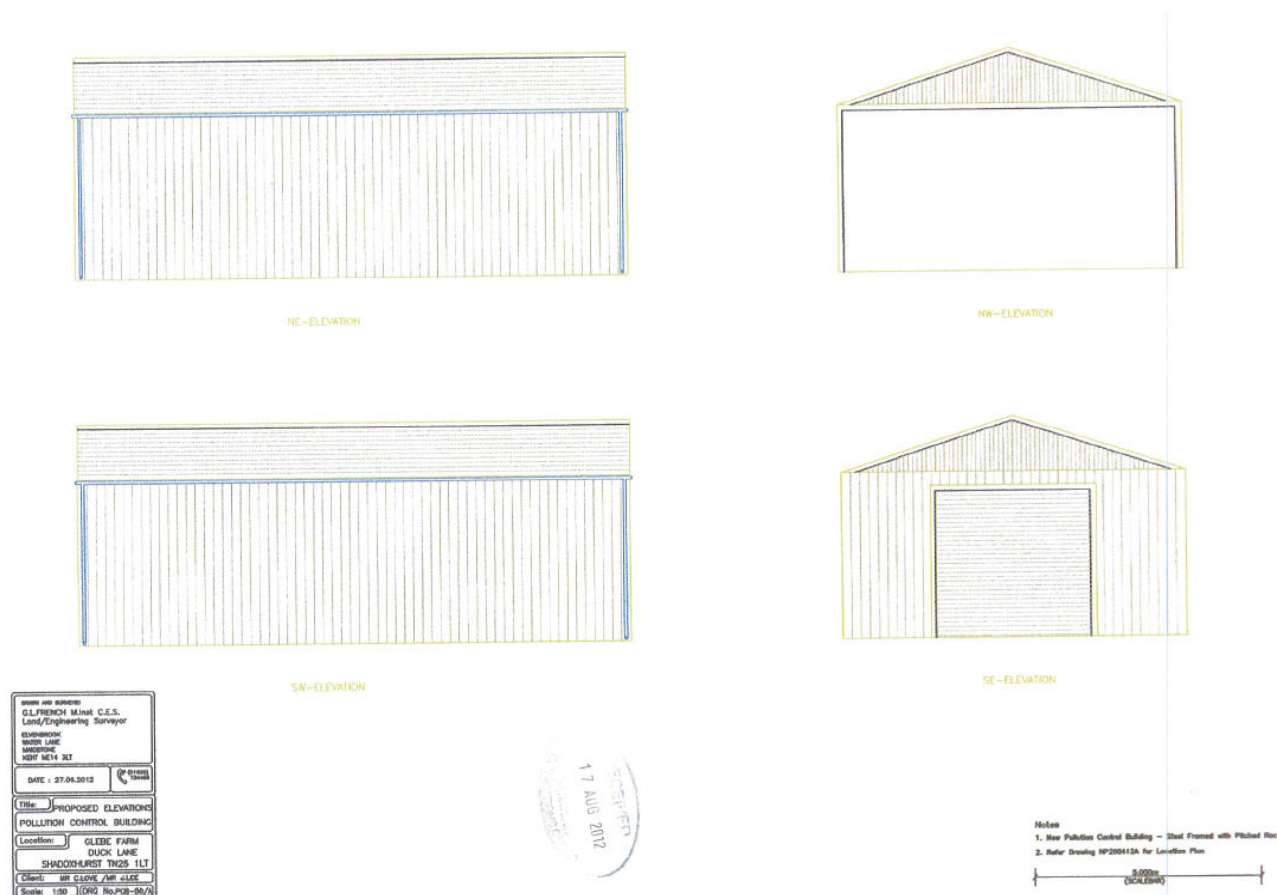
35. The NPPF is a material consideration in planning decisions. At the heart of the NPPF is a presumption in favour of sustainable development. Planning decisions should ensure that a site is suitable for a new use taking account of ground conditions or former activities such as pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment. Amongst other things, the NPPF also promotes the conservation and enhancement of the natural environment and requires that decisions prevent unacceptable effects on the natural environment and amenity.

**Planning Policy Statement 10: Planning for Sustainable Waste Management**

36. The key planning objectives set out in PPS10 can be summarised as: providing a framework for delivering sustainable waste management; helping implement the national waste strategy and supporting targets that are consistent with obligations required under European legislation; helping secure the recovery or disposal of waste without endangering human health and without harming the environment; ensuring that communities take more responsibility for their own waste (self sufficiency) and enabling sufficient and timely provision of waste management facilities to meet the local needs; enabling waste to be managed in one of the nearest appropriate installations (proximity); and considering wider environmental and economic benefits of sustainable waste management; as material considerations that should be given significant weight in determining whether proposals should be given planning permission.

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(surface and groundwater); W20 (land drainage and flood control); W21 (landscaping); W22 (road traffic and access); W25 (plant and buildings); W27 (public rights of way);

### Draft Kent Minerals and Waste Plan

38. Draft Core Strategy policies: CSW1 (sustainable waste management and climate change); CSW2 (waste hierarchy); CSW3 (strategy for waste management capacity); CSW5 (non strategic waste sites); CSW6 (location of non-strategic waste sites); CSW16 (other forms of waste development); DM1 (sustainable design); DM2 (sites of international, national and local importance); DM8 (health and amenity); DM10 (transportation of minerals and waste); DM11 (public rights of way) contained within the Strategy and Policy Directions Consultation (May 2011).

### Ashford Borough Local Plan (Saved Policies)

39. Policies GP12 (protecting the countryside); EN31 (important habitats); EN32 (protection of trees and woodland).

### Ashford Borough Local Development Framework (LDF) Core Strategy (July 2008)

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40. Policies CS1 (Guiding Principles); CS9 (Design Quality); CS11 (Biodiversity); CS15 (Transport), CS19 (Development and Flood Risk); CS20 (Sustainable Drainage).

**Ashford LDF: Tenterden and Rural Sites Development Plan (Oct 2010)**

41. Policies TR17 (Landscape Character & Design); TRS18 (Important Rural Features); TRS8 (Extensions to Employment Premises);

**Ashford LDF: Landscape Character Supplementary Planning Document (April 2011)**

42. Landscape Character Areas (Jacobs 2009): Area 21 – Shadoxhurst Wooded Farmlands

**Consultations**

43. **Ashford Borough Council:** To date we have received three responses from Ashford BC:
- 10 October 2012 - Strongly objects as the proposal is contrary to development plan policies for the following reasons:
    - The site is not identified within the development plan for waste facilities. It is in a rural site at the end of a narrow country lane with residential properties close to the road.
    - The site is larger than the lawful use site therefore the development is likely to increase the amount of traffic, noise and general activity close to a residential property.
    - The visual impact of the proposal will be significant and will detract from the character of this rural area and will be detrimental to the users of the adjacent public footpath.
    - The need for this development has not been adequately established.
  - 23 November 2012 – Reaffirms strong objections to the development as being contrary to development plan policies:
  - 25 February 2013 – Very strongly objects:
    - The site is not identified for waste use.
    - The council is of the view that the previous use has been abandoned, there is no fall back position to be relied upon by the applicant's agent.
44. **Shadoxhurst Parish Council** – Strongly object to the application on the following grounds:
- Highways – The access roads are far too narrow to cope with the size and number of vehicles from this development. Few passing places. Soft verges unsuitable for HGVs. Road surface unsuitable for increased traffic and HGVs.
  - Byways – The access to the site is from a byway rather than a highway. The increase in the number of vehicles and HGVs would pose a danger to users of the

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byway, and those accessing the PROW network.

- Local Environment – The proposal would be detrimental to the surrounding environment. The entry to the site is through a Conservation Area. The site is next to Ancient Woodland. The local church and village green are at the junction of Duck Lane and Church Lane and when events are taking place in the church a large number of cars have to park around this junction, which will conflict with HGVs. There is serious concern regarding chemical pollution from the site entering White Water Dyke. The site is acknowledged as being in a Flood Risk Zone. The development will have a major impact on local wildlife, flora and fauna.
- Impact on Local Residents – The development would impact upon the quality of life for local residents in the village through excessive amount of HGVs and other vehicles using an access route through a built up area used by children and the elderly, with limited pavement. There is concern about noise and light pollution harming the character of the area.
- Site – There is no designated area for the storage of tyres. The area is also well served by at least 3 other yards dealing with End of Life Vehicles.
- Local Opposition – There is a great deal of local opposition to this development with a petition of at least 400+ signatures, and 18 residents attended the Parish meeting to voice their objections. A copy of the Petition is attached as an appendix.

45. **Kent County Council Highways & Transportation** – Recommends refusal and objects to the proposal on the following grounds:

#### HIGHWAY SAFETY

- The site is accessed from Duck Lane, which is significantly constrained in relation to its use by Heavy Goods Vehicles (HGVs) between its junction with Church Lane and the site entrance. The measured width of the metalled surface of Duck Lane is 3.0m, compared to a minimum width of 5.5m for two HGVs to pass in free flow, and 4.8 metres for a car and a HGV to pass. Indeed, Duck Lane is not even wide enough for two cars to pass. The absence of vehicle passing places and/or off-site turning areas along the length of Duck Lane results in a situation whereby if one vehicle were to encounter another passing in the opposite direction there would be no opportunity for one vehicle to make sufficient room for the other vehicle to pass. Moreover, towards the south-western extent of Duck Lane the strip of vegetation adjacent to carriageway falls away relatively sharply to provide a drainage ditch to capture highway runoff. This poses a potential safety concern in those instances where an HGV were to encounter (say) a pedestrian or another vehicle and attempt to allow sufficient space to pass.
- The layout of Duck Lane is so constrained that frequent vehicular use is not only likely to give rise to vehicular conflicts, but it is also likely to result in damage to the roadside margins and boundary treatments.
- In the context of the 'wider' site access, Duck Lane is directly accessed from

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Church Lane. There is only a footway connection on the eastern kerbside of Church Lane, which provides an important pedestrian connection to local services. It is considered that the level of HGV movements associated with the proposed ELV facility at the application site could result in the increased potential for conflict between pedestrians and HGVs. Moreover, both sides of Church Lane are utilised by local residents parking, which narrows down the carriageway. Local residents park their vehicles 'on-road' on sections where there is limited forward visibility, and car drivers proceed with caution when passing along Church Road. Whilst appropriate for the current levels of usage, an increase in large vehicle movements along Church Lane could lead to associated hazards. The changing alignment of Church Lane, which restricts forward visibility along certain sections of carriageway, coupled with the presence of legitimate on street parking, means the receiving environment could not adequately cater for a steady flow of HGV movements to coincide with the proposed operating hours.

- Against these concerns about highway safety, the potential for vehicular activity associated with the site ('baseline') must be considered in relation to likely trip generation of the proposed use.

#### BASELINE VEHICULAR TRIP GENERATION – A FIRST PRINCIPLES APPROACH

- It is important to recognise that the situation which has prevailed at the site has been one of very low activity. In establishing a baseline position for trip generation, it could be argued that the site would only appeal to a single operator, for example a local builder, that has a need to store vehicles/plant and materials. Use of the site in this capacity would translate into limited potential for trip generation – perhaps 2 employees travelling to site in their own vehicles to collect work vehicles/plant that cannot be left outside their home address. This kind of operation would generate in the region of 4 car movements (two-way total) per day (employees arriving and departing) and perhaps 8 HGV movements (two-way total), i.e. 2 vehicles out in the morning, returning to site once during the day to collect additional materials, before returning to the compound later in the day. However, while this 'single operator scenario' may be realistic, it does not fully recognise the potential arising from lawful use of the site.
- The applicant's transport consultant has applied trip generation figures obtained from TRICS, which is the industry standard (Outside London) for estimating the likely trip generation of development proposals. TRICS uses a comprehensive database of surveys of sites with a wide range of land uses. However, in relation to the application site and the uses covered by the Lawful Development Certificate, the local highway authority is of the view that the use of TRICS provides inflated trip rate estimates. This is because the sites surveyed for TRICS are all commercially active and benefit from appropriate facilities. The application site as it is currently laid out lacks welfare and office facilities,



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meaning it is not plausible for 'all-day' activities to take place at the site. Furthermore, the inclusion of welfare facilities within the application site could not be provided under permitted development rights, meaning a planning application would need to be submitted to the local planning authority. In reviewing the Transport Assessment, the starting point for the highway authority must be one of a situation where the baseline trip generation has been overestimated.

- It is also pertinent to assert that the site has remained vacant for a period of time, despite being marketed in an attempt to attract occupiers, which is a strong indication of a prevailing lack of occupier demand. The lack of site activity is reflected in the fact the applicant has not sought to conduct a trip survey for the existing use, as the associated number of trips based on current observations would be negligible.
  - In the light of the above, a 'first principles' approach has been applied to arrive at a reasonable estimate of the baseline trip generation, based on the Lawful Development Certificate uses.
- a) **Commercial vehicles:** this use could legitimately involve a local bus/commercial vehicle company making use of the site. Employees (it is assumed that three employees would all arrive by private car) would generate trips to the site. In terms of operational use, it is assumed that commercial vehicles would leave the site to complete deliveries/public transport journeys (e.g. school trips), and drivers would return to the depot before completing similar tasks during the afternoon period. The corresponding trip generation for this use is as follows:
- Employees (departures and arrivals) = 12 movements (two-way total) per day (including trip out for lunch period)
  - Vehicles (departures and arrivals) = 12 movements (two-way total) per day (all large vehicles/HGVs)
  - **Total daily trip generation = 24 movements (two-way total), including 12 such movements by HGVs**
- b) **Cars for sale** (to include arrivals of cars to be sold): in all reasonableness, the likelihood of car sales taking place at site in the absence of welfare/office facilities is modest, and so the trip generation potential is based upon 1 part-time employee and limited turnover of vehicle stock. The daily trip rate is assumed to not exceed 8 movements per day, equating to two movements generated by one part-time employee and 6 movements relating to a combination of potential customers and new stock arriving.
- **Total daily trip generation = 8 movements (two-way total), all cars**
- c) **Builder's yard** (operational use): the type of operation that might take place at the site would be akin to an operation whereby a limited number of businesses (e.g. General Builder and/or Scaffold company) could use the site as a store

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compound. On the assumption that the site could accommodate the business needs of two businesses, each with 4 employees and 2 commercial vehicles, the resulting trip generation assumptions would be as follows:

- Employees (departures and arrivals) = 14 per day (based on one car share)
- Vehicles (departures and arrivals) = 8 per day (comprising 4 HGV movements and 4 Light Goods Vehicle (LGV) movements)
- **Total daily trip generation = 22 movements (two-way total), including 4 such movements by HGVs and 4 by LGVs**

d) **Storage of building materials and scrap:** it is assumed that this use would involve a number of deliveries to the site of scrap and bathroom equipment, but in the absence of office/welfare facilities the operations would be limited in nature. It is assumed there would be one temporary employee, which would generate 2 vehicle movements a day. Deliveries are assumed to amount to no more than 4 movements per day (2 arrivals and 2 departures), and customers would not exceed 10 movements per day (5 arrivals and 5 departures)

- **Total daily trip generation = 16 movements (two-way total), including 4 such movements by HGVs**

e) **Total trip generation**

**Total daily trip generation = 70 movements (two-way total), including 20 such movements by HGVs and 4 by LGVs**

#### COMPARISONS WITH CONSULTANT'S TRIP GENERATION ESTIMATES

##### LAWFUL USE

- The 'first principles' review of the LDC uses undertaken by KCC H&T (see above) has assumed that lawful uses at the site could generate an absolute maximum of 70 daily (two way total) movements, of which 20 would be HGVs. The number of HGV trips is broadly comparable with the assumptions made by DHA (23 movements). The significant difference is in the number of car/LGV trips, with DHA assuming 105 car movements a day compared to the local highway authority's calculation of 50 movements a day (46 cars, 4 LGVs), a difference of 55 vehicle movements.

##### PROPOSED USE

- There is no reference to End of Life Vehicles (ELVs) in the Trip Report prepared by DHA Transport dated January 2013. This has implications for the trip generation of the proposed use.
- Research into an existing ELV facility in Kent has evidenced that flatbed lorries are commonly used to transport ELVs to processing sites. While DHA's reference to the

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likely use of larger transporter vehicles is acknowledged and accounted for (see below), such are the concerns about highway safety that the use of larger HGVs (albeit less frequently) would be likely to give rise to a greater potential for vehicular conflict on the approach roads. Indeed, it may prove to be the case that larger vehicles could not reasonably access the site, meaning that a tonnage based approach would inevitably mean many more flatbed HGV movements.

- A flatbed lorry can only accommodate one ELV per load. Information presented in section 3 of the Trip Report explains that a total of 72 tonnes is expected to arrive at the site each day. It is then assumed that each load will be 6 tonnes, generating 12 trips in and 12 out per day. Taking the same weight of material (72 tonnes) arriving at the site per day, but allowing for the arrival of only one ELV at a time represents the worst-case scenario. This level of trip generation would amount to 72 HGV (two-way total) movements a day (i.e. 36 outbound trips and 36 inbound trips), which is a factor of 3 times the trip generation estimate stated in the Trip Report under the section titled 'Input Trips'. When adding the output trips (assumed to amount to 8 (two-way) movements per day), the total HGV generation from the proposed use amounts to 80 (two-way total) movements per day.
- DHA have responded (letter dated 19<sup>th</sup> March 2013) to the points raised by the local highway authority concerning trip generation to advise that:

*“the applicant has undertaken to enter into preliminary contracts with a number of fleet suppliers and other organisations, subject to planning, for the bulk recycling of ELVs.”*

- As indicated above, KCC H&T considers that 6 tonne loads represent an over-estimate of typical vehicle, but is willing to apply a degree of pragmatism to the discussion by applying a mid-point value of 2 vehicles (i.e. 4 tonnes) per load, which assumes the theoretical operation of the application site as an ELV facility might reasonably employ a combination of flat-bed lorries and larger transporters, if the latter can physically access the site.
- The HGV trip generation potential for the development proposal (to include 8 output HGV movements a day), when applying a mid-point value, is 44 HGV (two-way total) movements each day. This is an increase of 24 HGV trips a day above the KCC estimate for LDC uses of 20 such HGV movements, derived using a 'first principles' approach. An increase of 24 HGV movements a day, over and above the 'worst case' LDC scenario, represents a 120% increase in the intensity of HGV movements associated with the site. Furthermore, all such movements are additional to current levels of activity at the site.
- In DHA's update letter of March 2013, the number of movements likely to be made by cars and LGVs is estimated to be in the proportion of 45:55 compared with HGVs. This contrasts with a proportion of 55% cars and LGVs to 45% HGVs as presented in DHA's August 2012 Trip Report. KCC H&T is in agreement with the ratio applied

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in the August 2012 Trip Report. Against the DHA estimate of 32 HGV movements (and applying the 45% HGVs to 55% cars and LGVs ratio), this equates to 39 car and LGV movements. This is not disputed, hence there is no uplift in the figure, despite the higher estimate of HGV movements.

- Table 1 summarises the trip generation estimates of the respective parties for lawful use and the development proposal.

**TABLE 1. Comparison of DHA and KCC estimates for LDC and proposed use traffic generation**

Estimates for LDC uses	All Arrivals (HGVs)	All Departures (HGVs)	All Vehicles Total (HGVs)
DHA	63 (12)	65 (11)	128 (23)
KCC	35 (10)	35 (10)	70 (20)
Estimates for proposed development			
DHA	36 (16)	35 (16)	71 (32)
KCC	42 (22)	41 (22)	83 (44)

Given the serious concerns over highway safety and the potential for damage to roadside margins, and having regard for uncertainty over how the ELVs will be delivered, the potential increase in HGV movements, over and above the estimate of movements that might be associated with the lawful uses, is considered to be unacceptable.

**RECOMMENDATION** -Refusal for the following reason:

By reason of the limited width of Duck Lane, on-street parking on Church Lane, and limited facilities for pedestrians on the entire local approach route, the likely levels of HGV traffic associated with the proposed development would give rise to unacceptable vehicular conflicts, an increased potential for damage to highway margins, and danger to pedestrians and other vulnerable road users.

**46. Kent County Council Biodiversity Projects Officer** – Submitted comments to the original application and subsequent additional information:

- The proposal has the potential to result in ecological impacts and is adjacent to Ancient Woodland and within a Local Wildlife Site.
- Acknowledge that the footprint of the site has limited potential for ecological impacts as the whole site is hardstanding granted permission by ABC. We are aware that fencing and hardstanding has not been constructed as approved. If the site is being altered and impacts upon the surrounding habitat there will be a need to consider the direct impact the proposed works would have on the designated sites and protected species.
- No information has been submitted on the potential impacts on the designated

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sites. Concerned that the development would have result in the sites being negatively impacted by noise or dust.

- The area of hardstanding should be reduced in area.  
*[Following receipt of additional information]*
- Reiterate previous comments requested information is submitted assessing the potential impact of the development on designated sites and protected species. This has not been addressed in the submitted additional information.
- The submitted noise assessment does not consider the impact upon designated sites.

**47. Environment Agency – Submitted comments:**

- 8 October 2012 – Serious concerns as to whether the proposals can be operated to protect people and the environment, but if permission is granted then the following conditions should be imposed
  - A surface water management strategy is submitted.
  - Minimum 5 metre buffer adjacent to the watercourse for biodiversity and to reduce the chance of surcharge.
  - Buildings should incorporate flood resilience methods.
  - Finished floor levels should be as high as practicable.
  - Additionally submitted comments that they are uncertain that noise and vibrations can be mitigated to a level required for the environmental permit, therefore this should be considered through the planning process.
- 30 October 2012 – Object on the following grounds:
  - Consider management of waste heights and volumes of waste to be a material consideration when seeking an environmental permit. The amended plans appear to have reduced the site area giving the operator a compact site. Therefore there are concerns that the reduced area would affect the ability to grant a permit.
  - The noise report does not assess the impact of noise generated from the noise associated with the loading of processed metal into lorry trailers or containers. This would need to be considered for the permit.
- 13 November 2012 - Following the receipt of representations commenting on the fear of pollution and contamination, the question was put to the Environment Agency regarding potential contamination issues. A response was received as follows
  - The site has previously been used for commercial purposes therefore could have contained a possible source of contamination. However the site has since undergone a cleanup process which appears to have removed scrap metal and bathroom fittings and resurfaced the site. This clean up would likely have removed any potential sources of contamination – e.g. tanks and oil drums.
  - The area is underlain by Wealden Clay which has a low permeability. This will restrict the movement of groundwater and promote attenuation. This clay has a low risk of contamination.
  - The risk to groundwater is considered low because the clay contains properties which reduce the potential for viable pathways.

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- The ditch may be susceptible due to surface run off but the application contains details of pollution prevention measures to prevent contaminated liquid from entering the ditch
  
- 48. **Kent County Council Noise Advisor** – Objects: does not consider it appropriate for KCC to allow an application which would clearly result in adverse noise impact to residents. Furthermore it is considered highly unlikely that noise from the site could be suitably reduced to ensure acceptable noise levels prevail, therefore object on the grounds of certain loss of amenity to nearby residents due to noise emissions. (Comments are given in full later in the report). In response to further representation from the applicant's noise consultant further disputing the use of BS:4142 as the assessment methodology for this type of development and the relevance of the LDC to form the background noise levels, the County Council's noise advisor confirms his view that BS:4142 is relevant to this site and provides a valid tool for assessing the potential noise impact arising from the site.
  
- 49. **Public Rights Of Way** – Comments that although no development is proposed directly on either of the Rights of Way, if approved the activities on site will impact on users of the paths. In particular equestrian use of the Byway AW341 could be adversely impacted by the noise associated with the operating of machinery such as the crusher and crane are likely to be sudden. In order to reduce potential conflict with users of the byway I would request that a condition prohibiting access via the byway and restricting the number of HGV vehicle movements per day to the site. Advises further conditions; prohibiting the erection of furniture on or across the PROW; no disturbance of the PROW, or obstruction of its use, by the construction of the development or following; no crossboard fencing over 1.2m in height or similar structure which would block out the views; no hedging or shrubs to be planted within 1.0m of the path.
  
- 50. **Woodchurch Parish Council** – Objects to the application on the grounds that the site as at the end of a narrow country lane, the business would generate an increase in the number of lorries driving through Woodchurch, and industrial effluent could enter the adjacent watercourse.
  
- 51. **Kent Wildlife Trust** – No objection in principle due to the LDC, but offers the following comments:
  - The site lies within Local Wildlife Site (LWS-AS56) and was historically woodland habitat, which since its designation has been cleared and hard surfaced, so is now unlikely to meet the criteria for LWS designation.
  - Concerned that the nature and extent of the use could threaten the condition of the valued habitat immediately adjacent to the site – particularly the northern and south western boundary. A watercourse lies to the north, and the remnants of the Ancient Woodland to the south west.
  - In addition to pollution control conditions, urge the County Council (should permission be granted) to impose landscaping conditions that will secure tree planting along the sensitive boundaries to provide a buffer.

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- There is evidence of a woodbank, contemporary with the original Ancient Woodland, along the site frontage to Duck Lane. I would applaud efforts to avoid its loss.

**52. CPRE Protect Kent – Strongly objects, with two responses received:**

- 24 October 2012
  - The site has for many years been subject to abuse by owners, it has been a dumping ground for many objects and could be considered gross fly-tipping in the countryside.
  - The fact that it is in new ownership and has been tidied up does not weigh in favour of this proposal.
  - The site is unsuitable for such a facility. It is a rural site, access is down a narrow residential lane unsuitable for the type of traffic proposed, which cause noise and pollution for residents.
  - The development would be, and has been, completely at variance with the surrounding countryside. It would have detrimental affect on the enjoyment of the PROW, which has in the past been blocked by dumping.
  - This use should be on an industrial site in an urban setting, and no justification for this use has been established. There are similar sites in Ashford, and is not identified within the KCC waste plan.
- 6 February 2013 – after considering amendments maintain strong objections
  - The LDC gives permission for storage, not for destruction of ELVs.
  - Our view is that any business use of this site should be agricultural related which requires a rural site. The proposed use is not rural related therefore does not require a rural site.
  - There is no need for the site, as there are several in the Ashford area.
  - The site does not have good traffic connections to major roads for the type of vehicle this activity would generate.
  - Detrimental to enjoyment of the PROW.

**53. KCC Conservation Officer – No objections subject to heavy tree planting and landscaping proposals successfully screening the fencing, operations and scrap storage.**

**54. KCC Landscaping Officer – The site is in a sensitive location protected for its biodiversity and heritage assets, and a local wildlife site. Given this, the submitted scheme needs to be of a high quality. The submitted scheme requires further work.**

- Any landscape scheme should look to support identified landscape character objectives. It is unclear why the scheme refers to the Kent Downs AONB Management Plan as it is in the Low Weald and nearer to the High Weald AONB.
- Local wildlife site adjacent to the development will have its own species list, habitats and aims, and this should be incorporated into the management plan. The applicant has stated that their aim is to improve biodiversity,

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therefore this should be easily achievable.

- The management plan should be submitted for comment, including management for Areas 1 and 2 and any other areas of woodland owned by the applicant at this site. The plan should provide the overall aims for the site (stated by the applicant to improve biodiversity), the baseline and the actions to be taken to achieve stated aims. Consideration of heritage assets should be included given the status of the woodland.
- The hard standing that exists beyond the revised site boundary should be removed. These areas should be restored appropriately – natural regeneration is recommended given the proximity of an established seed source.
- The applicant must remove all Ash from the species list for planting, and all species should be native and of local provenance to avoid the spread of disease.
- The trees that remain along the boundary should be retained; advice from an arboriculturalist may need to be sought.
- The existing landscape proposals are not sufficient given the site's location close to sensitive ancient woodland, and the proposed use of the site. Therefore a plan should be submitted for additional screening. This should be designed to help mitigate the visual impacts, and offer additional habitat to replace that which has been removed (to be included in the management plan).
- The visual implications of the site have been underestimated, so additional work to screen the site and begin to mitigate the impacts of the development is necessary. The landscape proposals show no recognition of the importance of Ancient Woodland for heritage assets as well as biodiversity. Assessing heritage assets early on can provide vital information, which can be used to determine the most appropriate method to follow for site restoration schemes such as this.

55. **Upper Medway Internal Drainage Board** – No comments received.

56. **Weald of Kent Protection Society** – Object to the proposal. The application should be refused due to unsuitable location with adverse impacts on three grounds: increased HGVs down a narrow residential lane; noise pollution from vehicles and use of the scrap yard; concerns lubricants will seep and contaminate the soil and adjacent watercourse.

**Local Member**

57. The local County Member, Mr Mike Angell, was notified of the application on 14 September 2012. The following comments were submitted:

*"I fully and unreservedly support the objectors to this application. It is apparent to me that the site is not in keeping with the environment and would be, if approved, exceedingly detrimental to the area, and outlying villages. The report from Highways confirms my opinion as to the unsuitability and dangerous risk to the neighbourhood. It*



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*has also been made clear to me having read a copy of counsel opinion [sought by Ashford BC] that the site was and has been abandoned since the original application to Ashford Borough Council."*

### **Publicity**

58. The application was publicised by the posting of a site notice(s), an advertisement in a local newspaper, and the individual notification of 75 residential properties.

### **Representations**

59. In response to the publicity relating to the original application, and subsequent amendments and additional information, the following letters of representation have been received.
- 42 individual letters of objection.
  - 2 objection reports submitted through an agent on behalf of a residents group with 19 signatories.
  - A petition submitted to the Chairman of the County Council by the local member Mr Mike Angell, with approximately 218 signatories. A copy of the petition is appended to this report.

The grounds for objection can be summarised under the following headings:

#### Noise

- Vehicles would bring noise to residential area and country lanes.
- Scrap yard noise of crusher and plant would spoil quiet and tranquil rural character.
- Noise would have an adverse affect on PROW and adjacent LWS habitats.
- 12 hours a day, 6 days a week, industrial noise would spoil the area.

#### Highways

- Duck Lane and surround road are too narrow for HGVs.
- HGVs would cause damage to road surfaces, hedges and trees. There are currently very few HGVs, and the occasional few do cause damage.
- HGVs have caused damage to the water main along Duck Lane.
- Duck Lane is a no through road with no turning or passing places.
- HGV traffic would cause conflict with other road users, such as horses, walkers and cyclists, accessing the local PROW network.
- Residents park along Church Lane which is too narrow for HGVs

#### Pollution

- The dismantling of cars would result in lubricants and other chemicals contaminating soil and water.
- Pollution would have an impact on the adjacent habitat and watercourse.

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- Flood lighting would be detrimental to the adjacent Ancient Woodland and Local Wildlife Site (LWS).
- The applicant claims that they cleaned up the site, however there is no way that all the materials were removed as many lorries had been tipping rubbish in the woods over a period of 12 months+. The clean up took a few weeks. Most of the waste is unknown and has either been burned or buried in the woods and under the hard surfacing.
- The bagged rubbish didn't come out, only the scrap metal.

Flooding

- The site and the surrounding area at the end of Duck Lane regularly floods, thereby increasing the risk of contamination

Inappropriate and Sensitive Location

- The development would cause negative visual impact to the countryside location and sensitive designations, as well as the landscape character.
- There are more suitable sites, and there is a reason uses such as this are located in industrial locations, close to major roads.
- The development and the HGVs would cause harm to the character of the nearby Conservation Area and the setting of listed buildings.
- There is a serious risk of contamination due to the quantity of waste dumped in around the site, which has now been covered in hard surfacing.

Relationship to 'Existing Use' under LDC

- The site has never been used for anything more than the dumping of scrap and the occasional retail of bathroom equipment.
- The site has been largely overgrown and unused since 1992, therefore the claimed level of existing noise and highways is unfounded.
- The uses asserted in the LDC have never taken place and this was explained to the council before the LDC was issued.
- The LDC uses have never taken place in the proposal area, and the area which Borough Council approved, all that has ever happened was the occasional trading of bathroom equipment in and around the Glebe Farm house.

Sustainable Development

- The site does not lie near any public transport, and is at the end of a country lane, therefore goes against the principles of sustainable development.

Need

- There is no proven need for this facility in this location.
- There are several other facilities within the Ashford area with capacity.

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**Discussion**

60. In considering this proposal regard must be had to the Development Plan Policies outlined in paragraphs 34-41 above. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Therefore the proposal needs to be considered in the context of the Development Plan Policies, Government Guidance and other material planning considerations arising from consultation and publicity.
61. The applicant has based their case on the planning history of the site, and the existence of the Lawful Development Certificate (LDC) which allows for the *'parking and storage of cars and commercial vehicles servicing of cars and commercial vehicles and retailing of bathroom equipment, building materials etc., and use as a builders yard'*. The assertion is that the proposed change of use to a scrap metal yard is not materially different to the uses permitted under the LDC, and a comparison of the existing and proposed amenity impacts of the development mean there would be no material negative impact from the proposal. Therefore, the LDC is a key planning consideration in establishing the baseline planning permission and the 'fallback' position against which the proposal has been submitted. Ashford Borough Council, as determining authority for the LDC, strongly asserts that the lawful uses within the LDC have been abandoned which is backed up with a supporting argument drafted by counsel.

*Abandonment Argument*

62. In order to assess the amount of weight the County Council - as determining authority for the planning application but not for the LDC – could give to the claim of abandonment, legal advice was sought. The advice given states that the Ashford BC counsel's opinion does not constitute a strong argument on abandonment. The evidence available to us in the form of the planning history, especially the 2011 permission for fencing, weighs in favour of confirming that the LDC exists. Subsequently, the applicant made us aware that Ashford BC had circulated this 'opinion' amongst objectors to the proposal, but not themselves. Some objectors have also referred to the opinion within their representations, and an officer at Ashford has stated in an email 22 March that they intended for the 'opinion' to be made public. Therefore, in considering the abandonment argument this report will consider the opinion as forming part of the formal views of Ashford BC.
63. The applicant only had first sight of this opinion on 22 March, but have also sought their own Counsel Opinion on the applicability of the LDC in consideration of the 'baseline' position. Their advice concludes that that the evidence does not show that the uses have been abandoned, the Certificate is still applicable and hence capable of being a 'fall back' to establish the baseline for the current application.
64. Therefore, in considering this proposal, this report shall be structured to consider the planning merits of the proposal in the instance of a) the lawful uses being abandoned;

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b) the LDC uses being allowed in their entirety and to the interpretation of the applicant within the technical assessments; and c) the County Council's own views on the LDC.

65. Within this context the determining issues for this application are:

- The impact the development would have on the character and amenity of the area having regard to landscape, traffic and noise, and taking into account the planning constraints of the designated sites, the alternative fallback uses and the nearby residential properties;
- Whether any harm identified is outweighed by a need for the development.

*If the Lawful Use has been abandoned*

66. Objectors to the proposal, including Ashford Borough Council, have claimed that the site has remained unused for many years and that the lawful use has in fact been abandoned. Lawful Use Certificates are fundamentally different from planning permissions, in that they are statement of fact that a use has been ongoing and therefore immune from enforcement action - whether the claimed use breaches or conforms to any planning policies is not material to the granting of an LDC. Rights confirmed by a LDC may only be removed by revocation – Section 193(7) and (8) of the Town & Country Planning Act 1990 – where it is clear to the determining authority that a LDC has been erroneously based upon a false statement or misrepresentation, or relevant information has been withheld. Or LDC rights may 'fall away' by abandonment. Ashford BC state that they sought counsel's opinion which supports their view that the use under the LDC has been abandoned.

67. Given the rural setting outside any urban or village confines, adjacent designated sites, sensitive location, transport links and landscape amenity value, I am of the opinion that planning policy, the National Planning Policy Framework (NPPF) and the principles of sustainable development would presume against development in this location. Therefore any development on this site would not gain policy support, whether it is physical or operational. The conclusion would therefore be that if the LDC uses have been abandoned, and the planning unit returned to 'nil-use', the proposal submitted before us would not be supported by development plan policies and I would recommend refusal.

*If the LDC remains extant*

68. It is the opinion of the applicant that the lawful use remains as described within the 1996 LDC, and that the uses have not been abandoned. As stated above, the applicant has adopted the fallback position as the principle material consideration to assess the impacts of the proposal in comparison with what could lawfully take place on site. Following our own legal advice the County Council is not at odds with the principles of this approach, but this will be expanded upon later in the report. If this approach is adopted then the next step is to weigh the potential impacts against policy and other material considerations, on balance.

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Noise

69. The applicant has submitted a noise assessment, and subsequent amendments, in order to put forward a case that the proposed development does not produce a noise impact over and above the existing permitted noise impact. The submitted assessment states that the scrap facility would produce 81dB at the nearest noise sensitive receptor, Glebe Farm House. This is stated to represent a minor increase above the permitted 'existing' noise level under the LDC, which the assessment predicts to be 80dB. The conclusion put forward is that 1dB is well below the 3dB increase at which a perceptible change is perceived by the human ear, and therefore the proposal is acceptable. Additional information submitted by the applicant does put forward a number of mitigation measures which could further reduce the site noise level from 81dBA (A) to 71 dB(A), (although the submission refers to a reduction of 9dB(A) not the 10 dB(A) the calculations suggests).
70. The assessment and subsequent amendments have been reviewed by our noise consultant. Noise issues are a key material consideration to determining this planning application and I therefore set the comments in full below:

*"The Applicant's acoustic consultant has provided a further submission in response to previous comments made by Jacobs and KCC. The submission continues to promote that existing noise levels at nearby residential premises could theoretically be 80 dB  $L_{Aeq,T}$  under the potential current use as allowed by the Lawful Development Certificate (LDC). Thus, the submission continues to suggest that the proposed site will not result in adverse impacts. Nevertheless, the submission does put forward a number of mitigation measures which could reduce the site noise level from 81 dB(A) to 71 dB(A). (N.B. The submission suggests a 9 dB(A) reduction to 71 dB(A); therefore 1 dB(A) is unaccounted for).*

*Reiterating my previous comments, I consider the use of theoretical existing activities on site, as covered by the LDC, to determine the baseline noise conditions is inappropriate. Fundamentally, the site is unlikely to operate at such noise levels under the current 'permission'. That is, subjecting nearby residents to noise levels of 80 dB  $L_{Aeq,T}$  would certainly result in enforcement action from Ashford Borough Council (ABC) under the Environmental Protection Act (EPA) 1990 for noise nuisance. At this point it shall be noted that the nearest residential property to the site, Glebe Farm, is in fact occupied by the Applicant. However, the adjacent property is only some 15m further back, and therefore, site noise levels would only reduce in the order of 3 to 4 dB.*

*It shall be noted that a LDC or even conditions set through the planning process do not provide protection against action under the EPA. That is, under the EPA local authorities are required to prevent a noise nuisance from occurring or recurring. Therefore, despite a LDC, the site would still have a duty to minimise noise impacts on nearby receptors. In a similar way that a pub has a duty to prevent adverse impacts despite it possessing a music licence. Thus, noise levels from the existing 'permitted' use are likely to be well below 80 dB(A).*

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*In the circumstance that the LDC is considered relevant to define the baseline condition, e.g. a legal review, it is clear when considering the above that the site would not expose residents to noise levels approaching 80 dB, and if it did, the site would certainly be subject to actions under the EPA. Therefore, with a likely lower existing noise level from the site, the noise emanating from the plant proposed in the application of 71 dB(A) (mitigated) or 81 dB(A) (no mitigation) would likely be well in excess of this.*

*The determination of nuisance under the Environmental Protection Act is normally formed though both a qualitative approach, e.g. "would the noise interfere with one's enjoyment of their property" or "would the noise prevent one from resting", etc and through the use of measured noise levels. In the case of plant noise, an assessment in accordance with BS 4142 is usually undertaken to assist in determining potential noise impact. As such, a comparison is made between the background noise (LA90), without the activity occurring, against the noise level with the activity occurring. This approach would be appropriate at Glebe Farm, irrespective of a LDC or planning conditions.*

*KCC usually look for plant noise to not exceed the existing background noise level. This level provides a level of protection to residents and is typical of that stipulated by many local authorities. Although it is not known the limit which ABC's would consider appropriate, at worst it would be no greater than + 5 dB(A) of the existing background noise level. Thus, with a probable existing background noise level in the low to mid 30's dB(A) in the vicinity of Glebe Farm, a noise level of either 80 dB(A) (suggested existing noise level for activities under the LDC), 81 dB(A) (with proposal - no mitigation) or 71 dB(A) (with proposal - with mitigation) would exceed this by at least 40 dB. On this basis, in conjunction with the ABC's officer's subjective assessment of the noise, ABC would be required by law to serve a noise abatement notice to prevent a nuisance occurring. It is therefore clear that both the theoretical current use of the site and proposed future use of the site would result in severe adverse impacts to residents and would therefore be subject to a potential noise abatement notice.*

*To get some perspective, I have produced a list below of typical noise levels from a variety of sources representing noise levels between 70 dB(A) and 80 dB(A). These demonstrate the level of noise that, according to the Applicants Noise Assessment, residents would be exposed to:*

- 10m from a 40 tonne tracked excavator undertaking earthworks – 79 dB(A)*
- 10m from a 14 tonne tracked excavator undertaking earthworks – 70 dB(A)*
- 10m from a 41 tonne Bulldozer undertaking earthworks – 80 dB(A)*
- 10m from a circular saw cutting concrete blocks – 79 dB(A)*
- 10m from a 25KW diesel water pump – 71 dB(A)*
- 10m from a heavily trafficked motorway (e.g. M25) – 80 dB(A)*

*It is my consideration that to adequately consider the potential impact of this site, an assessment in accordance with BS 4142 should be undertaken. Furthermore, the baseline situation should be defined with no existing site activity. I would usually recommend a condition requiring no exceedance of the existing background noise level*

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*as per the standard KCC approach. I am minded though, due to the specific situation at this site, to compromise on a limit of 5 dB above the background noise level. However, it shall be noted that it is very unlikely that the site will be able to achieve such noise levels.*

*In summary, I do not consider it appropriate for KCC to allow an application which would clearly result in adverse noise impact to residents. Furthermore, I consider it highly unlikely that noise from the site could be suitably reduced to ensure acceptable noise levels (see above) prevail. Therefore, I would raise an objection to this site on the grounds of certain loss of amenity to nearby residents due to noise emissions."*

71. The Applicant's consultant has provided further representations disputing the use of the BS:4142 as the assessment methodology for this type of development and the relevance of the LDC to form the background noise levels. I note that the County Council's noise advisor confirms his view that BS:4142 is relevant to this site and considers that this provides a valid tool for assessing the potential noise impact arising from the site. The British Standard describes methods for determining, *at the outside of a building*: a) *noise levels from factories, or industrial premises, or fixed installations, or sources of an industrial nature in commercial premises; and b) background noise level.* The standard also describes a method for assessing whether the noise referred to in (a) is likely to give rise to complaints from people residing in the building. For noise assessment, the application site would be considered an "industrial premises", furthermore there is no reference in the Standard to it not being relevant to moving noise sources. Furthermore, discussions with officers from the Environmental Health Team of Ashford BC have confirmed that this is the approach that would be taken should it be necessary to establish whether a noise nuisance is occurring from the site.
72. It is considered that despite the LDC, the approach taken by the applicant is not acceptable. The existence of a planning permission or a use right arising under an LDC does not provide immunity to an action in noise nuisance. Noise levels emanating from the proposed application site, as presented by the applicants, would result in severe adverse impacts at nearby residential premises. Allowing the site to operate at such noise levels would be likely to lead to enforcement action by Ashford Borough Council under the Environmental Protection Act. (This position is confirmed by the Borough Council's Environmental Health Officer). The Applicant's defence that the site could operate at levels approaching 80 dB(a) under the LDC is not applicable as this does not protect them from action by the Borough Council. To minimise risk of adverse noise impact, a rating noise level emanating from the site not exceeding the background noise level by 5 dB assessed in accordance with BS4142 would be relevant. However it is highly unlikely that noise from the site could be reduced to meet this required noise level.
73. The Environment Agency has also raised concerns that the application indicates that the proposed site would be unlikely to operate without causing noise and vibration impacts to a level which would prevent the issuing of an Environmental Permit. They have requested that although the permit would set noise limits, there is no evidence that noise and vibration could be mitigated therefore this should be an issue considered at

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the land-use planning stage.

74. In consideration of the above, I am of the opinion that the proposed noise levels are not acceptable in planning or policy terms, as they would have a detrimental impact to the nearby residential property at a level capable of causing harm to human health and complaints under the Environmental Protection Act. On that basis the noise levels proposed would also have an adverse impact on the rural character, nearby habitats of the Local Wildlife Site and users of the adjacent PROW. Therefore the development is not acceptable under Saved Policies W3 and W7 of the Waste Local Plan 1998, or the principles of PPS10 and Sustainable Development within the NPPF. Indeed the NPPF seeks that the planning system contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at an unacceptable risk from, or being adversely affected by, noise pollution. The Framework requires decisions should ensure that new development is appropriate for its location. Paragraph 123 specifically states, *"Planning policies and decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life arising from noise from new development."* By way of explanation the text also refers to Noise Policy Statement for England (NPSE) (Department for the Environment Food and Rural Affairs), which applies to all forms of noise including environmental noise, neighbour noise and neighbourhood noise and sets out the long term vision of Government noise policy to: *Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.*
75. On the basis of the obvious noise impact that would result and the unlikelihood that noise levels could be adequately reduced to an acceptable level, the proposed development would be unsustainable and unacceptable.

#### Highways

76. The publicity process for this application has resulted in the receipt of a number objections, most of which relate to the impact that the proposed development would have upon the highway network and highway safety. Local residents are concerned that the increase in HGV movements along Duck Lane would result in damage to the highway, conflict with other road users (walkers, horses, cycles, and cars), additional noise and pollution, as well as impacts upon the residents of Duck Lane and Church Lane. Duck Lane is approximately 450m long and single track along its entire length, with few opportunities to pass and no formal passing places. It is a no-through road with a maximum width of 3m, which in places is stated to reduce to 2.7m. The adjacent verge is soft, and falls away steeply to a drainage ditch towards the Glebe Farm end of Duck Lane. Other users of Duck Lane are residential properties, and another business, Kent Tractors – although residents have stated that HGV movements are very occasional. Kent Highways and Transportation have recommended refusal of the proposal, raising concern about safety on Duck Lane and Church Lane; the inability for HGVs to pass on a long road with no passing places; inappropriate methodology to calculate potential movements; inappropriate comparison with a dissimilar facility; an unsustainable location; and a deficient site plan which does not show vehicle parking



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nor an area for HGVs to turn. The Highway Authority views are set out in detail in paragraph 45 of this report. Members will note that Kent H&T have challenged the number of proposed vehicular movements and considers that an estimate of 83 (44 HGVs) two-way total movements per day is more appropriate than the applicants assessment of 71 (32 HGVs).

77. The applicant had adopted a comparative approach in which they had estimated the 'existing' vehicle movements under the LDC by assigning the different uses proportions of the site area. On that basis the conclusion of the applicant was that the proposal would result in a net reduction in daily vehicle movements, however it would increase the total number of HGV movements.

*Relationship with the LDC*

78. The Trip Report considering traffic movements associated with the LDC had estimated a permitted number of vehicle movements, based upon several assumptions. Within these assumptions are that the activities under the LDC would utilise a 100sq.m building and a 300sq.m external area. When comparing a planning proposal against a fallback position, the correct approach would be to look at what can legitimately take place on the site without the need for any additional consent. A 100sq.m building would require planning permission, and it is likely the 300sq.m external area would also require permission if it required engineering of a concrete base. Therefore, in my opinion the Trip Report calculations are based upon a flawed assessment, and this indicates that the calculated 'existing' vehicle movements are overstated to some degree. Furthermore, Kent Highways and Transportation raise two additional concerns. Firstly it considers that the use of TRICS provides inflated trip rate estimates because the sites surveyed for TRICS are all commercially active and benefit from appropriate ancillary facilities. The application site as it currently is lacks welfare and other facilities that it is not plausible for all day activities to take place at the site. Such facilities would require planning permission in their own right. Secondly, the Trip Report assessment makes no reference to End of Life Vehicles (ELV) and the implications this has for the nature of vehicles to be used in transportation and for trip generation.

*Revised Trip Report*

79. In response to initial concerns with the Trip Report, the applicant revised the methodology as set out in paragraphs 24-25 above. The revised report isolated the 'builders merchant' use listed in the LDC description, and made it the sole use, under the assumption that this would not require any further planning permission and would result in a high level of activity and therefore a higher number of vehicle movements associated with the fallback position. The Report concludes that there would be a large reduction in residual daily vehicle movements but a minor increase in HGV movements. KCC Highways & Transportation initially responded that if the revised approach was appropriate in planning terms, then a solution would be to cap the vehicle movements via condition. Further consideration of the highway merits of the case has however concluded that this approach is not an appropriate one and the formal view of the

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Highway Authority is to recommend refusal as set out in paragraph 45 above.

80. I am advised that the approach of the revised trip report is also unsound in planning terms. The LDC allows for a sui generis mixed use for:

- Parking and storage of cars and commercial vehicles;
- Servicing of cars and commercial vehicles;
- Retailing of bathroom equipment, building materials etc.;
- Retail sales of up to six second hand cars; and
- Use as a builders yard

It is not appropriate in planning terms to isolate a single use and extend this over the entire planning unit as the principle use. To do this would amount to a material change of use requiring planning permission. To change the character and use of land by increasing one use, at the expense of other uses within a previously mixed use, would require planning permission. The separate LDC uses are not connected to each other's operation, therefore it is not possible to identify one as a primary use, nor the others as being merely ancillary. Therefore I am of the opinion that the mixed use approach of the original Trip Report is the correct basis for assessing the proposal in highways terms

81. In light of the above, Kent Highways and Transportation has adopted a 'first principles' approach to arrive at a reasonable estimate of the baseline trip generation, based upon the LDC uses. This approach assumed the operations of the lawful use at the site would generate a total of 70 (two-way total) daily movements, of which 20 would be by Heavy Goods Vehicles. The number of HGV trips is broadly comparable with the assumptions made by the applicant's highway advisors DHA (23 movements). The significant difference is in the number of car/LGV trips, with DHA assuming 105 car movements a day compared to the local highway authority's calculation of 50 trips a day (46 car trips, 4 LGV), a difference of 55 vehicle movements. The Table below compares the DHA estimates for traffic generation arising from the lawful uses, submitted in support of the application, with the estimates of KCC H&T. It also compares estimates for the proposed use (see paragraph 82 below).

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**TABLE 1. Comparison of DHA and KCC estimates for LDC and proposed use traffic generation**

Estimates for LDC uses	Arrivals (HGVs)	Departures (HGVs)	Total (HGVs)
DHA	63 (12)	65 (11)	128 (23)
KCC	35 (10)	35 (10)	70 (20)
Estimates for proposed development			
DHA	36 (16)	35 (16)	71 (32)
KCC	42 (22)	41 (22)	83 (44)

82. KCC H&T has challenged the number of proposed HGV movements and considers that the HGV trip generation potential for the development proposed (to include 8 output HGV one-way movements a day) is 44 (two-way total) HGV movements a day. This is based upon a combination of flat-bed lorry movements and larger transporters. This is an increase of 24 such HGV movements a day above the local highway authority's baseline trip generation value of 20 HGV movements a day for the lawful use of the site in applying a 'first principles' approach. The increase of 24 such HGV movements a day generated by the development proposal represents a 120% increase in the intensity of HGV movements compared with the highest estimate for the lawful use of the site. An increase of such magnitude needs to be considered in relation to the nature of the approach route, with particular regard for highway safety.

*Highway Safety*

83. Objections received to this application state that the proposed HGV movements would result in issues of highway safety on Duck Lane and Church Lane. The advice from Kent Highways is in agreement with this view on the grounds that Duck Lane is single carriageway with no passing places along its length. Specifically they comment:
84. "The site is accessed from Duck Lane, which is significantly constrained in relation to its use by Heavy Goods Vehicles (HGVs) between its junction with Church Lane and the site entrance. The measured width of the metalled surface of Duck Lane is 3.0m, compared to a minimum width of 5.5m for two HGVs to pass in free flow, and 4.8 metres for a car and a HGV to pass. Indeed, Duck Lane is not even wide enough for two cars to pass. The absence of vehicle passing places and/or off-site turning areas along the length of Duck Lane results in a situation whereby if one vehicle were to encounter another passing in the opposite direction there would be no opportunity for one vehicle to make sufficient room for the other vehicle to pass. Moreover, towards the south-western extent of Duck Lane the strip of vegetation adjacent to carriageway falls away relatively sharply to provide a drainage ditch to capture highway runoff. This poses a potential safety concern in those instances where an HGV were to encounter

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(say) a pedestrian or another vehicle and attempt to allow sufficient space to pass.

85. The layout of Duck Lane is so constrained that frequent vehicular use is not only likely to give rise to vehicular conflicts, but it is also likely to result in damage to the roadside margins and boundary treatments.
86. In the context of the 'wider' site access, Duck Lane is directly accessed from Church Lane. There is only a footway connection on the eastern kerbside of Church Lane, which provides an important pedestrian connection to local services. It is considered that the level of HGV movements associated with the proposed ELV facility at the application site could result in the increased potential for conflict between pedestrians and HGVs. Moreover, both sides of Church Lane are utilised by local residents parking, which narrows down the carriageway. Local residents park their vehicles 'on-road' on sections where there is limited forward visibility, and car drivers proceed with caution when passing along Church Road. Whilst appropriate for the current levels of usage, an increase in large vehicle movements along Church Lane could lead to associated hazards. The changing alignment of Church Lane, which restricts forward visibility along certain sections of carriageway, coupled with the presence of legitimate on street parking, means the receiving environment could not adequately cater for a steady flow of HGV movements to coincide with the proposed operating hours."
87. Likewise, other road users, such as horse riders, cyclists and walkers using the lane to access the PROW network would not be able to safely move out the way, especially at points where the drainage ditch is steep.
88. Even accepting there would be a certain amount of HGV movements associated with the lawful use of the site, due to the location, unsuitable road, distance from the primary road network and safety concerns, any increase would be unacceptable in policy terms unless there are significant material considerations weighing in favour of the proposal, due to the increase in harm to highway safety.

*Other issues*

89. Kent Highways and Transportation have commented that the site layout allows limited space for storage of scrap, which has implications for potential vehicle movements. Additionally, the site plan does not show any area for site parking or HGV turning. This would place an additional pressure on the site area and the availability of space to store scrap. If permission were to be granted, any condition placed upon stockpile heights would therefore restrict the storage capacity of scrap vehicles waiting processing. This has possible implications for highways movements and throughput which would need to be clarified for an accurate assessment.
90. In consideration of the above, I am of the opinion that the proposed development would result in an unacceptable level of HGV movements along a rural lane resulting in severe risks to highway safety for other road users. It is therefore contrary to development plan policy, the National Planning Policy Framework and the objectives of sustainable development.

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*Impact on Conservation Area and Listed Buildings*

91. As discussed above, there would be an increase in HGV movements resulting from the proposal. All HGVs would need to enter and leave the site via Duck Lane, using Church Lane to connect to the primary road network. The junction of Duck Lane and Church Lane is at the focal point of the St Peter & St Paul's Church Conservation Area, which also has a number of listed buildings, a small green with a listed pump, and an open area with the appearance of a village square.
92. In my opinion the introduction of an increase in HGVs, turning into and out of Duck Lane at this prominent point, would result in material harm to the character of the Conservation Area and the settings of the Listed Buildings/features contrary to development plan policies. Therefore, permission should only be granted if there are material benefits of the proposal which outweigh the harm.

Visual Impact and Landscaping

93. In discussion about the visual impact of the proposal, the applicant has stated that they have removed extensive quantities of rubbish from the site, and covered the area with hardstanding and fencing, approved retrospectively by Ashford BC. Therefore the existing appearance is of an open area, enclosed by 2.4m fencing surrounded by woodland. The Applicant may well have tidied up the site and improved the visual appearance of the site from its previous untidy state; however it has also significantly changed the appearance from its former rural nature. It is recognised that the Borough Council granted retrospective planning permission for these changes.
94. It is not possible to conduct a direct comparison with the visual impact of the lawful use with that of the proposal given the site is currently vacant; however an opinion can be reached on the information provided. The physical development would be set back into the site, incorporating the construction of a processing building, concrete base, weighbridge, office facility and operational plant. The remainder of the external area is envisaged to be used to store scrap vehicles waiting processing – although the exact layout of this storage has not been submitted by the applicant.
95. The LDC contains many elements which would have a similar appearance to the proposal, particularly the storage of cars. Therefore, this element could be viewed as being largely similar to the LDC. However, the building would introduce a new industrial element to the site, along with various plant, which could be viewed as having a negative impact on the surrounding area. On balance, I am of the opinion that – if the lawful use rights under the LDC are likely to be invoked – this application represents an opportunity to control and improve a potentially unchecked scrap vehicle storage use. The site layout could be conditioned, along with stockpile heights, as well as removing permitted development rights to ensure that any further proposals associated with the site are suitable for the location.

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96. Whilst there has been piecemeal erosion of this rural woodland site, planning permission has been granted by the Borough Council for fencing and hardstanding, which serves to formalise the LDC area. Therefore the opportunity presented at that time to seek to return the site to its original state appears to have been missed. Notwithstanding this, there may still be an opportunity to improve on the general landscaping scheme should Members be minded to support the development.

*Landscaping*

97. The applicant has submitted plans for planting and landscaping with this application. However, Members should note that this landscaping scheme is identical to that already required to be implemented and completed pursuant to a condition attached to the 2011 permission for fencing and hardstanding. The condition stated that the landscaping should be undertaken within one year, expiring December 2012. However, to date, no enforcement action or Breach of Condition notice has been issued by the borough council.
98. The 2011 permission has been acknowledged by the Borough Council as being implemented incorrectly, due to the area of hardstanding going beyond the limits of the red line boundary which forms the LDC area. Additionally, the fencing is erected beyond the boundary. If Members are minded to grant permission, I would recommend that conditions are attached requiring the removal of the excess hardstanding and fencing, and a landscaping plan submitted showing tree planting in these areas. The aim would be to secure a retreat of the hard surfacing and fencing which has been allowed to creep unchecked beyond the LDC boundary.
99. The KCC Landscape Officer is of the opinion that the submitted landscaping scheme is not sufficient. It refers to a landscape character area which is not related to the site. The Plan does not refer to the Ancient Woodland and its importance to heritage and biodiversity. Further work needs to occur to mitigate the proposal. The existing landscape plans would need to be improved to include additional planting and additional habitat to compensate for that which has been removed. Planting would need to incorporate native species of local provenance, omitting Ash, and the existing trees should be retained and protected. The hardstanding that has been laid beyond the permitted LDC line should be removed. A management plan for the landscaping would also be expected.
100. I am satisfied that additional and improved landscaping could be secured by condition. However, the scheme before me does not address these issues.

Pollution

101. A number of residents have expressed concern that the operation of this facility could result in contamination of the soil, groundwater and the nearby Whitewater Dyke, especially considering the location with Flood Zone 2 & 3. The Environment Agency is responsible for pollution control, and they have passed comments that there is a low risk of contamination due to the nature of the Wealden Clay soils, and details of

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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pollution prevention have been submitted. If permission is granted, I recommend conditions are imposed requiring submission of a surface water management strategy, incorporation of flood resilience methods to the construction of the buildings and pollution prevention measures. It is the responsibility of the Environment Agency as the relevant competent authority to control these issues through the Environmental Permit and approval of pollution control methods.

#### Location

102. The proposal involves the development of a waste processing activity on a rural site. Objectors to the proposal have stated that they believe a use such as this should be located in an industrial area, close to the primary road network, and not within the open countryside. Also that the proposed site is not allocated within the development plan for waste use.
103. The applicant is arguing that the site is suitable for waste development, because it is located within an 'established commercial area' due to the existence of the LDC, and another business 'Kent Tractors' along Duck Lane. Policy W3 of the Waste Plan 1998 states that unallocated sites can be suitable for Waste development provided they: *avoid the need for road access, or can gain ready access to the primary or secondary road network; are located within or adjacent to an existing waste management operation or within an area of established or proposed general industrial use.* The draft development management policies of the Core Strategy Policy Directions Consultation (Policy CSW6) support the view that industrial/employment land is suitable.
104. In my opinion the proposal site does not meet the criteria within these policies. The site does not enjoy 'ready access to the primary road network' required under Policy W3, due to its location 450m down a single track rural lane. Additionally, as discussed above, there would be unacceptable amenity impacts to sensitive receptors resulting from noise and highways. It is considered that the term 'industrial area' could imply an industrial estate location, with surrounding compatible land uses away for residential properties. This view is supported in the wording to the preamble to draft Policy CSW6 which refers to 'industrial estates'. Therefore, although a site may have historically been used for commercial activities, there are other material factors that need to be weighed in favour before it can be presumed to have policy support.

#### Ecology

105. In my opinion there are locational constraints, which when weighed against the amenity impacts of the proposal, on balance presume against the development. The proposal site is adjacent to Ancient Woodland, within an extensive Local Wildlife Site and alongside a watercourse. It had previously lain dormant for a period of years until the new owners took control, and would have (up until this point) had the potential for protected species. I agree with the view of the Kent Wildlife Trust in that the hard surfacing of this area has rendered it incapable of providing habitat for the LWS designation however it is unfortunate that protected species were not considered as part of the 2011 application. The KCC Biodiversity Officer is of the opinion that the

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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operation of the scrap processing facility (rather than the physical development) has the potential to impact upon the designated sites, and therefore habitats and protected species. A request was made for the noise assessment to consider the impacts upon the designated sites; however this has not been done. The officer also recommends that the excess hardstanding should be removed. Therefore, due to the deficient information I am unable to assess the impact the proposal would have upon biodiversity.

Need

106. There is a general policy support for recycling facilities. PPS10, the Waste Framework Directive and the emerging Waste Local Plan support the movement of waste up the waste hierarchy. The European End of Life Vehicle Directive requests a national target recovery rate of 95% to be achieved by 2015, and currently the UK is achieving approximately 81%. Therefore, there is an in principle support for facilities such as this to come forward, and no general necessity for allocated sites or to prove a capacity 'need'. Saved Policy W6 of the Waste Local Plan 1998 however, states that where a planning application would result in *'demonstrable harm to an interest of acknowledged importance, need will be a material consideration in the decision'*.
107. In my opinion the above assessments of the development demonstrate that the proposal, by virtue of its amenity and highways impacts, would cause harm. Therefore the application would have to prove an identifiable need sufficient to outweigh the harm.
108. The Council's Minerals and Waste Local Plan Team have advised that metal/ELV recycling facilities are well established in the county both with an excess of existing capacity well above current and future needs and in terms of geographic distribution. Therefore, Metal/ELV has not presented any specific need for the emerging Minerals and Waste Plan to identify sites for this specific waste management use. Additionally, there are a number of permitted and operational facilities within the Ashford area.

KCC Planning view on the LDC

109. It is acknowledged that the LDC, for the purposes of assessing this planning application, exists and is therefore a material consideration. I am advised that there is little evidence to support a case for abandonment, particularly in light of the 2011 retrospective planning permission for fencing and hardstanding. Ashford BC strongly believe that the site has been abandoned, which appears to have been prompted by evidence from objectors. However, there were objections raising the same points at the time of the 2011 application (for hard surfacing and fencing of the site) – this would have been the time, in my view, when this argument should have been put forward. Despite this, permission was granted under delegated powers, and therefore the lawful uses effectively reaffirmed. The officer's report confirms this as being the primary reason for grant of approval.
110. Ashford BC have also put forward comments that the 2011 permission has not been implemented properly – the fencing and hardstanding goes beyond the permitted



**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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boundary and the approved landscaping scheme has not been implemented within the conditioned timescale. However, no breach of condition notice or other enforcement action has been forthcoming. Although the applicant has amended this application to create an internal operating area that is conducive to the site area of the LDC, at the moment, the landscaping scheme relies upon plans that are evidence of a breach of condition.

*Fallback Position*

111. In considering the fallback position one of the tests is to prove whether there is a reasonable prospect of that position materialising. I am advised that it is appropriate that if we accept that the site has a lawful use then the assessment of the prospect for traffic and noise generation must reflect the full potential of that mixed use. However this becomes less of a consideration if we are not persuaded that the fall back position would be resorted to. Aerial photos, site photos, and representations from residents are evidence that the fallback position has not been in operation for a considerable number of years, the site having been vacant for a number of years. It could also be inferred that, since acquiring the site in 2010, the site has been prepared and an application submitted for a scrap facility, and on that basis the prospects are slight.
112. The impacts of implementing the fallback position would need to be high in severity or likelihood, so that approving a conditional planning permission for an alternative land use would be more favourable in land use and policy terms. The applicant in my view has demonstrated that the worst case scenario would result in unacceptable impacts upon the character and amenity of the area, but also that the proposal would have similar or potentially greater impacts. Although the applicant has stated they would invoke the fall back position, there is no supporting evidence that it would be utilised to the levels used in the baseline comparison.

*Baseline Levels of Activity*

113. As discussed above, I am of the opinion that the baseline levels of activity have not been proven to demonstrate that the proposal would not have a greater impact than the fallback position. The updated Trip Report utilises a methodology that uses one land use from the LDC, whereas the Noise Report assumes a worst case scenario from using all the LDC activities in combination. This mixture of methods is not a robust approach to demonstrating the baseline as there is no consistency to establishing the fallback position. Comments from my noise advisor suggest that the assumed noise levels of the fallback position have been presented at a level which is harmful to human health and would have given rise to enforcement action by the local authority, and would not gain an environmental permit.
114. The levels of activity - to the reasonable man viewing the site history, aerial photos, site photos, proximity of houses and general location - are likely to be viewed as being very low key. The intensity of use is likely to be limited by the inappropriateness of the location due to its poor access, proximity to local houses and sensitive location. It is from these considerations that the baseline should be established. In my opinion the

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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method should have been to calculate what activities and intensity would have resulted in a noise level not above background at the nearest sensitive receptor so as not to give rise to complaints. Once this activity level is established, then the likely vehicle movements, throughput, and physical impact could be properly calculated. This baseline would then need to be assessed against the properly implemented permissions on the site, with breaches remedied, in order to consider future proposals within the sensitive landscape setting, historic Ancient Woodland and ecological important Local Wildlife Site surroundings.

### **Conclusion**

115. The applicant is proposing to construct and operate a scrap metal facility within a site located at Glebe Farm, Duck Lane, Shadoxhurst. The foundation of the application is that there is an extant Lawful Development Certificate (although challenged by the determining authority, Ashford Borough Council) which allows a baseline level of activity against which the impacts of the proposal are compared. Whilst it is acknowledged that the LDC exists we should remember that we are considering a planning application for a waste proposal as the Waste Planning Authority and not what the LDC allows. We cannot 'go behind' the Certificate, as certainty of its interpretation would be a matter for the issuing authority and the Courts, however where appropriate, the level at which the lawful activities may take place has also been given due consideration in the specific sections of the report above.
116. The applicant sets out their fallback position, although the approach to establishing this differs for noise and highways issues. In the applicant's view, the proposal would not result in greater impact. However the case made for the fallback position asserts a level of activity that is not supported by recent evidence to be likely.
117. Notwithstanding the situation of the fallback position, the application would result in unacceptable harm to the character and amenity of the locality, through impacts arising from noise, traffic generation (particularly HGVs) and visual impact to the historic value of the Ancient Woodland, as well as causing harm to the character and setting of the Conservation Area and adjacent Listed Buildings. The demonstrable harm from the proposal has not been demonstrated to be outweighed by an overriding need for the facility. Although there is general policy support for recycling facilities, the application has not demonstrated an overriding need for additional End of Life Vehicle facilities, and there are several already operating within the Ashford area. The current status of the site, with a number of breaches identified by Ashford BC, also confuses the situation and the ability to conduct an adequate assessment of the planning merits. Therefore, I am of the opinion that the proposal is not sustainable development and that permission should be refused.

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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**Recommendation**

118. I RECOMMEND that PERMISSION BE **REFUSED** for the following reasons

- (i) The site is not identified within the development plan for waste facilities and given its inappropriate rural location, with poor access along a rural lane is considered to be contrary to the Kent Waste Local Plan Policies W3 and W9 and Policy CSW6 of the Minerals and Waste Local Plan Core Strategy – Strategy and Policy Directions Consultation May 2011.
- (ii) By reason of the limited width of Duck Lane, on-street parking on Church Lane, and limited facilities for pedestrians on the entire local approach route, the likely levels of HGV traffic associated with the proposed development would give rise to unacceptable vehicular conflicts, an increased potential for damage to highway margins, and danger to pedestrians and other vulnerable road users; the development is therefore contrary to National Planning Policy Framework, Kent Waste Local Plan Policy W3 and W9, Policy DM10 of the Minerals and Waste Local Plan Core Strategy – Strategy and Policy Directions Consultation May 2011, Policy CS15 of the Ashford Borough Council Local Development Framework Core Strategy and Policy TR18 of the Tenterden and Rural Sites DPD October 2010.
- (iii) Noise levels proposed in the application would result in severe adverse impact at nearby residential premises and it is considered unlikely that the proposed development would be able to operate at levels when assessed in accordance with BS4142 that would be considered acceptable and as such is contrary to National Planning Policy Framework, Kent Waste Local Plan Policy W18, Policy DM8 of the Kent Minerals and Waste Local Plan Core Strategy - Strategy and Policy Directions Consultations.
- (iv) The proposed development would have an unacceptable impact upon the nearby Ancient Woodland and Local Wildlife Site and as such would be contrary to national Planning Policy Framework, Kent Waste Local Plan Policy W9. Policy DM2 of the Kent Minerals and Waste Local Plan Core Strategy - Strategy and Policy Directions Consultations 2011, and Policies TR117 and TR18 of the Tenterden and Rural Sites DPD October 2010.
- (v) The proposed development by virtue of the associated traffic would have a detrimental impact passing through the nearby Conservation Area and passing by Listed Buildings and as such would be contrary to National Planning Policy Framework, Policy DM4 of the Kent Minerals and Waste Local Plan Core Strategy - Strategy and Policy Directions Consultations 2011.
- (vi) Traffic generated in association with the proposal would cause conflict with users going on to access Byway AW341 at the end of the lane and as such would be contrary to Policy DM11 of the Minerals and Waste Local Plan Core Strategy –

**Development of a scrap metal recycling facility for the processing and storage of End of Life Vehicles (ELV) with some Waste Electrical and Electronic Equipment (WEEE), construction of a concrete slab base, 93sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher at Glebe Farm, Duck Lane, Shadoxhurst, Kent, TN26 1LT - KCC/AS/0306/2012 (12/1042/AS)**

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Strategy and Policy Directions Consultation May 2011, and TR18 of the Tenterden and Rural Sites DPD October 2010.

- (vii) There is no proven need for the proposed development and as such the proposal is contrary to policy W6 of the Kent Waste Local Plan and Policy CSW16 of the Kent Minerals and Waste Local Plan Core Strategy - Strategy and Policy Directions Consultations May 2011
- (vii) The proposed development is contrary to the National Planning Policy Framework, 2012 in that it fails to achieve the concept of sustainable development.

I further RECOMMEND that I be granted delegated authority to finalise the exact wording of the grounds of refusal.

Case Officer: Andrea Hopkins	Tel. no: 01622 221056
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Background Documents: see section heading
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**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

**The 1998 Lawful Development Certificate APPENDIX 1**

**1996 LDC DECISION**



BOROUGH PLANNING OFFICER  
 & DEPUTY CHIEF EXECUTIVE  
 Anthony Slack MRTPI

TOWN AND COUNTRY PLANNING ACTS  
 TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDERS

Determination as to whether planning permission is required  
 Application no: 96/0256/AS

Applicant MR J E RIPLEY  
 C/O JOHN BISHOP & ASSOCIATES

Date of  
 Application: 29.02.96

Correspondent JOHN BISHOP & ASSOCIATES  
 HALDEN HOUSE  
 HIGH HALDEN  
 ASHFORD KENT TN26 3BT  
 FAO: MR R STEVENSON

Date of  
 Decision: - 6 MAR 1998

**Description and Location of Application**

APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE EXISTING  
 DEVELOPMENT: PARKING AND STORAGE OF CARS AND COMMERCIAL  
 VEHICLES SERVICING OF COMMERCIAL VEHICLES STORAGE OF SCRAP  
 STORAGE AND RETAILING OF BATHROOM EQUIPMENT BUILDING MATERIALS  
 ETC AND USE AS A BUILDERS YARD  
 GLEBE FARM DUCK LANE SHADOXHURST (TQ 966 374)

- 01 That Ashford Borough Council hereby certify that on 1st March 1996 the development described in the first schedule thereto in respect of the land specified in the second schedule hereto and edged black on the plan attached to this certificate would have been lawful within the meaning of the Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

- (a) That the certificate be issued as the use of the site for  
 Parking and storage of cars, parking of three commercial vehicles,  
 servicing of those commercial vehicles, storage of scrap, storage  
 and retailing of bathroom equipment, building materials etc.  
 retail sales of up to six second hand cars and use as a builders  
 yard has been for a period in excess of 10 years and is therefore  
 immune from enforcement action under Section 171 of the Town and  
 and Country Planning Act 1990 (as amended).

**FIRST SCHEDULE**

Parking and storage of cars and commercial vehicles servicing of  
 cars and commercial vehicles servicing of commercial vehicles  
 storage of scrap storage and retailing of bathroom equipment  
 building materials etc and use as a builders yard.

**SECOND SCHEDULE**

Glebe Farm, Duck Lane

Application 96/0256/AS continued on next page

ASHFORD  
 An area of  
 INVESTMENT  
 OPPORTUNITY

**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

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ASHFORD BOROUGH COUNCIL

BOROUGH PLANNING OFFICER  
& DEPUTY CHIEF EXECUTIVE  
Anthony Slack, MRTPI

Application 96/0256/AS continued from previous page

Borough Planning Officer C-

Refer to the Statement of Applicants' rights and General  
Information attached hereto.

NP



ASHFORD BOROUGH COUNCIL  
Planning Department

**ASHFORD**  
an area of  
INVESTMENT  
OPPORTUNITY

**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

---

**ASHFORD**  
BOROUGH COUNCIL



CIVIC CENTRE,  
TANNERY LANE,  
ASHFORD,  
KENT TN231PL

(01233) 637311  
Fax No (01233) 645654  
DX 30204 Ashford (Kent)

**NOTES:**

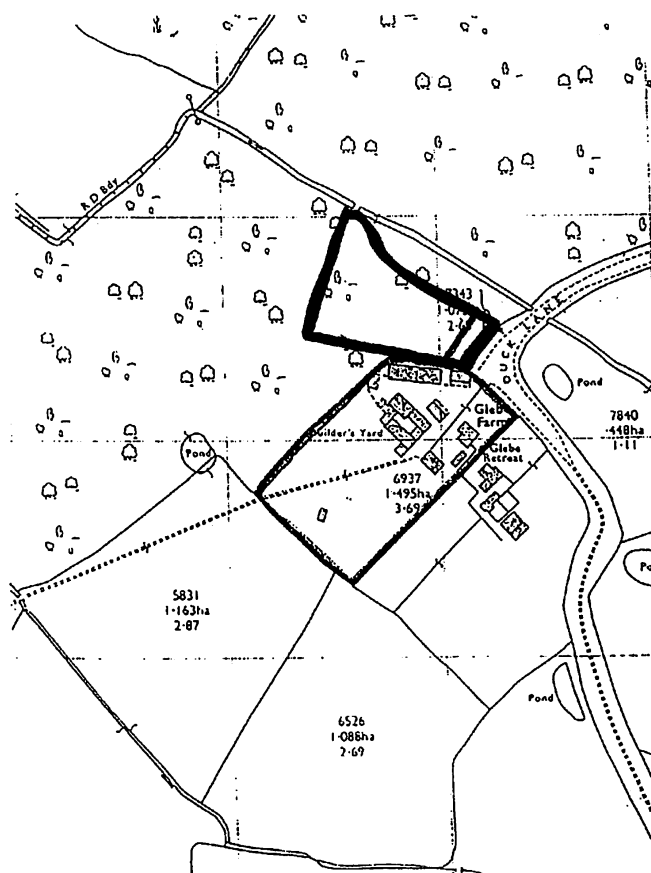
1. This certificate is issued solely for the purpose of section 191/192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/~~operations/matter~~ specified in the First Schedule taking place on the land described in the Second Schedule was/~~would have been~~ lawful, on the specified date and, thus was not/~~would not have been~~ liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use/~~operations/matter~~ described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/~~operations/matter~~ which is materially different from the described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

96/256

GLEBE FARM, DUCK LANE, SHADOXHURST

Application for Lawful Use Certificate



Scale 1:2500

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96/10/A



**Halden House  
High Halden, Ashford  
Kent TN26 3BT  
Tel: 01233 850541  
Fax: 01233 850573**



**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

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BOROUGH PLANNING OFFICER  
CITY CHIEF EXECUTIVE  
COUNCIL CLERK

Department Fax : (01233) 330682  
Direct Dial : (01233) 330247  
Case Officer : Mrs C Ridings

Application No: 96/0256/AS  
Date

9- APR 1998

Dear Sir/Madam,  
APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE EXISTING DEVELOPMENT:  
PARKING AND STORAGE OF CARS AND COMMERCIAL VEHICLES SERVICING OF  
COMMERCIAL VEHICLES STORAGE OF SCRAP STORAGE AND RETAILING OF BATHROOM  
GLEBE FARM DUCK LANE SHADOXHURST (TQ 966 374)

NOTIFICATION OF DECISION.

You recently sent me your observations on the above proposal which has now been formally considered. Any proposal which attracts objections must be determined by the Members of the Borough Council and the appropriate Committee will have been informed of all representations before arriving at its decision.

I must inform you that the Borough Council has determined that a planning application is not required for the specified proposal.

A copy of the decision can be inspected in the Planning Department Ashford or by prior arrangement at the Council's Office in Tenterden. A copy of the decision notice has also been passed to the Parish Council (where appropriate).

Yours faithfully,

ANTHONY SLACK

Borough Planning Officer

CPRE KENT  
COLDHARBOUR FARM  
WYE ASHFORD KENT  
TN25 5DE

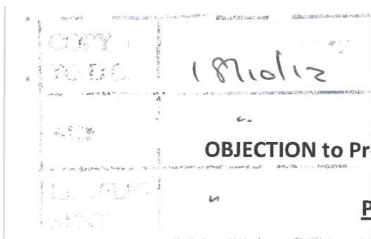
ASHFORD  
an area of  
INVESTMENT  
OPPORTUNITY

# Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS

## APPENDIX 2

### Petitions Received

#### Petition 1



Cooper & Associates

#### OBJECTION to Proposed Recycle Facility at Glebe Farm, Duck Lane, Shadoxhurst

PLANNING REFERENCE PAG/KCC/AS/0306/2012



#### Executive Summary

This document represents the summary of concerns expressed by residents of Shadoxhurst Village and immediate environs to the Application for processing End Of Life Vehicles at Glebe Farm. Their concerns are detailed in the main document but are expressed in simple summary as follows:-

- 1) The site is located within Ancient Woodland and is itself noted as a Local Wildlife Site by Kent County Council. The site was until recently a quiet, overgrown location but has been cleared by the current owners with scant regard for the damage done to local habitats.
- 2) The site has not been used for major business activity in the last 40 years as can be evidenced by residents of very long standing in the village. Residents should be allowed to continue to enjoy that peace and quiet.
- 3) The site is accessed via Duck Lane, which is a very narrow lane of shallow construction with no footway provision and soft verges. The lane is less than half the width recommended by Kent County Council and others as being the minimum standard for an Industrial Site Access.
- 4) Duck Lane is used by many villagers and ramblers from further afield to access the woodland walks. Residents also walk along the lane to access village facilities. Introduction of large HGV's will be very hazardous.
- 5) Duck Lane has old residential dwellings fronting onto it, including Grade II listed buildings that will become compromised by heavy traffic use
- 6) The access road to the site regularly floods, as do parts of the site. This is evidenced by the Environment Agency who confirms it is in Flood Zones 1, 2 and 3. This suggests a significant risk of regular contamination by oils and chemicals in the event of inundation of the site.
- 7) The site is now and has always been very quiet. It will be changed out of all recognition to the detriment of the ancient woodland around it if consent is granted.
- 8) If granted the development will bring unacceptably high levels of noise, dust, dirt, odours and bright artificial light into the heart of Ancient Woodland with consequent risks of impact on local wildlife.
- 9) The claimed levels of traffic use will have a severely detrimental impact on all village roads that are not appropriately sized to deal with large numbers of large vehicles.

**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

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**Petition 1  
Continued**

OBJECTION to Proposed Recycle Facility at Glebe Farm, Duck Lane, Shadoxhurst  
PLANNING REFERENCE PAG/KCC/AS/0306/2012

*Appendix A*  
*Schedule of Shadoxhurst Residents supporting this Objection*

Signed by 19 petitioners

# Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS

## Petition 2

Cooper & Associates

OBJECTION to Proposed Recycle Facility at Glebe Farm, Duck Lane, Shadoxhurst

PLANNING REFERENCE PAG/KCC/AS/0306/2012



### Executive Summary

This document represents the summary of concerns expressed by residents of Shadoxhurst Village and immediate environs to the Application for processing End Of Life Vehicles at Glebe Farm. This is a supplemental note to the one issued at time of original application and addresses the information in the revised application and further information provided by both Ashford Borough Council and Kent County Council. The residents concerns are detailed in the main document but are expressed in simple summary as follows:-

- 1) The applicants case relies wholly upon a Lawful Use of the development site. It is the opinion of Counsel, as engaged by Ashford BC, that there is no meaningful Lawful Use to rely upon as evidenced by available documents and records. Accordingly the proposed redevelopment and use of the site is wholly unacceptable due to environmental, highway and safety impacts on the village of Shadoxhurst.
- 2) The Highway Officer comments from Kent County Council Highway Department calls into question the validity of the Applicants assessments of traffic and noise as well as confirming our own opinions as to inadequacy of the access road, lack of safety margins and suitability of the highway for such high level of use. The KCC comments are based on an acceptance of the Applicants claimed Lawful Use – that use is now abandoned and as such KCC Highway concerns and objection will undoubtedly strengthen as a result.
- 3) The Applicants revised information and explanatory note do not materially change the facts of the matter as noted in the body of this response.
- 4) The new information and opinion from Counsel shows that the impact of the proposed development will be far greater than that envisaged at the outset and are therefore wholly unacceptable in a rural village location next to Conservation Area, Ancient Woodland and areas of ecological and environmental sensitivity.

### Introduction

The application is for the storage and processing of End of Life Vehicles on a small rural site in the village of Shadoxhurst. The additional information submitted by the Applicants in January 2013 is to correct errors in the original application regarding size of the site and to address concerns from consultees. Ashford Borough Council sought Counsel Opinion on the matter of Lawful Use of the site as this forms the central plank of case for the Applicants. Kent County Council has provided detailed Highway comments about the application. Following review of all the new information, this note is a formal OBJECTION to the proposals for reasons that are

**Development of a scrap metal recycling facility, Glebe Farm, Duck Lane, Shadoxhurst, Kent KCC/AS/0306/2012 12/01041/AS**

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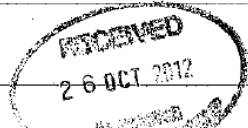
**Petition 2  
Continued**

OBJECTION to Proposed Recycle Facility at Glebe Farm, Duck Lane, Shadoxhurst  
PLANNING REFERENCE PAG/KCC/AS/0306/2012

*Appendix A  
Schedule of Shadoxhurst Residents supporting this Objection*

Signed by 19 petitioners

**Petition 3**



**Petition against Glebe Farm Planning Application**

**KCC Application:** KCC/AS/0306/2012 dated 12/9/2012

**ABC Application:** 12/01041/AS dated 17/9/2012

We, the undersigned, wish to register our objection to the above application for the "*Development of a facility for the processing and storage of end of life vehicles (ELV), with construction of a concrete slab base, 93 sqm processing building, weighbridge, portable cabin and welfare facilities, and use of a mobile crane and crusher*" at Glebe Farm, Duck Lane, Shadoxhurst, Kent.

Signed by 218 petitioners