

<b>Application No:</b> 11/01372/CM	<b>Ward:</b> Kirtlington	<b>Date Valid:</b> 07 September 2011
<b>Applicant:</b>	Hansteen Land Ltd	
<b>Site Address:</b>	Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire	

**Proposal:** The importation, storage and processing of inert construction and demolition waste, and operation of an aggregate recycling facility on land at Shipton on Cherwell Quarry. Retention of the existing weighbridge, site office and wheelwash to facilitate the operation of the proposed recycling facility (OCC ref. MW.0119/11)

## 1. Site Description and Proposal

- 1.1 Shipton on Cherwell Quarry is a limestone quarry, which extends to approximately 67 hectares. The quarry is located to the north of the village of Shipton on Cherwell and east of the A4260. To the north eastern boundary of the quarry, the land falls away to the Oxford Canal/ River Cherwell, which runs along the edge of the site. Along the eastern boundary is the Birmingham to Oxford Rail line. Bletchington lies approximately 2km to the east of the site. To the north west of the site is the linear settlement of Bunkers Hill, separated from the Quarry by the A4095. The quarry has been designated a County Wildlife Site and parts of the quarry are designated as a Site of Special Scientific Interest (SSSI) so has high ecological interest. The site is also within the Oxford Green Belt. A public right of way runs close to the site and the site is potentially contaminated.
- 1.2 This application seeks the comments of Cherwell District Council on a planning application currently being dealt with by Oxfordshire County Council for the above development. The proposed facility would allow the processing of inert construction and demolition waste for the production of grades of recycled aggregates, recovered topsoil and subsoil for re-use in construction and restoration projects with the residual non suitable inert waste from the recycling operation deposited along with other non suitable imported inert waste within the ongoing permitted quarry restoration works. The proposed recycling facility will be for a temporary period and would be present for the duration of the permitted restoration works. The proposal also seeks retrospective permission for the weighbridge, site office and wheel wash, which currently exist on site and which will be used to facilitate the operation of the proposed recycling facility.
- 1.3 Planning history  
The site has a long history which is set out on the file, however the most relevant applications are:

06/02046/CM (Permitted) Comprehensive restoration and development of quarry.

This development programme incorporated:

- Mineral extraction;
- The import of inert engineering fill to raise the quarry floor above water level;
- The comprehensive restoration of the site, including development of open storage yard areas principally for the storage of cars with an associated inspection building for a period of no more than a 15 year temporary operational period, and a rail storage depot, both supported by a new rail terminal; and
- Two class B8 warehouse buildings and a rail aggregates depot.

Comments were submitted to OCC to this proposal under application numbers 07/00996/CM (Objection) and 07/02011/CM (Objection). The objections were based on the fact that the development is inappropriate development in the Green Belt and that the special circumstances put forward did not outweigh the harm to the purposes and objectives to the Green Belt.

10/00360/CM (No Objection) To continue development without complying with conditions 26 and 36 of 06/02046/CM (these conditions related to site investigation surveys). **(This application repeated all conditions from the earlier application and so supersedes the original consent).**

11/01402/CM (Pending – elsewhere on the agenda) Continuation of development without complying with condition 6 (importation of waste by road) and with the variance of conditions 1 (time limits) and 7 (volume of waste imported) of planning permission 10/00360/CM, dated 17 June 2010 (OCC ref. MW.0120/11)

## 2. Application Publicity

- 2.1 As this matter is a County Matter, all publicity has been undertaken by Oxfordshire County Council.

## 3. Consultations

- 3.1 As this matter is a County Matter, all formal consultations have been undertaken by Oxfordshire County Council. However, internal consultations have been undertaken:
- 3.2 CDC Landscape: Site is well concealed by vegetation from the public viewpoints of roads and footpaths. There are only small glimpses into the site. In addition the development site is at a lower level than surrounding land. For this reason it is not foreseen that there will be any significant landscape impact from the proposed development in terms of buildings and on-site operations.
- 3.3 CDC Anti Social Behaviour Manager : Following ongoing discussions with OCC and the applicant' agents and further review of the submitted application in particular the

specialist acoustic report, the following comments have been provided directly to the case officer at OCC:

*It was agreed between myself and the applicants' consultant that on the period of operation for the crushing and screening equipment would be taken as 100% of any hour on the application of the precautionary principle. Experience suggests that where, at best, estimates of 'on time' periods for plant and equipment are used they can be open to challenge where as the use of a 100% on time period would result in the absolute worst case scenario being modelled. In essence this is the application of the precautionary principle.*

*The LAeq noise measurement at Bunkers Hill was reported as being 65.9 dB(A). In the annotation that accompanies this measurement it is noted that the dominant noise source at this location was due to road traffic. In this situation any noise produced by the operation of plant and equipment associated with the aggregate processing would not be audible above the road traffic noise. There are however circumstances where the equivalent continuous sound pressure level at this location could be lower and example could be between 07:00 and 08:00 hrs.*

*It is important in such circumstances to be certain as to the source of the noise being measured and for the condition to be qualified in such a manner that it relates to noise produced by aggregate recycling operations. Mention is made further on in relation to adjustments to the applicants proposed condition.*

*Comments made by a resident of Shipton on Cherwell previous planning approvals on this site have included an element of Saturday working. As far as I can recall this has not given rise to excessive noise. My view on the measurement positions chosen for the survey is that they are sufficient to provide an indication of the noise climate at the nearest dwellings to the proposed developments site. Equally the periods of measurement are sufficiently long to provide data for the exercise being undertaken. With hindsight coverage of the period 07:00 to 08:00 hrs could have been beneficial as it is likely that this would be the quietest time of the day.*

*In setting a maximum noise level for aggregate processing operations the noise produced by HGV movements would be included and level measured to test compliance.*

*Should OCC be minded to approve the application, it is recommend that the hours restriction contained within 10/00360/CM is carried forward in that activities associated with the implementation of this consent shall only take place between 07:00 and 18:00 hrs Mon- Fri, 07:00 and 13:00 hrs on Sat with no working being permitted to take place on Sundays, Bank or Public Holidays.*

*Although I have previously agreed with the principal of the applicants proposed noise condition (contained within paragraph 9 of their report) with the benefit of a second look I do feel that there are some improvements that can be made. Firstly the two clauses should be seperated to produce two noise conditions.*

*The first condition should be worded as follows:*

*That noise from the site generated by aggregate recycling and within the permitted working hours shall not exceed 55dB(A) when measured as a 1 hour Equivalent Continuous Noise Level, free field, (L<sub>aeq</sub>, 1hr) at any of the closest residential properties detailed below:*

*Residential properties on Jerome Way including 5 and 6 Railway Cottages South of the site and residential properties on Bunkers Hill Rd North West of the site.*

*The second condition should be worded as follows:*

*During works associated with site preparation of final restoration a noise limit at any inhabited property of 70 dB(A) Leq, 1h (free field) for no greater than a total of 8 weeks in any one year shall apply. The operator shall notify the LPA in writing of the commencement of operations taking place with the benefit of this condition and will specify the duration of proposed period of working.*

*As a final point I would recommend a further condition requiring the prior approval of dust management plan as historically we have received justified complaint of dust emissions particularly from the site access road.*

- 3.4 CDC Ecologist - The reptile mitigation proposed will need securing via condition. From the brief description within the main body of the report it seems that reptiles have largely been addressed. With regard to birds I am not sure there is sufficient information on how the proposals will affect them or how they will determine safe timing windows in terms of nesting times for work. The last bird surveys are stated as being 2008/2009 and as there has been a period of un-use on site things may have changed. Will there be a retained ecologist or one on site? Or pre-commencement checks for nests?

The survey data it is based on is out of date however (2009) whilst this is not likely to change the general approach to the mitigation on site as a minimum comment should be made by their ecologist on whether the microhabitat has changed in the intervening time (particularly given that the site hasn't been in use) such that the populations of reptiles may need resurveying prior to any recommencement of works to determine whether the low and high risk areas outlined are still relevant in terms of location.

Many of the issues on site are likely to be being addressed by the OCC ecologist Camilla Burrows.

## **4. Relevant Planning Policies**

- 4.1 PPS1: Delivering Sustainable Development  
PPG2: Green Belts  
PPS9: Biodiversity and Geological Conservation

PPS10: Sustainable Waste Management  
PPG13: Transport  
PPS23: Planning and Pollution Control  
PPS24: Planning and Noise  
PPS25: Development and Flood Risk

- 4.2 The South East Plan: Policies BE1, CO4, W6, W17, M2, NRM5, NRM9, NRM10
- 4.3 Adopted Cherwell Local Plan: Policies GB1, C1, C2, C5, C7, C30, TR7, TR10, ENV1
- 4.4 Oxfordshire Minerals and Waste Local Plan: Policies W3, W4, PE5, PE14

## 5. Appraisal

- 5.1 Whilst this application is related to the other application on the agenda (11/01402/CM), each is to be considered on its own merits. However, it is difficult to consider all the relevant issues without referring to the other application. It might be assumed that the proposed importation of waste by road (rather than rail) is related to the proposed recycling operation, but it has arisen because the applicant has been unsuccessful in securing contracts for the importation of waste by rail.

### 5.2 Green Belt and Waste Management

Taking this application on its merits, in terms of the principle of the development, the site is situated within the Oxford Green Belt and therefore PPG2: Green Belts is relevant. This National guidance is reflected within regional and local level policy. PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts being their openness. One of the purposes of including land in Green Belts is to assist in safeguarding the countryside from encroachment.

- 5.3 PPG2 advises that there is a presumption against inappropriate development within the Green Belt, which should not be approved, except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Development which is appropriate within the Green Belt is identified within PPG2.
- 5.4 PPG2 also provides advice on mining operations within the Green Belt stating that minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. It goes on to state the statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with

the purposes of including land in the Green Belt.

- 5.5 Visual amenity is also addressed within PPG2, with the following advice: the visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design.
- 5.6 Secondly, it is important to set out the relevant principles with PPS10: Sustainable Waste Management. PPS10 states that “the overall objective of Government policy on waste, as set out in the strategy for sustainable development, is to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Through more sustainable waste management, moving the management of waste up the ‘waste hierarchy’ of reduction, reuse, recycling and composting, using waste as a source of energy, and only disposing as a last resort the Government aims to break the link between economic growth and the environmental impact of waste. This means a step-change in the way waste is handled and significant new investment in waste management facilities”.
- 5.7 PPS10 at paragraph 3 also provides key principles relating to waste management, one of which is of particular importance to the Green Belt. This states that planning strategies should “protect green belts but recognise the particular locational needs of some types of waste management facilities when defining detailed green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission”.
- 5.8 It is understood that a Planning Inspector has previously concluded that the same type of recycling activity on this site would affect openness, but that was for a permanent facility. The present application proposes plant and stockpiles to be at the site for up to 25 years, which is a substantial time and the impact on the openness would be relatively the same.
- 5.9 Whilst mineral extraction need not be inappropriate development, the same does not necessarily apply to waste processing, which could take place at source outside the Green Belt. The HOS for DC&MD has no doubt that despite its temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. The site lies in the open countryside outside the boundary of any settlement, the installation of the ARF and associated formation of stock piles of materials together with the proposed portacabin building and retention of the existing site office, weighbridge and wheelwash facility would be significant and would conflict with the guidance contained in PPG2 and Policies SP5 and CO4 of the South East Plan 2009 and GB1 of the adopted Cherwell Local Plan, unless very special circumstances exist that outweigh the harm to the Green Belt. .

5.10 The proposed Aggregates Recycling Facility (ARF)

Given that the development is by definition inappropriate development in the Green Belt, it is therefore necessary to consider whether the harm is clearly outweighed by other considerations and whether very special circumstances exist.

- 5.11 The proposed recycling facility will operate in conjunction with the permitted development at Shipton-on-Cherwell Quarry. The facility will allow the Applicant to take materials which by their nature will be unsorted to degree, separate them into inert non-recyclable material and recyclable material. The inert non-recyclable material will subsequently be landfilled within the current void.
- 5.12 The plant will include a crusher and a screener. Indicative dimensions of the type of plant to be installed on site include a crusher that will be approximately 4m high and 14m long, while a screener will be approximately 3m high and 14m long.
- 5.13 Material will be loaded onto the crusher first and then pass on the screen to produce grades of recycled aggregates and to recover topsoil and subsoil. The processed material will be stored in temporary stockpiles and will be exported from site as and when required for reuse in predominantly development and restoration works.
- 5.14 During the life of the proposal, construction of the development platform will take place in a phased approach, as detailed within the Phased Operations Plan (Drawing 3B). A four phased approach is proposed, and the plant and stockpiles will be located within the remaining three phases while the infill is undertaken within each phase. Once the development platform has been constructed, the plant and stockpiles will be relocated as detailed within Drawing 3A, which shows the final position of the plant and stockpiles within the application area. The final position of the plant and stockpiles takes into consideration the location of the motor vehicle pre-delivery inspection (PDI) building permitted under the extant permission and ensures all plant and stockpiles are located within the western part of the application area to allow the PDI building to be constructed. In this way, the applicant considers that the proposed facility will integrate with the permitted development without disrupting it.
- 5.15 In addition to recycling and recovery of materials from imported waste material the ARF would be beneficial in being able to recover and process suitable inert materials for both potential export and or re-use within site engineering works for the landfilling works required under the Environmental Permit.
- 5.16 Whilst the applicant has advised that the facility will only process inert construction and demolition waste imported at the site from construction and utilities projects within the local area, this could not necessarily be controlled and could come from anywhere. However, waste will be imported onto site as permitted under consent 10/00360/CM and it is anticipated that up to 60% of the imported material will be

suitable for recycling prior to reuse as secondary aggregate materials.

- 5.17 The ongoing recycling and restoration works will also generate an element of non-recyclable material which will be used on site as part of the infill and restoration works. It is estimated that this would account for approximately 40% of the total incoming material (i.e. 100,000 tonnes per year).
- 5.18 The facility will have a capacity of 250,000 tonnes per annum. Conditions 6 and 7 of planning permission 10/00360/CM allow the importation of up to 250,000 tonnes of waste by road for up to three years (up to a maximum of 750,000 tonnes in total). This permission will be the subject of a further Section 73 application (which is reported separately in this agenda under 11/01402/CM) to permit the continuation of development without compliance with these two conditions, to provide the operator with the flexibility to import up to 250,000 tonnes per annum of waste by road until restoration of the entire site is complete.
- 5.19 In terms of timescale, the aggregate recycling activities will be temporary in nature and will be carried out in association with the ongoing infill activities. The proposed development is for a temporary period of up to 25 years in accordance with the overall timescales associated with planning permission consent no. 10/00360/CM dated June 2010.
- 5.20 Clearly the proposed ARF is a new facility to be installed at the site and taking the above into account will promote the recycling of aggregates, diverting them from landfill and pushing waste up the waste hierarchy, in accordance within national and regional planning policy. The development will contribute towards helping Oxfordshire County Council reach their recycling targets, as set out within the South East Plan (2009). These benefits must be weighed against the potential harm to the amenity of the Green Belt.
- 5.21 Also material to the consideration of the application is the fact that the material to be imported into the site will be via road and given that the other application elsewhere on this agenda, seeks to vary the condition of the previous consent relating to the import of waste beyond the initial 3 year period. It is possible that the approval of that application may reduce the applicant's urgency in securing a rail linked contract, which may ultimately never be secured, leaving all the importation of waste to be carried out by road.
- 5.22 Harm to residential amenity
- Taking the comments of the Anti-Social Behaviour Manager into account, the HOS for DC&MD considers that subject to specific conditions there would be no significant harm to residential amenities of the occupiers of properties on Jerome Way including 5 and 6 Railway Cottages South of the site and residential properties on Bunkers Hill Rd North West of the site.



5.23 Harm to Ecology

The rock faces exposed by the previous quarrying work has resulted in the statutory designation of the parts of the quarry as a geological Site of Special Scientific Interest (SSSI). The ARF is to be situated outside of the designated area. The haul road, which forms part of the application area, does pass through the SSSI, however this is an existing road, and no further impact is anticipated as a result of the proposed development. In addition to the SSSI designation, Shipton Quarry is designated as a County Wildlife Site with lowland meadows (including other areas of unimproved neutral grassland) and eutrophic standing water, as listed in section 74 of the Countryside and Rights of Way Act 2000.

5.24 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes onto advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”

5.25 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard to the purpose of conserving (including restoring / enhancing) biodiversity” and;

Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.

5.26 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.

5.27 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which

include:

- 1) is the development needed for **public health or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).
- 2) Is there any **satisfactory alternative**?
- 3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?

5.28 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.

5.29 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission
- 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
- 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

*[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]*  
*[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]*

**NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.**

5.30 In respect to the application site, due consideration of the SSSI and the County Wildlife Site and protected species within it has been had by the CDC's and OCC's Ecologists, BBOWT and Natural England based on the surveys undertaken at the site by the applicant. Mitigation and Translocation Method Statements for the

reptiles on the site have also been duly considered.

5.31 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and Policy C2 of the adopted Cherwell Local Plan.

5.32 Conclusion

The HOS for DC&MD has reservations about the scheme and that despite its apparent temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. Clearly there are benefits associated with the ARF and the potential to increase recycling, however the HOS for DC&MD is not convinced that these amount to very special circumstances that outweigh the presumption against inappropriate development in the Green Belt.

## **6. Recommendation**

**That Oxfordshire County Council be advised that Cherwell District Council** has reservations about the scheme and that despite its apparent temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. Clearly there are benefits associated with the ARF and the potential to increase recycling, however the Council is not convinced that these amount to very special circumstances that outweigh the presumption against inappropriate development in the Green Belt, but OCC is best placed to assess whether a very special circumstances case can be made in relation to Green Belt Policy.

The comments made the Cherwell District Council's Anti Social Behaviour Manager and OCC's Ecologist should however be taken into account during the determination of the application.

**Cherwell District Council request that they be informed of the outcome of the application once a decision has been made.**

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