

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

14 July 2014

Report of the Strategic Director – Economy, Transport and Environment

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF
EXISTING USE OR DEVELOPMENT, IN RESPECT OF USE
FOR THE PROCESSING, RECYCLING AND STORAGE OF
METALS, SCRAP AND WASTE METALS AND WASTE
MATERIALS INCLUDING VEHICLE DISMANTLING, ON
LAND AT GRIFFON ROAD, ILKESTON
APPLICANT: DONALD WARD LIMITED
CODE NO: CL8/0114/154**

Introductory Summary This application, made under Section 191 of the Town and Country Planning Act 1990, is for the grant of a Certificate of lawfulness of existing use or development in respect of a stated existing use of land (CLEUD) for the processing, recycling and storage of metals, scrap and waste metals, and waste materials (including vehicle dismantling).

Unlike an application for a conventional planning permission under the 1990 Act, an application for a CLEUD is entirely reliant on the available factual evidence about the planning history of the land to which it relates. This is because these applications have to be granted or refused according to whether or not it is considered 'on the balance of probability' to be an existing lawful use or development referred to under the application which has become lawful over time. In this case, this application contends that the land, the subject of the application, has been in continuous use for the processing, recycling and storage of metals, scrap and waste metals, and waste materials (including vehicle dismantling) for a period of over 10 years up to the date of the application.

(1) **Purpose of the Report** To enable the Committee to consider the application.

(2) **Information and Analysis**

Application Details

This application is submitted on behalf of Donald Ward Limited and it relates to the use of approximately 2.0 hectares of land at the Quarry Hill Industrial Estate in Ilkeston. The land subject to the application is shown hatched in the plan attached to this report.

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The applicant has at the same time submitted another application for a CLEUD over an adjacent area of land which is outlined on the plan attached.

The Quarry Hill Industrial Estate is on the southern outskirts of Ilkeston. The land which is the subject of this application (CL8/0114/154) is now within a greater assembly of land at the industrial estate under the control of the applicant company. The area of the application land is surrounded to the north and east by business units on the industrial estate, to the west by other land occupied by the applicant company and business units, and to the south by the Nutbrook Trail.

The following items accompanied both this application and the other application:

- Statutory Declaration of David Ward – Director of David Ward Limited dated 15 January 2014
- Statutory Declaration of Donald Ward – employee dated 15 January 2014
- Witness statement of Donald Taylor (former owner/operator) dated 17 January 2014
- Witness statements of employees of the company dated 15 and 17 January 2014
- Witness statements of contractors to the company dated 15 January 2014
- Planning supporting statement provided by the solicitors for the company dated 28 January 2014

The supporting statement includes reference to the following permissions/certificates which relate to application land:

Permission/Consent	Development	Date
Certificate of Lawfulness granted by Erewash Borough Council ('1994 CLUD')	Use of land and premises for the processing and storage of scrap metal, including vehicle dismantling	16 th March 1994
Permission CW8/0602/37	Materials Recycling Facility	2 July 2003
Permission CW8/0105/187	Construction of replacement building for waste recycling operations	27 February 2007
Permission CW8/1206/148	Construction of building and use of land for waste recycling operations, including the use of a new access	4 May 2007
Certificate of Lawfulness granted by Derbyshire County Council	Use of replacement plant for scrap metal recycling	29 August 2007

Responses Received

Waste planning authorities are not required to carry out consultations on CLEUD applications. However, the Authority is entitled to canvas evidence if it so wishes before determining an application. In this case, it invited the Environment Agency, Erewash Borough Council and businesses located next to the land in question to provide any relevant information they might have relating to the application.

The Environment Agency consequently provided copies of several inspection reports carried out by its officers between June 2003 and May 2007.

An agent on behalf of Saint Gobain, PAM UK Ltd, a company which continues to own a substantial landholding in the vicinity, has responded with a letter which indicates that it does not consider that any CLEUD should be granted in respect of the application. Whilst the letter offers some opinions regarding the nature and quality of the application, it does not contain any new information regarding use of the application land. Therefore, it cannot provide any particular assistance to the determination of this application.

Erewash Borough Council responded with a comprehensive report including historical information in respect of the application and surrounding land but confirmed that the Council did not hold information that directly contradicts the information contained in the applicants submitted Statutory Declarations and Witness Statements.

Other Information

Copies of aerial photographs taken on 29 July 1999 and 9 September 2004, which include views of the land, have been obtained by the Council and the following items have been located in the Council's records.

- Letter from SA Simmons Ltd on behalf of Donald Ward Limited to Derbyshire County Council – dated 9 May 2002. Notes of site meeting attended by Derbyshire County Council, Donald Ward Limited and SA Simmons Ltd – dated 20 May 2002.

On 23 April 2014, copies of the Environment Agency inspection reports, aerial photographs and other items were sent to the applicant with a covering letter inviting any comments they might have on them. The applicant's solicitors have provided with a letter in response dated 19 May 2014:

- A copy of an aerial photograph of 18 July 2000
- A witness statement of David Ward dated 17 May 2014
- A witness statement of Donald Ward dated 16 May 2014

Case Analysis

This application contends that throughout the 10 years up to the date of the application, the site has been used for processing, recycling and storage of metals, scrap and waste metals, and waste materials (including vehicle dismantling). The key element to consider is the continuity or otherwise of use of the application land during the 10 year period up to the submission of the application.

The supporting statement argues that a CLEUD should be granted because of the combination of the existence of the 1994 CLUD, planning permission CW8/0602/37 and planning permission CW8/0105/187, and the evidence of Statutory Declarations and Witness Statements.

I consider that the 1999, 2000 and 2004 aerial photographs provide some significant evidence regarding the probable extent of the application land which was subject to any relevant waste activities when they were taken. Although the 1999 and 2000 photographs predate the 10 year period up to the date of the application, the witness statements and statutory declarations submitted by the applicant, and its supporting statement, include references to the preceding years back to the 1980s, and I consider that it is necessary for such items to be considered in the determination of this application.

Although the applicant's solicitor in the letter dated 19 May 2014 comment that, 'the scale of the aerial photographs is very small and it is very difficult to identify precisely what individual details or matters are illustrated on them', it is clear to me that the 1999, 2000 and 2004 aerial photographs capture significant details from the air of the situation on the ground on those occasions.

The 1999 aerial photograph clearly shows a concentration of features associated with a scrap operation in a distinct area within the application land, some container storage on certain land to the north of that area, and an absence of any substantial objects that might be associated with scrap/waste activity on the other parts of the land. It is therefore considered to be probable that at this time the part of the land being used for scrap/waste operations was contained within this distinct area. Furthermore, the photograph shows that the distinct area was then bounded by a barrier which included the hedgerow along the southern boundary. The separation of the area in which there were scrap operations by this barrier also suggests that the part of the land which at that time was in occupation by Donald Taylor and in use for scrap metal operations, was limited to this area.

The 2000 aerial photograph shows a similar concentration of features. There appears to be little if any difference from the 1999 photograph.

The 2004 aerial photograph shows a concentration of features associated with waste activities over a larger area, which is generally similar to the equivalent area in the 1999/2000 photographs but which includes some further land

towards the north-east, the south-east and the south-west. The inclusion of the land towards the south-east is consistent with the site covered by planning permission CW8/0602/37 for a waste recycling facility, granted in July 2003. The photograph also shows an absence of any substantial objects that might be associated with scrap/waste activity on the north-west section of the application land, which in all respects appears similar to its depiction on the 1999 and 2000 photographs.

The letter from SA Simmons Ltd refers to a proposal by Donald Ward Limited to develop a material recycling facility on part of the application land and related to pre-application enquiries in respect of the proposal which subsequently resulted in planning permission CW8/0602/37. The applicant company at this time were in the process of purchasing part of the land within the application site which included the existing scrap yard operated by Donald Taylor. The letter refers to an area of land the company was proposing to develop with reference to a plan, which shows the area outlined in blue, described as the Hemlockstone Haulage land. This outlined area, corresponds with the area of the 1994 CLUD. The plan also highlighted two areas outlined in red and described as additional land. The letter indicates that at the time, in May 2002, operations were being carried out within the blue land but not within the red land. It also states that 'the one existing building on the land extends onto the additional land to the east'.

The note of a site meeting on 20 May 2002 between Martin Dale (S.A. Simmons Ltd), David Ward (Donald Ward Limited) and Kevin Finn (Derbyshire County Council), which was made by Kevin Finn and which the Council has retained, states that *'the main part of the site is used as a vehicle dismantling yard'* but *'the other part of the site is physically separated by a fence and is currently unused'*.

The letter from SA Simmons and the note of the site meeting from May 2002 predate the 10 year period up to the date of the application. The witness statements and statutory declarations submitted by the applicant and its supporting statement also contain references to the preceding years (back to the 1980s). I consider that this material should be considered in the determination of this application.

The Environment Agency referred to the two Environmental permits which fall within the area of this application and supplied copies of several inspection reports in respect of Permit EAWML 43394 (PJ06) from between June 2003 and May 2007. Permit EAWML 43394 (PJ06) was originally issued to Hemlockstone Haulage Ltd in December 1997. The boundary of the land subject to this permit corresponds with the Certificate of Lawfulness granted by Erewash Borough Council in 1994. This permit was transferred to Donald Ward Limited in March 2003. The second permit, EAWML 43580 which was issued in May 2004, covers only the area of the waste transfer/treatment facility under the permission CW8/0602/37 granted by Derbyshire County Council in July 2003.

The inspection reports that the Council has been supplied with comprise 10 reports from the latter part of 2003, 19 from 2004, 11 from 2005, 1 from 2006 and 2 from 2007. It is understood that the site continued to be inspected regularly, and that other inspections have been carried out since 2004 relating to the same permit. Although the Council has not been provided with copies of any other reports, I do not consider that these reports would be likely to provide key evidence as they concern inspections undertaken well within 10 years of the application date.

The inspection reports provided do not contain any references to scrap /waste activities being carried out outside the permit area until 20 August 2004, when it was reported that two containers of waste were being stored outside the permit area, which the investigating officer requested were removed by the end of the day. There are also references to storage outside the permit area in inspection reports dated 20 May 2005 (which noted 'waste stored in skip outside licensed area') and 4 August 2005 (which noted that 'waste was being stored outside the licensed area including end of life vehicles') and 1 May 2007 (which noted that the company was advised to apply that for a Paragraph 45 exemption to allow the 'storage and recovery of scrap metal or dismantling of depolluted waste motor vehicles' on land outside the permit area). From the inspection reports it would appear that before August 2004 the Environment Agency did not identify any concern that the site was not operating within the confines of the permit area. Instances of skips/waste left outside the permit area were noted in August 2004, May 2005 and August 2005 but the other reports for inspections in 2004 and 2005 do not indicate that there were any such instances observed on the occasions of those inspections. Although the inspections were carried out to monitor the operations permitted under the permit and entry by the inspecting officer would have been confined to the permit area, it is clear that the inspecting officer did not ignore matters of interest on land adjoining the permit areas; instances of intrusion of features associated with the permitted activities outside the permit area were notified in these reports on a number of occasions.

The application land is a combination of the land covered by the permission CW8/0602/37, land outside that land but covered by the 1994 CLUD, and other land. I attach to this report Plan No CL8/0114/154-DCC1 which identifies the permission area and the 1994 CLUD area. The plan attached to the 1994 CLUD, which depicts the land to which the CLUD relates, is not based on any accurate map. However, it has been transposed as accurately as possible onto Plan No CL8/0114/154-DCC1. Although the supporting statement includes a plan to illustrate these areas, I do not find that they are depicted on it with accuracy.

The area of the application land under the permission CW8/0602/37, and the area of the application land outside it but within the area covered by the 1994 Certificate of Lawful Use, have each become subject to a use which

corresponds generally to the type of use described in the application. The use of these areas stems respectively from the implementation of permission CW8/0602/37, and from use in accordance with the 1994 CLUD. These uses of these areas in conformity with the permission and with the 1994 CLUD has endured in the absence having been overtaken by any subsequent incompatible uses or any abandonment.

Witness statement of Donald Taylor:

Donald Taylor refers to having operated a scrap yard and metal recycling on the application land between 1983 and 2002. However, he later refers to having operated a metal recycling and processing facility on the application land since 1984. He states that the area on which he processed and stored scrap materials was greater than the extent of his ownership and extended on to land to the west and south of his 'strict ownership boundaries', and that there was no continuous fence along the boundary between his land and that of Saint Gobain. Donald Taylor confirms that he had been operating a metal recycling and processing facility on the application land since 1984 and that the activities he was carrying out continued after the acquisition of the site by Donald Ward Limited. He states that from his own knowledge the application area has been used for a scrap and metal process, recycling and storage for in excess of 10 years.

This statement with regard to the extent of the facility over the application land is not supported by the aerial photographs taken in 1999 and 2000. Both photographs show a distinct area of land being used for scrap metal activities at those times which does not include the whole of the application area. The areas outside those areas on the 1999 and 2000 photographs are notably clear of features associated with the use described in the application. The statement is also not supported with regard to the extent of the facility by the letter from SA Simmons and note of site meeting from May 2002, since they suggest that Donald Taylor's scrap operation at that time was restricted to the 1994 CLUD area and that adjacent land to the north and east was unused.

If Donald Taylor had indeed been substantially using the full extent of the application land for such a facility since 1984, one could have expected the application for the Certificate of Lawful Use in 1994 to Erewash Borough Council to have covered the whole of it.

Statutory Declaration and Witness Statement of David Ward

David Ward provides an account of the general history of the assembly of land at Griffon Road, which is occupied and traded from by Donald Ward Limited, from his familiarity with the land dating from prior to 2002. He comments on the extension of operations by Donald Taylor onto the whole of the application land and states that when his company acquired the site in 2002 they continued to operate it in a similar manner and over a similar area. David Ward confirms that the area of land identified on the plan numbered 2 attached to his statement is the area which has been used for scrap and metal processing, recycling and storage for a period in excess of 10 years.

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This declaration and statement are not supported with regard to the extent of the use of the application land, by the aerial photograph taken in September 2004, which shows some parts of the application land being notably clear of features associated with the use.

While it appears from this photograph, together with the 1999 and 2000 aerial photographs, that there had been a slight expansion of the land in use between 1999 and September 2004, to the east, north and south, it does not appear likely that the development was by then being carried out over the whole of the application area, or that the whole area was then the relevant planning unit.

The statement with regard to the extent of the use over the application land is also not supported by the letter from SA Simmons and note of site meeting from May 2002 which suggest that Donald Taylor's scrap operation at that time was restricted to the 1994 CLUD area and that adjacent land to the north and east was unused.

Statutory Declaration and Witness Statement of Donald Ward

Donald Ward refers to having worked for Donald Ward Limited since 12 February 2003 and to having been familiar with the land at Griffon Road since 2002.

Donald Ward, in his Statutory Declaration, provides a summary of his involvement and development at the site and includes photographs from 2003 and 2004. Donald Ward refers to certain operations having taken place there (installations of Henschel Shear, mobile shear, fencing, etc) but does not specify which areas were involved for each. The plant and machinery to which Donald Ward refers were permitted under the terms of the 1994 Certificate of Lawful Use.

Donald Ward states that the application land has been in use to his personal knowledge and belief for scrap and metal processing, recycling and storage for in excess of 10 years.

This statement with regard to the extent of the use of the application land is likewise not supported by the aerial photograph taken in September 2004.

The photographs provided in the Statutory Declaration and Witness Statement show various views of the scrap metal facility but I do not consider they provide any clear evidence that would indicate that scrap/waste operations were being undertaken over the whole of the application land.

Photographs 11 – 21 referred to in his Statutory Declaration show the demolition of the concrete bridge which are stated as having been taken on 14 May 2004. However, the same photographs, and additional ones (photos 20-31), showing the demolition of the concrete bridge provided in the additional

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witness statement, are stated as having been taken on 14 May 2003. The aerial photograph of 9 September 2004 clearly shows the concrete bridge in-situ thus neither of the dates provided for these photographs appear to be correct and appear to have been taken 9 September 2004.

Photograph 32 included in the Witness Statement shows a group of sections of large pipes on the ground near the Saint Gobain test building (to the west of the application land) some of which are within the land covered by this application. The Witness evidence suggests that the pipes had been discarded by Saint Gobain and collected by Donald Ward Limited under the site services contract which was in place. However, I do not consider that the presence of such pipes, and subsequent collection, constitutes a part of any use of any of the land for the use described in the application.

Written Statement of John Murfin with Invoices

John Murfin states that over many years he has carried out haulage on behalf of Donald Taylor and subsequently Donald Ward Limited, and was employed collecting loads of recycled metals from the Griffon Road site for onward transport.

He states that he first started collecting scrap metal from the Griffon Road site in early February 2003.

John Murfin has produced with his statement copies of two invoices from his company, D.P. Transport, to Donald Ward Limited dated 11 February 2003 and 21 February 2003.

John Murfin confirms that, from his own knowledge, the application land has been in use for scrap and metal processing, recycling and storage for in excess of 10 years.

Since Donald Taylor sold his business to Donald Ward Limited in 2002, John Murfin therefore appears not to have had direct experience of having collected from the Griffon Road site when it was occupied by Donald Taylor.

The invoices provide evidence of collections from Donald Ward Limited at Griffon Road Ilkeston. They do not provide any evidence to support the claim that scrap/waste operations were being carried out on any participated parts of the application area.

This statement with regard to the extent of the use over the application land, is likewise not supported by the aerial photograph taken in September 2004.

Written Statement of Simon James Murfin with Invoices

Simon Murfin trades as SJ Murfin Transport and has been transporting scrap metal for many years. His main customer is Donald Ward Limited at the Griffon Road site in Ilkeston who he commenced working for in 2003. His company collects scrap metal from the site for onward transport.

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Simon Murfin states he was familiar with the previous owner Donald Taylor who he states also operated a scrap metal and recycling processing and storage facility on the application land. He recalls that the site under the operation of Donald Taylor was poor and that the site was poorly managed.

Simon Murfin has produced, with his statement, copies of invoices from 2003 and 2004 which relate to his visits to the Griffon Road site for Donald Ward Limited.

Simon Murfin states that the application land has been in use for scrap and metal recycling, processing and storage for in excess of 10 years.

Other than being familiar with the previous owner, Donald Taylor, he does not provide any basis for why he might be able to assess the extent of information to the area of land which was in operation by Donald Taylor.

Although the invoices provide evidence of collections from Donald Ward Limited at Griffon Road Ilkeston, they are compatible with a lawful use at the time in accordance with the 1994 CLUD. They do not provide any evidence that scrap/waste operations were being carried out on any particular parts of the application land.

This statement with regard to the extent of the use over the application land is likewise not supported by the aerial photograph taken in September 2004.

Witness Statement of David Sheldon

David Sheldon had worked for Donald Taylor as a lorry driver since 1 April 1985. He states that Donald Taylor sold the site to Donald Ward Limited in 2003. When Donald Ward Limited took over the site, David Sheldon became Manager of the weighbridge, a role he continued until 2008.

David Sheldon states that throughout his period of knowledge of the site (since 1985), the application land has been used for scrap metal, recycling, processing and storage.

Several other statements and statutory declarations indicate that the year when Donald Taylor sold the site was 2002. The statement is not supported with regard to the extent of the use over the application land by the aerial photographs taken in 1999, 2000 and September 2004.

Witness Statement of Michael Jackson

Michael Jackson is currently the site foreman for Donald Ward Limited and refers to having worked at the Griffon Road site since 2002, when the applicant company acquired the site from Donald Taylor. He has been responsible for offloading vehicles and loading scrap ever since Donald Ward Limited took over operations from Donald Taylor in 2002. He indicates that the application land has been in use for scrap metal recycling, storage and

processing for over 10 years since his first knowledge of the site in 2002, and that operations have continued ever since.

Michael Jackson refers to the concrete bridge that was located on the site and to having been the person responsible for its demolition in early 2004, which involved moving all the scrap metal then around the structure in order to safely demolish it. Michael Jackson marks a location for the concrete bridge on the drawing attached to his statement, on the western boundary of the application site.

This statement, with regard to the extent of the use over the application land, is not supported by the aerial photograph taken in September 2004.

The location of the concrete bridge, as annotated by Michael Jackson, is inaccurate. The aerial photography shows that the concrete bridge was located to the south-east of the turning head at the end of Griffon Road. Although Michael Jackson makes reference to the concrete bridge being demolished in early 2004, the concrete bridge is clearly visible on the aerial photograph taken on 9 September 2004, and therefore must have been demolished after this date.

Witness Statement of Christopher Hunt

Christopher Hunt refers to having worked on a Site Services Contract for Saint Gobain as a crane and lorry driver from 18 March 2002. His role involved loading material from the Saint Gobain land and hauling material to the Griffon Road site. He also states that he has knowledge of the site since 1980's and that the application land has been continuously used for the processing, recycling and storage of scrap metal since the 1980s.

Since Christopher Hunt did not start working at the site until 2002, it is not apparent that he had any particular involvement with the land before that time.

This statement, with regard to the extent of the use over the application land, is not supported by the aerial photograph taken in September 2004.

Witness Statement of Anthony Ashby

Anthony Ashby refers to having worked for Meakes Transport on the Saint Gobain Sites Services Contract from 1979. His role was to drive the lorry which was loaded with scrap metal and pipes from the Saint Gobain site. He was a regular visitor to the application site, taking materials there for processing and taking material back to Saint Gobain for smelting.

Anthony Ashby transferred to work for Donald Ward Limited when it acquired the contract in 1999 and continued in that role until 2007 when Saint Gobain finished operating and when he subsequently became a lorry driver working directly for Donald Ward Limited.

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He confirms that ever since his knowledge of the site since 1979, the application land has at all times been in use for scrap and metal storage, recycling and processing, and that the use has been ongoing for in excess of 10 years.

This statement, with regard to the extent of the use over the application land, is not supported by the aerial photographs taken in 1999, 2000 and September 2004, nor by the letter from SA Simmons and note of site meeting from May 2002.

Witness Statement of Michael Holmes

During the 1990s, Michael Holmes worked for Sisson and French who carried out site services for Saint Gobain, including the collection of scrap metal. When Wards Recycling took over these services in 1999, he became an employee of Wards Recycling. The site services he was involved in, both before and after the acquisition of the contract by Donald Ward Limited, involved the collection of reject and scrap materials and metals from the Saint Gobain plant and, up until 2002, such materials were sent to the Wards Recycling site at Woodville and Donald Taylor at Griffon Road. When Wards Recycling acquired the site from Donald Taylor, all the material from Saint Gobain went to the Griffon Road site.

Michael Holmes states that he has known the Griffon Road site for a period in excess of 25 years and confirms that the application site was in use for scrap and metal processing, storage and recycling. He further states that the area that was in use was consistent throughout the period of ownership and operation by Donald Taylor and, subsequently, by Donald Ward Limited.

Michael Holmes confirms that the application land has been in use for scrap and metal processing, recycling and storage for a period in excess of 10 years.

This statement, with regard to the extent of the use over the application land, is not supported by the aerial photographs taken in 1999, 2000 and September 2004, nor by the letter from SA Simmons and note of site meeting from May 2002.

Statement of Toby Potter

Toby Potter was employed by Saint Gobain as the main scrap metal buyer for the UK business and worked for this company between 2000 and 2006. He states that during that period he was familiar with Donald Ward Limited and the Griffon Road site as it was a site that received scrap from Saint Gobain for recycling and produced metals which were smelted down by Saint Gobain. He ceased working for Saint Gobain and took up employment with Wards Recycling in February 2007.

Toby Potter states he regularly visited the application site between 2003 and 2006 in his capacity working for Saint Gobain and after that through working for Donald Ward Limited.

He refers to having had continuous knowledge of the application site for a period of in excess of 10 years and confirms from his own knowledge and experience that the application land has been used for scrap metal processing, recycling and storage for in excess of 10 years.

This statement, with regard to the extent of the use over the application land, is not supported by the aerial photograph taken in September 2004, nor by the letter from SA Simmons and note of site meeting from May 2002.

Conclusion

I do not consider that the Statutory Declarations and Witness Statements provide convincing evidence that the development described in the application has been ongoing continuously for the period of 10 years up to the date of the application over the whole of the application area.

The aerial photography from July 1999, July 2000 and 9 September 2004 is considered to demonstrate that:

- (a) the part of the land in use in 1999 for scrap metal recovery (conforming with the 1994 CLUD) was corresponded to a distinct area within the application land.
This was the area being operated by Donald Taylor prior to the acquisition of the site by Donald Ward Limited. The part of the application land in such use at the time of the photograph in 2000 was substantially similar. The other areas of the application land were clear of any activities as described in the application.
- (b) at the time of the photograph in September 2004, after the acquisition of the site by Donald Ward Limited, the extent of the application land in such use had grown slightly, to the south, north and east. The use did not extend to the whole of the application area.

Although they are not conclusive on the issue, the reports provided by the Environment Agency give an indication that during the latter part of 2003 and until August 2004 the scrap/waste activities were confined to the permit area.

The Statutory Declarations and witness statements suggest that the north-west part of the application land was previously in use by Saint Gobain as part of a different planning unit under its control which generated some scrap metal waste arisings which were collected under a Site Services Contract for recycling.

The Statutory Declarations and witness statements make references to plans which show a site corresponding to the full extent of the application land. However, they do not appear to provide any evidence to explain how the

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particular areas of the application land, beyond the area in use which is suggested by the 2004 aerial photograph, might have been part of the history of continuous use of the application land over time for the recycling of metals, scrap and waste metals and waste materials. Whilst they refer to loading and transport of materials from "the Saint Gobain site" to the Donald Ward Limited site, where they were then recycled, it is not evident that any use by Saint Gobain of any of the application land would have been substantial or other than ancillary to its use as part of a separate unit which related to iron production.

It is apparent that the statements provided with the application do provide substantial evidence that in accordance with a contract, scrap materials arising from Saint Gobain's business and which were being discarded were collected by Donald Ward Limited, or contractors on their behalf, and transported to a site at Griffon Road.

However, this does not amount to evidence of a distinct use of any of the land then owned or occupied by Saint Gobain that might have been associated with the use of a greater area of land, such as is claimed by this application, primarily for storage and recycling of waste. The aerial photograph dated 9 September 2004 indicates that there was then no substantial on-going storage of metals, scrap or other waste metals, or waste materials or recycling on the parts of the application land which then related to Saint Gobain.

It is considered that over the relevant period, the area of the application land which is shown hatched on plan CL8/0114/154-DCC2, was used in a manner compatible with the permission for its use as a materials recycling facility subject to the conditions (Planning Permission CW8/0602/37) which was issued on 2 July 2003 and implemented thereafter, and the existing use referred to in the application.

It is considered that over the relevant period, the area of the application land which is edged by a dashed/dotted line on plan CL8/0114/154-DCC2, was used in a manner compatible with the use as described in the 1994 CLUD and the provisions of the Appendix attached to that Certificate, and the existing use referred to in the application.

It is considered that part of the area of the application land outside the boundaries of the above planning permission and the 1994 CLUD, which is shown cross-hatched on plan CL8/0114/154-DCC2 is also being used in a manner which is compatible with the existing use referred to in the application and has been used continuously in this manner for a sufficient period of 10 years or more so as to be capable of forming part of a lawful use.

I therefore consider, on the balance of probability, that there is a lawful use of land for the processing, recycling and storage of metals, scrap and waste metals, and waste materials, which relates to the land shown on plan

CL8/0114/154 DCC2 respectively hatched, edged by a dashed/dotted line, and cross-hatched.

It is considered that the remaining area of the application land shown dashed on plan CL8/0114/154-DCC2 has not been subject to any continuous use described in the application for a sufficient period so as to be capable of forming part of a lawful use. With respect to that part of the application area dashed on plan CL8/0114/154-DCC2, I do not consider, after evaluation of the evidence provided in the application and the aerial photography from July 1999 and September 2004, that, on the balance of probability, the use of this area for processing, recycling and storage of metals, scrap and waste metals, and waste materials has been carried out for a period of 10 years from the date of the application, and therefore I consider that this use over this land is unlawful.

As noted above, the existing use as expressed in this CLEUD application is stated to include "vehicle dismantling". Use of land for dismantling of vehicles into component parts would generally be a use of a different kind to use for scrap metal recycling. Although the scrap metal recycling which is prominent on the land may well utilise vehicle-related waste to a great extent, no evidence appears to have been put forward which suggests there has been on-going vehicle dismantling taking place as a distinct activity within the land over the 10 years up to the date of the application. It is considered therefore any certificate to be issued with respect to this application should have a substitute description for the use, which does not include a reference to vehicle dismantling.

The description in any certificate under section 191 of an existing use being recognised as having a lawful status should be as precise as possible. In this case, during the relevant ten year period of use, the planning permission CW8/0602/37, and the Environment Agency permits, have each covered substantial elements of that part of the application land on which the use is considered to have endured over the period. No information as to hours of working are contained within the information received from the applicant, but there is no evidence to suggest that activities relating to the use, or acceptance of waste, have generally carried on at any times in the day or week that would be respectively prohibited under the permission and the permit EAML 43394. It is also considered that the use of the relevant part of the land which has the benefit of the permission CW8/0602/37 would generally have been in conformity with that permission and the conditions under it. It is considered therefore that the use as described in any certificate to be issued in this case should be worded to reflect this, as provided under the recommendation below.

(3) **Financial Considerations** The fee of £1,690 has been received.

(4) **Legal Considerations** This is an application submitted under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.

By virtue of the Act, a continuous use for 10 years of a parcel of land in breach of planning control, which has not been subject to enforcement action under the Act, can establish an on-going lawful use for the land under planning law which did not previously exist.

The determination of this application concerns matters of fact and not questions on amenity or planning merits. The activity at the application site may result in an impact on amenity in terms of visual impact, noise or traffic, but cannot be conditioned. In the case of a CLEUD, the action of the Waste Planning Authority is prescribed by law, in that the Town and Country Planning Act 1990 (as amended) requires that a CLEUD be granted where sufficient evidence is provided to show the use over the prescribed period, without taking account of any amenity concerns.

Nevertheless, such a grant will not confer any immunity for the commission of any public or private nuisance. The determination of this application as required by the 1990 Act is regarded as being compatible with the human rights under the European Convention on Human Rights (including a persons' entitlement to a fair and public hearing in the determination of his civil rights and obligations, under Article 6 of the Convention).

Section 191(4) provides that if the local planning authority is satisfied of the lawfulness at the time of the use described in the application, or that description subject to its modification, or a use under a substituted description, it is to issue a certificate to that effect.

(5) **Environmental and Health Considerations** As contained in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers**

Application, together with Planning Supporting Statement, Statutory Declarations and Witness Statements. Letter from the applicant's solicitor (Gateley) dated 19 May 2014 including additional witness statements of David Ward and Donald Ward and copy of aerial photograph dated 18 July 2000, aerial photography dated 29 July 1999 and 9 September 2004. Certificate of Lawfulness granted by Erewash Borough Council dated 16 March 1994.

Planning permission CW8/0602/37 and planning permission CW8/0105/187.
Letter dated 9 April 2014 and email dated 12 June 2014 from Alliance
Planning on behalf of Saint Gobain. Response from Erewash Borough Council
dated 14 April 2014.

(7) OFFICER'S RECOMMENDATIONS

That the Committee resolves to approve the determination of the application described in this report by the issuing of a certificate of lawfulness under section 191 of the Town and Country Planning Act 1990 which shall contain a substitute description, to recognise as the existing lawful use:

the use of those parts of the land subject to the application comprising;

- (a) the part inside the area of planning permission CW8/0602/37
- (b) the part outside the area of that permission and within the area of the certificate of lawfulness for use for the processing and storage of scrap issued by Erewash Borough Council dated 16 March 1994 and
- (c) those parts (outside both the area of that permission and the area of that certificate), which are shown by cross-hatching on the Plan CL8/0114/154-DCC-2 attached to this report;

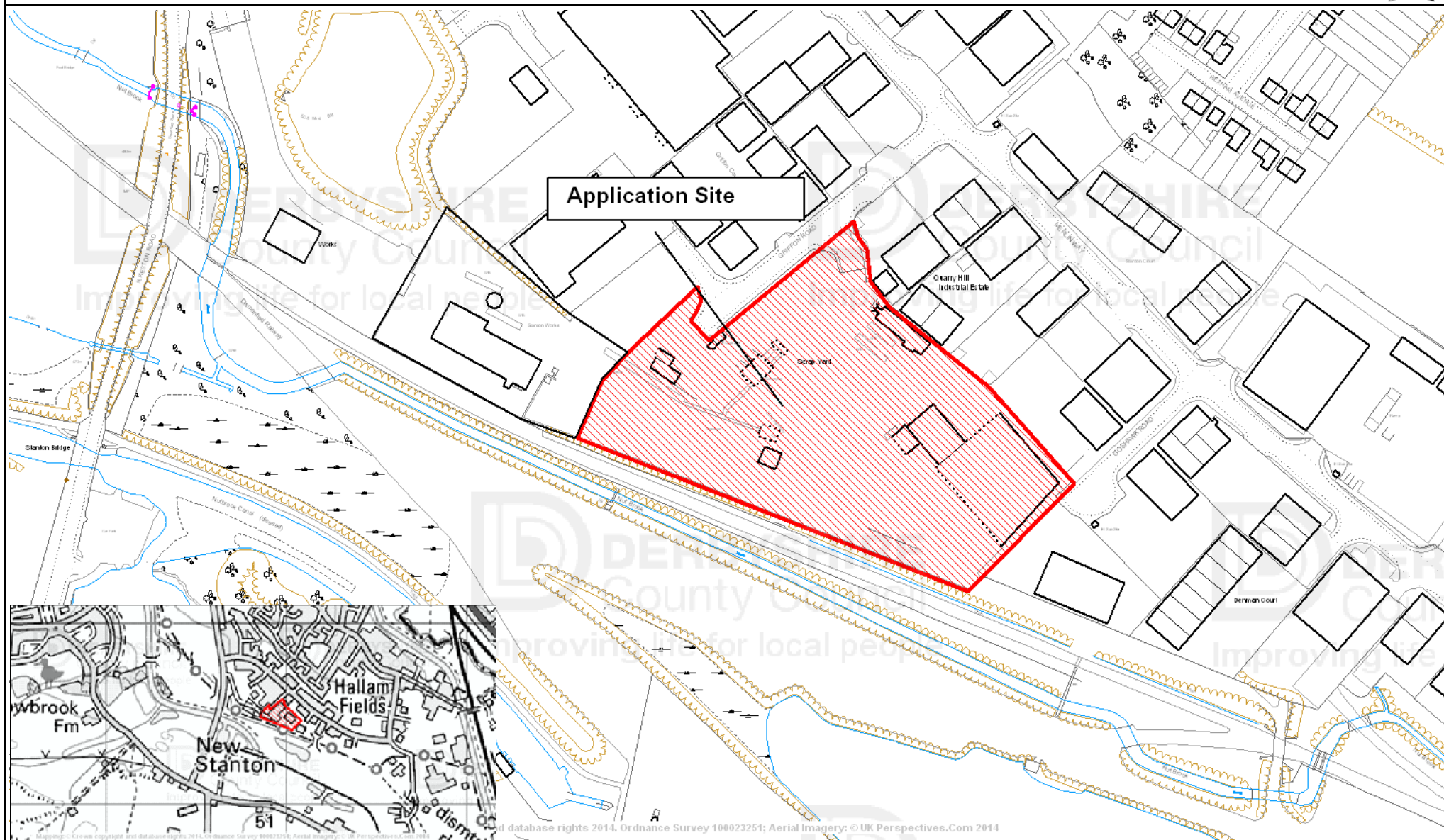
for the storage and recycling of scrap and waste metals and other waste materials in a manner whereby (i) the element relating to the part of the land '(a)' conforms with the use permitted under planning permission CW8/0602/37 and with the conditions therein, (ii) the element relating to the part of the land '(b)' conforms with the provisions of the appendix to the certificate of lawfulness dated 16 March 1994, (iii) except in cases of emergency incoming materials are not accepted earlier than 07:00 or later than 18:00 on any day, and (iv) except in cases of emergency activities are not undertaken on any Sundays or public holidays, or earlier than 06:00 or later than 20:00 on any other day

Signed.....Date.....

Mike Ashworth
Strategic Director - Economy, Transport and Environment

Title

CL8/0114/154 - Land at Griffon Road, Quarry Hill Industrial Estate, Ilkeston



Title

PLAN NO - CL8/0114/154-DCC1



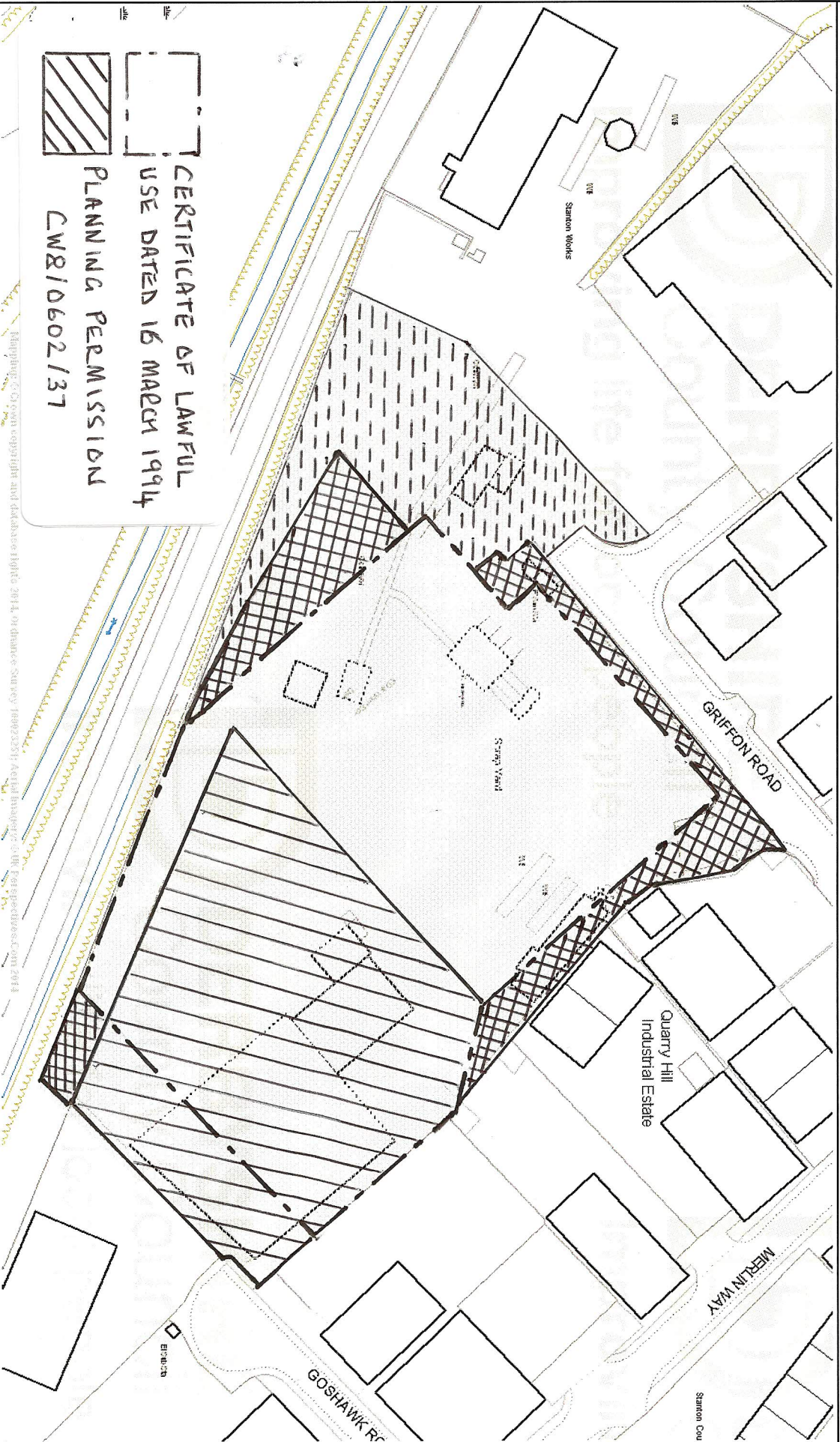
CERTIFICATE OF LAWFUL
USE DATED 16 MARCH 1994
PLANNING PERMISSION
CN8/D602/37

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Date 1/7/2014
Scale 1/1250
at A4

Title

PLAN NO - CL8/0114/154-DCC2



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