A report by Head of Planning Applications Group to Planning Applications Committee on 11 December 2013.

Retrospective application by CLC Construction Ltd., for a change of use from car breakers yard and storage of damaged vehicles and trailers to depot with site office and open storage of inert spoil from road excavations and installation of lighting at Westdene, Whetsted Road, Five Oak Green, Tonbridge, Kent, TN12 6SD.

Recommendation: Permission be granted subject to conditions.

Local Member: Alex King

Classification: Unrestricted

Site description

- 1. The site is located to the west of Whetsted on the south side of Whetsted Road. The A228 Whetsted Road connects Pembury and Tunbridge Wells to the south west of the site with Maidstone to the north east. The site is approximately 200 metres in length and is bounded by a plant nursery to the west, a well screened residential property to the east (approx. 50 metres from the site) and open land to the south. Beyond the plant nursery to the south west of the site (approx. 180 metres) is another substantial residential property, known as Sebastapol, although this screened to some extent by small woodland. The northern boundary of the site fronting Whetsted Road is formed by a mature hedgerow set behind a post and rail fence. The fencing is set well back form the edge of the carriageway to provide a wide verge.
- 2. The area at the eastern end of the site is concreted and accommodates offices and storage buildings together with operational parking. The western end of the site comprises open storage. The site is relatively flat and fairly well screened from the road.
- 3. The application site is located within the Metropolitan Green Belt.
- 4. CLC Construction occupies the site and this application seeks retrospective planning permission to change the use of the site. The Applicant company undertake reinstatement works on behalf of a variety of utility companies. After a utility company dig a hole in the road and/or pavement to undertake maintenance or repair works, CLC will fill and finish the public highway. They reinstate approximately 600 holes per day across the South East. Their work consists of reinstating the highway and also removing the remaining spoil which is taken back to the depot.

Fig 1. Site Location Plan

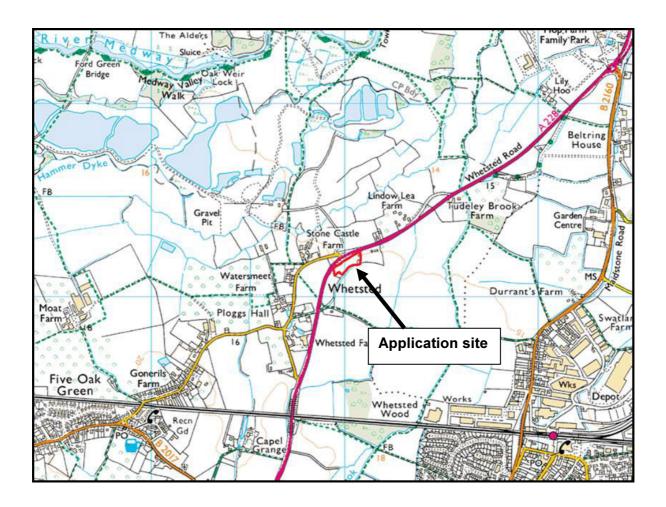
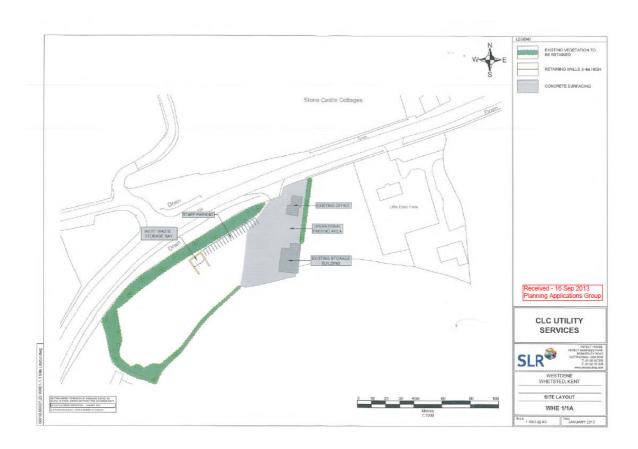


Fig. 2 Site Layout Plan



Planning History

- 5. The application site has been used for a number of storage and scrap vehicle uses over the years and I set out the chronological order of planning applications submitted to the Borough Council below.
 - TW/79/0321 Retrospective planning application for workshop and storage building Appeal dismissed.
 - TW/80/0976 Retrospective planning application for replacement workshop and storage building for motor vehicle repairs and dismantling – Appeal dismissed.
 - TW/80/1159 Change of use to breakers yard Permission granted.
 - TW/81/1201 Retrospective planning application for workshop and storage building for motor vehicle repairs – Tunbridge Wells Borough Council records show decision as "Deemed Refused (Historic Use Only)".

TW/84/0671 – Change of use from agriculture to storage of agricultural plant
Refused

- TW/84/0672 Retrospective planning application for workshop and storage building in connection with dismantling and repair of vehicles and parts – Refused.
- TW/86/1093 Use of land for storage of accident damaged vehicles and trailers Appeal allowed for temporary period.
- TW/87/1817 Retention of workshop/store building Appeal allowed.
- TW/92/1228 Lawful Development Certificate for use as a vehicle breakers yard Certificate Confirmed as Lawful. (Eastern end of site)
- TW/95/10989 Continued use of land for storage of damaged vehicles and trailers (renewal of TW/86/1093) – Temporary permission granted until17 January 2001. (Western part of site)
- TW/96/1322 Continued (and permanent) use of land for storage of accident damaged vehicles and trailers Appeal allowed. (Western part of site)
- 6. The significant planning history can be described as follows. Planning permission was granted on appeal for the temporary use of land for storage of accident damaged vehicles and trailers, and the retention of the workshop/store building in January 1989. In April 1993 Tunbridge Wells Borough Council issued a Lawful Use Certificate for the use of the eastern part of the application site as a vehicle breakers yard, although the plan attached to the permission on the Council website indicates that this permission covers the whole of the application site (Permission TW/92/1228). No restrictions were placed on this Certificate and therefore the storage and breaking of vehicles can operate 24 hours per day, with no limits on the height of vehicles stored within the site. A further temporary consent was granted for continued use of the land for storage of damaged vehicles and trailers. In January 1998 following an appeal, permission was granted on a permanent basis for the use of the central and western part of the site for the storage of accident damaged vehicles and trailers. The permission is limited to this use but is a permanent permission and allows the stacking of vehicles up to a height of 5m across the site and it is against this background that the current applications should be considered.

Proposals

7. Following protracted negotiations and a change of Agent this application has now been amended so that there is no longer any intention to process any of the waste material on site. The proposal no longer seeks planning permission for the crushing and screening of the aggregate on site. What is now proposed is that the site be used as depot for the Applicant and that only small quantities of inert waste are brought back to the site at the end of every day. That waste would be stockpiled and bulked up for onward transfer to a suitable reprocessing facility. It is that minor element of waste handling that makes it appropriate for the County Council to deal with this planning application rather than the Borough Council. In all other respects the site operates as a local depot for the Applicant Company.

- 8. As set out above the Applicant carries out excavation works created by utility contractors. At the end of the day the company lorries often return to site with small volumes of surplus excavated inert materials in order of 0.5 cubic metres per vehicle. This material would be deposited within the designated area shown on the layout plan. This storage bay area would be created by three 3 - 4 metre high retaining walls constructed of interlocking concrete blocks. The maximum amount stored at any one time would be no more than 50 - 60 cubic metres of material, equating to an area of around 10m x 10m. The material would be removed from site in bulk loads of 10 -15 m³, taken for reprocessing offsite (i.e. Gallaghers in Maidstone) into material suitable for backfilling. The same vehicle would collect recycled material suitable for reuse by the Applicant for backfilling reinstatement works. This imported material would be stored in an area adjacent to the waste storage bay, in similar volumes and over a similar sized area (i.e. 10m x 10m). The development would generate between 120 and 150 vehicle movements per day. The Applicant currently operates around 9 light goods vehicles and 23 HGV's (of varying sizes) from the site, although this varies over time. The Applicant's Operators Licence allows for up to 26 HGV's.
- 9. It is proposed that the hours of operation would be 0600hrs 1900hrs Monday to Sunday (with the exception of emergency reinstatement works).
- 10. The proposal also includes the installation of lighting at the site.
- 11. Members will note this is a retrospective application and the site as been operating as proposed for approximately 2 years.

Planning Policy Context

- 12. **National Planning:** The National Planning Policy Framework came into force on 27 March 2012; it replaces all previous national planning policy guidance. However, the framework does not contain specific waste policies since national waste planning policy is to be published alongside the National Waste Management Plan for England. Pending this, Planning Policy Statement 10 (Planning for Sustainable Waste Management) is to remain in place. The other matters addressed in the framework primarily carry forward previous national planning policy guidance.
- 13. The NPPF presumes in favour of sustainable development. Sustainable development seeks to ensure that society can meet the needs of the present without compromising the ability of future generations to meet their own needs. The Framework also refers to the UK Sustainable Development Strategy Securing the Future which sets out 5 guiding principles for sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society, achieving a sustainable economy; promoting good governance and using sound science responsibly. In terms of the planning system, the NPPF identifies that there are 3 dimensions to sustainable development which create 3 overarching roles in the planning system -- economic,

social and environmental. These roles are mutually dependent. In facilitating the delivery of these roles the Framework also requires that local planning authorities should look for solutions rather than problems. It states that those determining applications should seek to approve applications for sustainable development where possible. Specifically relevant to this proposal is the chapter on Green Belt Land which sets out Government policy on inappropriate development and the use of previously developed land and the potential for greater impact on the openness of the Green Belt.

- Kent Waste Local Plan (Saved Policies) (March 1998): Policies W3 (Locational Criteria), W6 (Need), W7 (Re-use), W9 (Separation and Transfer Location of facilities), W18 (Noise, Dust and Odour), W19 (Surface and Groundwater), W20 (Land Drainage and Flood Control), W22 (Road Traffic and Access), W25 (Plant and Buildings), W21 (Landscaping).
- 15. **Kent Minerals and Waste Local Plan Draft:** Draft Policy CSW16 of the Kent Minerals and Waste Local Plan: Strategy and Policy Directions Consultation (May 2011) which supports other forms of waste development subject to there being a proven need and no unacceptable harm to the environment or communities.
- 16. **Tunbridge Wells Borough Local Plan:** Policy MGB1 (Maintain the openness of the Green Belt).
- 17. Tunbridge Wells Local Development Framework Core Strategy Development Plan Document June 2010: Core Policy 2 (presumption against inappropriate development that would not preserve openness of the Green Belt).

Consultations

18. Consultations were carried out and the following comments received:

Tunbridge Wells Borough Council: No objection

Capel Parish Council: The site situated in the green belt would have a detrimental impact on highway safety and although the light installation has undergone some adjustment it still has a significant harmful impact on the neighbouring properties and highway.

Environment Agency: No objection subject to drainage details being agreed by condition

Kent County Council Highways and Transportation: The application has now provided details of visibility splays available at the access and having revisited the site it is noted the splays have been cleared and visibility is much improved. Whilst the applicant has been unable to provide any detailed history and traffic associated with

the previous uses, it is evident that the previous authorised uses included a vehicle breakers yard, and storage of damaged vehicles and trailers all of which would have involved access by large vehicles. It is noted that this use has been on site since 1 November 2010 and having checked the crash data and found no recorded crashes associated with the recent use of the access. Therefore on balance it is considered that it would be difficult to resist the use in highway terms subject to a condition to cover provision and maintenance of the visibility splays and parking and turning areas.

KCC Noise and Dust Consultant (Amey): Consultations were carried out on the proposals when it was still intended to carry out aggregate crushing and screening at the site. Concern was raised about the potential of noise levels associated with the operation of plant associated with those activities. Since those elements of the proposals have been removed the potential for noise disturbance would arise at a result of general activity and vehicles moving about on site. The main mechanism for controlling noise generation would be by restricting the hours of operation, so no further advice was sought from our noise consultants. There were no concerns relating to dust arisings.

KCC Biodiversity Comments: No objections.

CPRE Protect Kent: Acknowledge the historical use of the site and therefore consider the proposed change of use is reasonable but only if subject to strict and enforceable conditions to protect the landscape and the environment. If the application is approved it should be subject to: a) a condition requiring improved landscaping of the site perimeter, with tree or native hedge planting, b) a condition restricting the hours of use between 6am and 7pm, c) conditions requiring approved noise and dust control measures, d) a condition requiring a full lighting plan to be approved, with no lighting permitted between 7pm and 6am, e) a condition requiring approved measures to ensure that there will be no pollution of watercourses, f) a condition limiting the number of HGV movements.

Representations

- 19. The application has been publicised both by site notice and newspaper advertisement and the nearest neighbouring properties were notified. A second round of neighbour notification was carried out following receipt of some additional details, and following the withdrawal of the crushing and screening elements a third round of notification was carried out and letters were sent to those who had written in originally (4 letters). Two letters of representation have been received since that final round of consultation The following comments are made:
 - Activities at the site have been taking place at the site beyond 11pm at night; operations should be restricted to normal working hours to limit noise impact.
 - The site activities are noisy.
 - There have been issues with dust contamination arising from the site.
 - The proposals would result in increased local business traffic, especially at

early evening / early morning on a dangerous junction.

• Objections to lighting, especially early evening and through the night.

Local Members

- 20. The County Council Member Mr Alex King was notified of the application. He commented that local residents concerns are as follows: the site was previously used as a scrap yard and there was never any noise or out of hours working and although the Borough Council planners advised there were no restrictions on noise levels or hours of working this was because there was no need because of the way the site operated; the site is already being used 24 hours a day; it is noisy and the floodlights are on all night; there are pollution risks to the local water courses; there are fire risks and the site is unsuitable for this type of activity.
- 21. Mr King has been re-consulted on the additional details and also when the application was amended so that processing activities were dropped from the proposals. No further comments have been received to date.

Discussion

- 22. <u>The Development Plan</u> Specifically Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. Material planning considerations include the National Planning Policy Framework (NPPF) which promotes sustainable development and the local plan policies.
- 23. Given the nature of the proposal the NPPF it is of less relevance in this case as PPS10 is to remain in place until any new waste policies are published alongside the new National Waste Management Plan for England. However the presumption in favour of sustainable development still applies, particularly on previously developed land and of specific relevance are the following: Delivering Sustainable Development, Part 1 Building a strong, competitive economy; Part 7 Requiring good design; Part 10 Meeting the challenge of climate change, flooding and coastal change and Part 11 Conserving and enhancing the natural environment (paragraphs 120 and 123, pollution and noise respectively).
- 24. Against the general presumption in favour of sustainable development it is also necessary to consider other key determining issues which in this case are the history of the planning activities on the site and its location within the Metropolitan Green Belt, need, amenity impacts and traffic.

Planning History and the Green Belt.

25. Clearly the site has been subject to a number of historical uses with an involved planning history. Over a period of years car breaking and storage of scrap vehicles have taken place on the site originally without the benefit of planning permission. A

Lawful Development Certificate was issued in 1993 to allow the use of part of the site as vehicle breakers yard, with no restrictions on the way the site is operated.

- Also in 1998 planning permission was granted on appeal for the use of the western part of the site for permanent retention of damaged vehicles and trailers. Inspector at the time considered the appropriateness of that type of development in the Green Belt; the effect of the proposal on the openness of the Green Belt and whether any harm would be outweighed by very special circumstances. He concluded that the lack of alternative sites, the fact that the site had been operated as a storage area since the 1970's and for over 8 years with the benefit of planning permission, had good road access and did not closely adjoin a residential area did constitute the very special circumstances such as to outweigh the harm to the Green Belt by reason of inappropriateness and reduced openness. The only condition attached to that permission related to restricting stacking heights to no more than 5 metres. Today Green Belt policy recognises that there will be circumstances whereby the use of previously developed land will not be inappropriate and will be acceptable where it does not have a greater impact on the openness of the Green Belt, although this generally refers to development involving the construction of new buildings.
- 27. This proposal does not involve the construction of any new buildings but seeks permission to change to the use of the whole site to a depot with a small element of waste related development which would be located away from sensitive receptors at the road side of the site and within a small clearly defined area. Furthermore the proposed waste element of the development is very minor and ancillary to the primary storage and office use of the site. It is argued in the application that given the reduced impacts of the proposals in comparison with the permitted uses it is not considered that the development is inappropriate. The proposed use however is one that would not normally gain support in such a green belt location and in my view should still be considered an inappropriate development. However the planning history at this site is very relevant for the determination of the propsal. The Applicant also submits that even if the development were considered to be inappropriate there are very special circumstance to justify approval of the development; namely:
 - the application site is all brownfield land, permanent planning permission exists on site for storage and recycling uses,
 - no new buildings are proposed and the footprint of the proposed use would be identical to that of the existing permitted use,
 - the overall impacts from the development would be lower that that of the permitted use,
 - the site is well located for the main road network, well screened and remote from residential receptors.
 - locating the ancillary waste use adjacent to the main storage/office use has significant sustainability benefits.

I concur with those views and I am satisfied that the proposal will not result in any greater impact on the openness of the Green Belt than the previous uses some of which have been taking place for over 30 years. It is not therefore considered appropriate to look at alternative sites. On that basis I conclude that the potential

harm to the Green Belt is limited and is outweighed by the very special circumstances set out above, such an approach id consistent with the earlier Inspector's view on this site.

Need and Location

- Need Policy W6 of the Kent Waste Local Plan states that need will be a material 28. consideration in the determination of applications for waste management development on sites outside those identified within the plan where demonstrable harm would be caused to an interest of acknowledged importance. Whilst there is no demonstrable harm, consideration of the general need for this type of facility is set out below. PPS 10 states the overall objective of Government policy for waste is to protect human health and the environment by producing less waste and using it as a resource wherever possible; it states "By more sustainable waste management, moving the management of waste up the 'waste hierarchy' of prevention, preparing for reuse, recycling, other recovery, and disposing only as a last resort, the Government aims to break the link between economic growth and the environmental impact of waste". The waste element of this proposal is small but it does allow for waste material to be bulked up and taken for recycling, thereby moving the waste up the waste hierarchy. The Applicant would then import a small proportion of waste that had been recycled for reuse in their activities around the County. The site offers the Applicant the space required to operate their fleet of vehicles from and allows sufficient space to stockpile the small quantities of waste material until such time as sufficient material is available to take it for reprocessing in a larger vehicle. Whilst processing is not taking place on site due to the potential amenity impacts it still offers a sustainable solution to dealing with the Applicants waste arisings.
- 29. Location Policies W3, W6, & and W9 of the Kent Waste Local Plan identify the location criteria against which individual proposals will be considered, whilst policies W18 to W22 and W25, W27 and W31 set out the operational criteria. Saved Policy W9 of the Kent Waste Local Plan supports proposals for waste development where they are not specifically allocated, where they are within or adjacent to existing waste management facilities or are part of a location within an established or committed general industrial-type area. The application site has permitted uses which are industrial in their nature and the proposed change of use therefore accords with this policy.
- 30. The evolving Minerals and Waste Local Plan also seeks to support waste related development. Draft Policy CSW16 of the Minerals and Waste Local Plan: Strategy and Policy Directions Consultation (May 2011) states that forms of waste development not covered by specific policies in the Core Strategy will be granted planning permission subject to there being a proven need for the facility and it would not cause unacceptable harm to the environment or communities.

Amenity Impacts

- Noise As set out earlier in this report initial noise concerns related to the operation of the plant and equipment associated with the crushing and screening proposals. These have been negotiated away from the scheme which now proposes continued use of the whole site as a depot with offices and a small ancillary element of waste handling and importation of recycled material. The Noise Assessment Report identified the prevailing soundscape at the nearest properties to be characterised and governed by the traffic on the A228 Whetsted Road. It also acknowledged that the proposals would involve the operation of a small number of HGV'S (grab lorries and tipper lorries) at the site, however operation of these vehicles would generally be of short duration. It is considered that these operations would have no greater impact than the previous uses on the site. In fact this application further offers the opportunity to control the number of vehicle movements associated with the use of the site as well as controlling the hours of use. It is therefore considered that noise levels would be adequately controlled by imposing conditions to restrict the hours of use and the number of vehicle movements. The proposed hours of operation are 0600 hours to 1900 hours Monday to Sunday (with the exception of vehicles entering or leaving the site to carry out emergency reinstatement works). It should be noted that utility repairs are undertaken 7 days a week and although the majority are planned, the company also need to respond to emergency situations such as water leaks. Some works are also scheduled for weekends to avoid road closures and disruption during the busy weekday periods. Given the location of the site on the busy A228 it is considered that the requested hours are not unreasonable and should be considered against the existing permissions on the site which could see activities taking place 24 hours a day, 7 days a week.
- 32. <u>Dust</u> No specific issues were raised by my dust advisor although the local residents have expressed some concerns about dust generation at the site. One particular concern related to a fine glass type dust. I have raised this with the Applicant who explained they had been trialling the use of a recycled glass material for reinstatement works but had decided not to pursue its use any further. I am assured that all of this material has been removed from site. The Dust Management Plan was drawn up with reference to the crushing and screening operations now no longer part of the proposals. However the proposed mitigation measures identified are still relevant for the management of dust arising from the proposed operations. I therefore propose a condition to ensure adherence to the mitigation measures identified in the management plan.

Landscape and Lighting

33. The site lies immediately adjacent to the busy A228 in a rural part of the Borough but is not directly affected by any landscape or nature conservation designations. It does however have the potential to be a prominent site, given the flat surrounding countryside. Having said that it is generally considered to be well screened, particularly from the passing traffic. It might be helpful at this point to consider the

Inspector's conclusions on the whether the site detracted from the character and appearance of the countryside in the earlier appeal case. The Inspector's report recognised the flat nature of the surrounding land, the existing buildings on the site, as well as the adjacent land to the south having been developed as a nursery with utilitarian sheds, polytunnels and close boarded fencing. The Inspector acknowledged the deciduous planting alongside the main road and field hedging to be effective in mitigating the adverse visual impact the storage use on the site would have on the character and appearance of the countryside. This situation remains unchanged today and it is further unlikely that any materials would not be stored as high as the previous stack heights allowed for damaged vehicles. It should be noted that for a period of time the Applicant did hold stockpiles of waste material awaiting processing which were highly visible from the road. Following input from the Regulation Committee these stockpile heights were significantly reduced to an agreed level. I understand that material has been removed from site and the situation is unlikely to arise again as the Applicant now takes the material offsite for recycling on a regular basis. A condition to restrict the volume of material being stored on site would ensure control of this situation.

- 34. Of more significant concern continues to be the use of the lighting at the site, which has the potential not only to impact upon the residential amenity of neighbouring properties but also the visual impact of the proposed development on the landscape and countryside setting of the surrounding area.
- 35. The Applicant advises that the existing lighting is divided into two types, security lighting and operational lighting. The security lighting is located at the eastern end of the site in the vicinity of the workshop, offices and vehicle parking and the operational lighting is located around the boundary of the whole site and is designed to ensure a safe working environment for employees and vehicles moving around the site. The security lighting consists of 5 directional 150w lights located on buildings and some on 3m high poles, these remain on at night time. The operational lighting is generally located on 7 or 10 m high poles and are 40 w sodium lights which are generally switched on when the site is operational during dark periods during the winter months. It is during those months when the leaves on the trees have largely gone and the use of the lights is likely to have the greatest impact.
- 36. The Applicant has attempted to achieve some improvement on the impact of the lighting by adjusting the angle of the lamps from horizontal (as they were) to tilted downward to throw the light more directly into the site and limit the spillage of light outside of the site. Whilst these measures are to be welcomed and will improve the situation to some degree I think it is appropriate to seek a full review of the lighting and its use. In so doing it will be necessary to balance the impact of the lighting with the safety and security needs at the site. I suggest a condition requiring the submission of an agreed lighting scheme (demonstrating containment of light spill within the site) within 3 months of any planning permission that may be granted.

Traffic

37. The Application is accompanied by a Transport Statement which again was based upon the original proposals that included crushing and screening. The conclusions of that statement are still relevant however as the number of vehicle movements remains the same. Daily movements are expected to total between 120 and 150 vehicles (HGV's, LGV's and staff cars), with the large majority of movements taking place outside the normal peak hour of 8am to 9pm. The assessment makes the point that the type and number of vehicle movements to and from the site under the permitted uses could be significantly greater, more industrial in nature and uncontrolled in terms of hours and levels of noise and size of vehicles. The assessment concludes that in view of the low level of trip generation compared to the prevalent traffic flows along the A228 it is considered that the impact of the proposed development and retention of the site access on the surrounding network would be negligible. My Highways advisor acknowledges the potential for a greater number of movements and larger vehicles associated with the existing permitted uses. On that basis and subject to ensuring provision and maintenance of the visibility splays concludes that in highway terms the proposals are acceptable. It is also suggested that parking and turning areas within the site are maintained and kept available for use at all times. Conditions could be attached to ensure the above measures are delivered and maintained.

Conclusion

- 38. The site does lie within the Green Belt but the previously established uses and planning history have set the background against which this application should be considered. The proposed development would not have significant impact on the openness of the Green Belt (and on this basis it is not necessary to refer the decision to the Secretary of State). The development for which planning permission is now sought makes use of a previously developed site and offers the opportunity to put some controls in place for the future way in which the site can be operated. The proposed development is considered acceptable in principle given the established use of the site already. There is also strong support for moving waste up the waste hierarchy, away from landfill and increasing waste recycling. Even though the element of waste recycling is small and the material is actually processed elsewhere, the bulking up of the waste is to be supported as it reduces the number of vehicle movements associated with waste management.
- 39. Following review of the Surface Water Management Plan the Environment Agency raises no objection to the proposals subject to the submission of a detailed drainage plan.
- 40. I am satisfied that the likely impacts arising from this development could be mitigated with appropriate conditions, and that the application offers the opportunity to improve the potential amenity impacts that could otherwise arise to the detriment of the nearby properties and the surrounding countryside. On this basis, the application accords with the relevant development plan policies, is sustainable development and there are

no material planning considerations that lead me to any conclusion other than that planning permission should be granted.

Recommendation

41. I RECOMMEND that PERMISSION BE GRANTED subject to conditions including, amongst other matters: submission of revised site layout plan showing storage area for imported recycled material and turning areas for vehicles, strictly in accordance with the application plans and details, restriction on types waste and throughput, hours of operation, submission of a lighting plan within 3 months of date of permission demonstrating no spillage of light beyond the site boundary, restriction on stockpile heights, parking and manoeuvring, restriction on number of vehicle movements, provision and maintenance of visibility splays, submission of drainage details and adherence to dust management plan.

Case Officer: Andrea Hopkins Tel. No. 01622 221056

Background Documents: see section heading.