

DR/43/16

committee DEVELOPMENT & REGULATION

date 16 December 2016

MINERALS AND WASTE DEVELOPMENT

Proposal: **Application for a Lawful Development Certificate (CLUED) for the use of the site for the storage, distribution and recycling (Screening and crushing) of aggregates.**

Location: **Hastingwood, Highways Depot, London Road, North Weald, Harlow.**

Ref: **ESS/39/16/EPF.**

Applicant: **Elmside Transport Ltd.**

Report by Acting Head of County Planning

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The full application can be viewed at www.essex.gov.uk/viewplanning



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1. SITE, BACKGROUND AND PROPOSAL

The 0.96ha. site of is located to the west of the M11 between the northbound slip road at Junction 7 interchange for Harlow and Epping and London Road.

Access to the site is of London Road via shared access with a fast food restaurant and the County's Hastingwood Highways Depot and via hardcore access road of approximately 300m in length which goes behind the County's Hastingwood Highways Depot. The Depot is adjacent to the northern boundary of the application site.

Adjacent to the NW corner of the site is the fast food restaurant (McDonalds) and car park.

There are residential properties approximately 60m to the west of the site located on London Road.

There is a residential property/farm approximately 80m to the south located on London Road.

Harlow Garden Centre is located approximately 200m to the east and on the east side of the M11 beyond the M11 roundabout.

There is established vegetation on the eastern boundary adjacent to the M11 slip road.

There are agricultural fields between the properties located on the southern and western boundaries.

The site has a 1.5m high bund located on the western, southern and eastern boundaries.

A 2m high palisade fence separates the site from the Highways Depot and bounds the access road to the shared access.

Located on site are a screener, loading shovel, excavator, fuel bowser and 2 storage containers and stockpiles of hard core aggregate up to a height of 11 metres.

Harlow Town Centre is approximately 2 miles to the north.

In terms of background the applicant has stated that the site is owned by Hayley Estates and the applicant (transport contractor) entered into a tenancy agreement with Hayley Estates on 1st May 2004, which was renewed in 1st March 2005.

The applicant is seeking a Certificate of Lawful Use (CLUED) on the basis that the use of the site the storage, recycling and onward distribution of aggregate has been continuing at the site for a period in excess of 10 years.

2. POLICY CONSIDERATIONS

CLUEDs seek to establish the lawful planning status of the land concerned and therefore no planning policies are applicable.

3. CONSULTATIONS

EPPING FOREST DISTRICT COUNCIL – No comments received.

HARLOW DISTRICT COUNCIL – No objection. The application should be considered on the balance of evidence provided by the applicant.

ENVIRONMENT AGENCY – No objection.

NORTH WEALD PARISH COUNCIL Objects on the following grounds:

- There has never been any screening and crushing activities carried out on the site what evidence is there to support this activity
- The storage on the site has only been road planings – there has not been concrete and you can easily see this via the photographs they would have been a different colour
- No lorry hire has ever been undertaken from the site – what evidence is there to support this activity
- The photographs are not truly representative i.e. dates etc.
- The details that have been given regarding the sizes and heights of the planning stacks are incorrect the local residents who live nearby advise they have never been that high.
- Has an Environmental Impact Assessment Disclosure ever been carried out?
Comment: EIA screening is not required for a lawful use application.
- Has an assessment been carried out regarding the open air Restaurant at McDonalds and Harlow Garden Centre, both of which are within 100 metres of the proposal?

LOCAL MEMBER- EPPING FOREST- North Weald and Nazeing – has concerns regarding the start date of the development.

4. REPRESENTATIONS

Site, Press notices and Neighbour notification letters were undertaken.

15 properties were directly notified of the application. One letter of representation has been received. This relates to planning issues covering the following matters:

Observation

Comment

That operations have only been carried out for eight years.

No evidence supporting the claim has been provided.

Shale creeping along the boundary

This not a material planning

towards the edge of local boundaries.	consideration as this application is seeking a CLUED.
No mains drainage to the cottages or to the works site. The effluent seeps into the ditch and kills several of the trees along a ditch on land.	This not a material planning consideration as this application is seeking a CLUED.
Loss of green area in the Green Belt.	This not a material planning consideration as this application is seeking a CLUED.
Becoming an Industrial Area.	This not a material planning consideration as this application is seeking a CLUED.
Generation of Heavy Lorries.	This not a material planning consideration as this application is seeking a CLUED.

5. APPRAISAL

A CLUED is a legal document stating the lawfulness of past or present development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out against the development referred to in the certificate.

A grant of a certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority.

It is for the applicant to provide collaborative evidence to show that the use has been in operation for in excess of 10 years at the site without intervening uses for this period.

The applicant has provided the Council with the following evidence to support the above claim.

- Application form dated 24 March 2016.
- Statement dated May 2016.
- Statutory Declarations from Mr I Padfield (Land Owner) and Mr K Bowen Director of Elmside Transport (Tenant) and Mr S Gould (Site Supervisor).
- Tenancy Agreement between the Landlord Mr Padfield (Hayleys) Ltd and the applicant Mr K Bowen of Elmside Transport dated 1st May 2004.
- Newspaper article from Farmers Guide dated 2005.
- Google Earth imaged dated 2005, 2006 and 2009.
- Hire Purchase Agreements for Plant and Machinery.
- Motor and General Insurance Services Ltd Certificate issued 00:0123 January 2006 to 24:00 22 January 2007 and again for the period of 00:01 23 January 2007 to 24:00 22 January 2008 and for the period 00:01 1 April

2015 to 24:00 31 March 2015.

- Environment Agency Waste Exemption Documents registration reference number TE1/001965 dated 26 September 2005 and Exemption document dated 27 December 2007 and Exemption document dated 2009, 2011 and 20 October 2014.
- Test certificate samples from Murray Rix dated 13 September 2006 and letter from Murray Rix dated 3 December 2015 stating UKAS accredited Construction Material Testing Services to Elmside Service have been taken from the Harlow Yard at rear of May Gurney (Now County's Highway Depot), London road.
- Letters of declaration from Customers, Insurance Broker, Directors of the Company, Current Employee and Health and Safety Consultant.
- Waste Transfer Notes and invoices. These go back to 2009 as there is no legal requirement to retain invoices beyond 5 years.

The key issue for consideration is:

Whether the use of land for importing, screening, recycling and storing of road planings and the crushing and screening of concrete and the parking of plant and machinery has taken place continuously on the application site for the 10 year period.

The applicant has submitted Google Earth Photographs from 2005 to 2009 which shows that the application site was undertaking screening operations as plant, equipment and stockpiles are visible at the site during these periods.

It has been submitted, within Statutory Declarations, that the applicant is a haulage company which has been using the site to store aggregates, which includes concrete, but more specifically road planings, which are classified as a 6F3 and 6F2 recycled aggregate. Their classification as a 6F3 and 6F2 recycled aggregate refers to size. The aggregate is screened and then either collected by or delivered to the customer to be used for the construction and maintenance of roads and carparks. Aggregates are defined as stones and rocks used for construction and different types are described by their size, angularity and type of rock. Road planings are one form of aggregate and usually come from road resurfacing work.

The applicant has further submitted that new equipment has been purchased since 2006. This equipment is a Chieftain Power Screen 600. Further purchases of machinery were completed in 2008 (Chieftain Power Screen 1400), 2012 (CAT wheeled Loader and CAT 320 CL Excavator) and 2015 (Volvo wheeled Loader).

The Environment Agency has granted an Environmental Permit Exemptions. These Exemptions started in 2006 and go through to 2014 and refer to the application site - to the rear of the County's Hastingwood Highway Depot.

Tenancy agreements between Elmside Transport and the Landlord have also been submitted as evidence of a continuous use since 2004.

Sales invoices for materials have been submitted from 2009. These invoices provide evidence that there has been a continuous use of the site for the screening,

storage and distribution of recycled road planings. The applicant has submitted that there is no legal requirement to keep invoices beyond 5 years. The applicant has further submitted that the average 'mean' amount of material sold for the last six years is over 102,000 tonnes.

The applicant has further submitted that the site has been occasionally used for the screening and crushing of concrete. North Weald Parish Council has stated in its response that concrete crushing has not taken place on site.

In order for the applicant to benefit from a lawful use, the evidence submitted has to show that, on the balance of probability, there has been a continuous use for the claimed use a period of 10 years. The evidence submitted by the applicant (Aerial Photographs, Machinery Test Certificates and Machinery Purchases) refer to the site being used for the recycling of road planings, with a statement that occasional crushing of concrete is carried out when necessary.

In this respect it is considered that whilst, on the balance of probability, the recycling of road planings has been carried out, the site has not been used continually for a period of more than 10 years for crushing concrete. Whilst it could be argued that both activities concern the recycling of aggregate, it is clear that the primary use is concerned with the importation screening, storage distribution of recycled road planings and not concrete crushing.

North Weald Parish Council has also objected in general to this application for the CLUED, but has not submitted any counter evidence to refute the evidence submitted by the applicant.

One letter of representation has received stating that operations have been carried out only for eight years. However the representee has not submitted any evidence to support this claim.

Adverse claims have been received as part of the consultation undertaken. Nonetheless, the Waste Planning Authority has no reason to doubt or consider the validity of the evidence submitted. It is considered the applicant has submitted evidence to support its claim of use for 10 years.

The evidence submitted demonstrates that the use, to which this application relates, has taken place at the site. In relation to this the applicant has not suggested any significant periods of abandonment of the site and/or use since 2005 and Essex County Council has no records or information of a different nature.

6. CONCLUSION

On the balance of probability, it is concluded on the evidence which has been submitted in support of this application that the use of this site has been for the storage, screening and distribution of recycled road planings which began more than 10 years before the date of this application. Accordingly, it is considered that the aforementioned use, on the balance of probability, is lawful and a certificate can be issued to this effect.

7. RECOMMENDED

That a Certificate of Lawful Use is issued for:

The storage, screening and distribution of recycled of road planings (and use of associated plant and equipment) at land at Hastingwood, London Road, North Weald, Harlow as shown on plan titled Site Plan, drawing nos 216020DWG001 dated 15/03/16.

BACKGROUND PAPERS

Planning Applications. ESS/39/16/EPF
Consultation replies
Representations

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (as amended)

The proposed development would not be located within distance to a European site.

Therefore, it is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required.

EQUALITIES IMPACT ASSESSMENT

This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER

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LOCAL MEMBER NOTIFICATION

EPHING FOREST- North Weald and Nazeing