

Agenda Item No. 4.2

**DERBYSHIRE COUNTY COUNCIL  
REGULATORY - PLANNING COMMITTEE**

**6 November 2017**

Report of the Strategic Director – Economy, Transport and Environment

**2 APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF  
EXISTING USE OR DEVELOPMENT IN RESPECT OF THE  
STORAGE AND PROCESSING OF INERT WASTE MATERIAL ON  
LAND AT CARR HILL FARM, COLE LANE, OCKBROOK  
APPLICANT: MR BARTON  
CODE NO: CL8/0617/28**

**8.849.5**

**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 (CLEUD) in respect of a stated existing use of land for the storage and processing of inert waste.

Unlike an application for a conventional planning permission under the 1990 Act, an application for a CLEUD is determined entirely on the available factual evidence associated with 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 there is considered 'on the balance of probability' to be an existing use or development which has become lawful over time. In this case, the applicant contends that the land, which is the subject of the application, has been in continuous use for the storage and processing of inert waste for a period of 10 years up to the date of the application.

The application does not provide an account of the use of the land which accords with the available evidence regarding the variety of activities taking place over the application land, being made solely in respect of the storage and processing of waste. The evidence considered does not support the claim of a continuity of use for waste activities for a ten year period up to the date of application. It is therefore recommended that the resolution of the Committee is to refuse the CLEUD application.

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

## (2) Information and Analysis

### Application Details

Carr Hill Farm is situated on the east side of Cole Lane, Ockbrook and north of the A52 Derby-Nottingham dual carriageway. The application seeks to establish that a use of an area of land to the east of the farm buildings, comprising approximately 0.42 hectares (ha) as identified on the plan attached to this report for the storage and processing of inert waste material is lawful, on the basis of being claimed to have carried on continuously for at least ten years. The application has been submitted on behalf of Mr Richard Barton.

The farm also includes a traditional brick farm house at Cole Lane, along with a range of outbuildings which surround what was the original farm yard, one of which has been converted into a domestic residence used by the applicant. To the east of the original farm yard is a large, modern agricultural building. It is believed, from previous discussion with the applicant, that the building is used for storage associated with the farming activities.

Part of the farm land, to the east of the area shown on the plan attached to the application, is used for the production of turf.

To the south and east of the agricultural building is a large hard surfaced yard which contains a substantial wood and steel structure which would originally have been used as a 'silage pit' but has more recently been referred to as a 'materials store'.

The application area comprises much of the hard surfaced yard which is currently used for storing inert waste, as well as plant and equipment associated with the applicant's agricultural contracting business. This includes HGV trailers, steel shipping containers, building materials, plastic drainage pipe, as well as agricultural equipment and materials.

Access to the yard is obtained directly from Cole Lane through a set of solid wooden gates. The yard area is not visible from any public vantage points due to the position of the farm buildings, high hedges and the wooden gates across the access point. It is understood that near neighbours are able to view the fields at the northern part of the yard, but have a very limited view of the area where waste storage is claimed to have taken place.

A statutory declaration has been submitted in support of the application, by Mr Richard Barton, a farmer who has lived on the land since 1978. He is the son of the landowner.

In his statutory declaration, Mr Barton states that waste materials have been stored on the site continuously since 1998 and that the processing of construction waste has been carried out since 2002. Mr Barton also states

that processing was initially undertaken on a relatively small scale but that by 13 March 2004, the storage and processing of waste material was taking place on a larger scale akin to the current level of activity.

Mr Barton also states that, over the years waste materials have been brought to the site by numerous customers and that until the waste is processed it is stored in different stockpiles depending on whether the waste materials are clean or mixed and that excavators and wheeled loaders are used to load the materials into crushing and screening plant.

Mr Barton states that the screening process is undertaken on average at least fortnightly during spring, summer and autumn and once a month in winter. His declaration goes on to say that screening can take a few hours a day over several days or full days depending on workloads.

With respect to crushing, Mr Barton states that it takes place on average once a fortnight and has continued to do so for in excess of the last ten years. The process takes a few hours a day over a couple of days or full days.

Mr Barton further states that at no time in the last ten years has the site been cleared of waste materials and that the storage of waste materials has been continuous. Further, the processing of waste materials has been undertaken on average once a fortnight over the last ten year period.

This statutory declaration also refers to a bundle of 36 photographic images which has been produced. Six statutory declarations by other individuals of July 2017 also accompanied the application; these are referred to below.

### **Consultations and Responses Received**

Planning authorities are not obliged 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, a letter notifying recipients that the application had been received was delivered to the 14 residential properties nearest to Carr Hill Farm.

In addition to notifying the members of the public living closest to Carr Hill Farm, the Authority consulted Erewash Borough Council's (EBC's) Environmental Protection Team and Planning Service, the Environment Agency, Ockbrook Parish Council, Derbyshire County Councillor Wayne Major and Erewash Borough Councillor Mike Wallis.

Derbyshire County Council's Traffic and Safety Section has also been made aware of the comments which have been received with respect to HGV movements associated with Carr Hill Farm with concerns being raised relating to an increased risk of road traffic accidents occurring, particularly at the junction of Cole Lane with the A52.

Whilst 50 responses have been received from members of the public, along with consultation responses from all the statutory bodies notified, the majority of these responses relate to loss of amenity through such issues as noise, dust and traffic; matters which cannot be taken into consideration in the determination of this application.

A number of them do however provide information which assists the consideration of the application.

One near neighbour to Carr Hill Farm indicated that they had seen no evidence of Mr Barton carrying out any kind of recycling business before 2014. They indicated that it had become apparent in 2014 that Mr Barton had started recycling waste materials again as there was an increase in lorries visiting the farm, and that recycling did not continue between the earlier refusal of planning permission and the resumption of recycling activities in 2014, referring to aerial photographs showing no piles of waste on the site prior to 2014.

Another submission states: *“Living adjacent to the applicant’s property we can observe some activity at the premises. In 2008-09 when the application was refused it was obvious that recycling had stopped following the refusal of planning permission. Traffic to the property was no longer in keeping with the operation of a recycling business. The continual operation of such a business as the applicant suggests would necessitate a large number of lorry movements bringing materials to and from the property, this clearly was not happening.*

*It is not difficult to be aware of heavy vehicles arriving and leaving the property the access is narrow and would easily draw attention. In addition, there is the machinery used for this activity. Prior to 2008 the applicant was using a large crushing machine (it was blue in colour) this makes a distinctive noise and could also be observed in operation, it was such that it immediately attracted complaints. Machines loading the crusher and moving materials around the site would be heard there was distinctive reversing noise (loud beeps) or revving of engines to suggest that anything was happening. When the applicant was recycling prior to 2008 there was considerable dust generated by this activity, it is clearly apparent that crushing and recycling was happening, after 2009 this ceased, clearly no further activity. There were several piles of rubble situated at the back of the property. Over the years these did not move or increase and decrease in size. If regular activity was taking place these would have been moved as products were sold. Clearly again this demonstrates the fact that there was no regular activity taking place at the site.*

*The applicant had been allowed to keep a small amount of material at the site following the refusal of planning permission for use around the farm, paths,*

*and entrances to fields etc. This does not demonstrate any regular activity taking place at any time. It is our opinion that there was no regular activity as the applicant is suggesting for a considerable number of years, between 2009-14.*

*In 2014, we began to become aware that recycling had restarted, albeit intermittently. Activity around the farm was increasing and there was more evidence of machinery operating”.*

Another individual confirms that following the appeal Mr Baron ceased the ‘crushing of material’, stating that ‘(p)ease and normality returned to the village’. This individual states that “(a)fter several years, the “crushing noise” emanating from Carr Hill Farm, could be heard again in late 2014/2015. Instead of lorries he was mainly using tractors and huge trailers to transport the material, day and night time. We reside approximately 100 metres from the farm, and can witness the noise and vehicular movements”.

A common thread that appears in responses from residents is that whilst those living close to the site were aware that a waste recycling operation was taking place at Carr Hill Farm up until around 2008, from that time, until 2014, nothing was seen or heard to suggest that a waste management activity was taking place.

Residents point to 2014 as the time when they became aware that a waste management activity had recommenced at the farm, albeit intermittently.

The consultation response received from EBC’s Environmental Protection Team advises that it has received two complaints alleging that crushing was taking place at Carr Hill Farm, one made in October 2016 and the other in April 2017. The representation also confirms that there is a lack of historical complaint from local residents made to environmental health in respect of dust or noise nuisance. This response also refers to concerns having been raised by Ockbrook Parish Council about HGV movements associated with activities at Carr Hill Farm.

EBC’s Planning and Regeneration Service has provided a detailed response to the consultation. In addition to comments on the technical detail of the application, the Borough Council refers to its own officers’ involvement with the site, providing photographs and comments on site visits undertaken on 30 June 2011 and 30 July 2014.

### **Other Information**

This Authority’s first involvement with regard to a possible waste recycling operation was taking place at Carr Hill Farm was in December 2006.

**Reports of unauthorised development to May 2008**

Date of report	Details of report	Outcome
4 December 2006	Importation and screening of waste material.	6 December 2006 Joint inspection by Derbyshire County Council (DCC) and the Environment Agency (EA). 22 February 2007 DCC meeting with R Barton. R Barton asked to remove waste by end of April 2007. 13 April 2007 DCC Waste Team Leader attends site meeting, file note does not refer to any waste materials being present.
7 March 2008	Two agricultural trailers carrying broken concrete observed entering the farm.	See 16 April 2008, below.
15 April 2008	Crushing noise reported.	See 16 April 2008, below.
16 April 2008	Crushing noise reported.	Inspection by DCC. Two piles of clean, crushed brick and concrete noted on site. R Barton explained that crushed brick and concrete was to be used in the base of an agricultural building authorised by EBC (reference ERE/1107/0103). 20 June 2008 site inspection by DCC Planning Officer, photographs taken of the piles of crushed brick and concrete and soil.

On 22 May 2008, an application was made to this Authority for planning permission *“for the screening and pulverising of waste materials from demolition and construction sites to produce reusable aggregates, and alterations to existing access”* at Carr Hill Farm.

**Reports of unauthorised development from May 2008 to October 2008**

Date of report	Details of report	Outcome
21 July 2008	‘Carrilion’ lorries reported entering Carr Hill Farm	Officer contacted R Barton by telephone. He denied that any waste transfer

		operations were taking place and explained that the lorries were involved with 'statutory undertaker' works in the area and that clean hard-core was being temporarily stored at the farm.
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The planning application made in May 2008 was considered and refused by this Authority on 6 October 2008. The applicant registered an appeal against this decision on 13 February 2009 with a public inquiry being held at Ockbrook on 11 August 2009. The appeal was subsequently dismissed on 24 August 2009.

This Authority did not receive reports of any unauthorised activity at the site between 22 July 2008 and 13 August 2014. The details of reports received from 13 August 2014 onwards are set out below.

#### **Reports of unauthorised development from August 2014**

Date of report	Details of report	Outcome
13 August 2014	Importation and processing of waste	Concerns reported via EBC Planning who had carried out their own inspection the previous week with respect to the agricultural building ERE/1107/0103. Piles of processed and unprocessed waste noted on site. An explanation received from the landowner that the material was to be used in the construction of the building and for repairing farm tracks. DCC inspect the site, discuss with R Barton and receive a similar explanation – crushed material to be used in the building or as drainage medium.
11 <sup>th</sup> June 2015	Waste materials being imported to the farm and a crusher being used	16 June 2015. DCC inspects the site, new piles of waste material noted. R Barton states that waste being imported, processed

		and sold to customers and that he considers this to be immune from planning enforcement action having been operating for 10 years
24 <sup>th</sup> September 2016	Waste material being imported and deposited	7 October 2016 DCC inspects the site with R Barton. R Barton confirms that soil and other excavated materials were recently imported, and the soil spread on the fields as part of the cycle of turf growing. Other imported material had been processed and had now left the farm.

The Planning Service holds photographs taken by officers which were taken (with the exception of 20 June 2008) during inspections made in response to reports of unauthorised waste activities. The photographs are dated 12 December 2006, 24 April 2008, 20 June 2008, 3 October 2014, 16 June 2015, 7 October 2016, 24 November 2016 and 10 April 2017.

This Authority has obtained ten commercially produced aerial images of Carr Hill Farm. The images were taken on: 2 June 2006, 10 August 2007, 16 August 2008, 1 April 2009, 1 October 2011, 11 March 2012, 29 September 2013, 17 February 2015, 4 June 2015 and 11 November 2016. A series of aerial images can assist in providing general indications of how the appearance of an area of land might have changed over time. However, such evidence is often inconclusive or ambiguous as to use of the land even at the exact times the images were taken, and tends not to give a reliable indication of the history of use(s) of an area, particularly if the images are long periods of time apart.

The Authority also holds records relating to the two previously submitted planning applications and the planning appeal (see case analysis below).

The applicant refers to the land edged blue in the plan attached to his statutory declaration as Carr Hill Farm. The blue line shown on the plan, which is the same as the plan attached to the CLEUD application, is incomplete and does not show the whole of the land referred to as Carr Hill Farm which presumably extends over the fields to the east of the area shown on the plan. The land is not registered with the Land Registry. Mr Barton states that the use of Carr Hill Farm was extended in 1998 from agricultural



and residential purposes to include the operation of a plant hire and contracting business. In 1998 this business was known as BM Plant, from November 2001 it was BM Plant Limited and since 9 May 2005 the business operating from the site has been Barton Plant Hire and Contractors Limited. The nature of the business known as Barton Plant Hire and Contractors Limited is recorded on the Companies House website as demolition, renting and leasing of construction and civil engineering machinery and equipment, and, renting and leasing of other machinery, equipment and tangible goods not elsewhere classified. Carr Hill Farm is the registered address of the company.

### Case Analysis

The CLEUD application was received by this Authority on 26 July 2017, the evidence therefore has to demonstrate that the land, on a balance of probability, has been in continuous use for the storage and processing of inert waste since 26 July 2007.

Of the 36 photographs with Mr Barton's statutory declaration, which are referenced "RJB 2", five are copies of aerial satellite images obtained from 'Google Earth' or 'Bing Maps'. Dates have been added on these images by Mr Barton but are not confirmed by the provider. Mr Barton provides his opinion on what these photographs show.

The other photographs provided as part of RJB2 were taken by either Mr Barton or his wife and are said to show the site in 2002, 2006, 2007, 2009 (aerial photo), 2010, 2013, 2014, 2015 and 2016.

Taking the various images in turn, Page 1 of RJB2 is a copy of a 'Google Earth' image stated by Mr Barton to have been taken between 1 March and 31 May 2001, and to demonstrate waste storage at the time. Whilst the image is difficult to interpret, it appears to show the farm yard at a time when various construction works consistent with the planning permission granted by Erewash Borough Council on 2 May 2001 (reference ERE/1000/0068) were taking place. In any event this image, if it does date from 2001, predates the relevant 10 year period.

Likewise pages 2 and 3 of RJB2 are 2 photographs of a JCB excavator said by Mr Barton to have been taken in 2002 in the farmyard. Mr Barton states that "*the photographs demonstrate that the site was being used for the storage of waste materials at that time*". It is not possible to discern what may have been in storage at that time, but again this obviously precedes the 10 years up to the date of the application.

No photographic evidence is provided for the period 2003 -2005.

At pages 4-20 of RJB2, 17 images are reproduced which are stated to have been taken in 2006. Presumably they record the months leading up to Planning Enforcement officers' first visit to Carr Hill Farm in December of that year. It is not disputed that some unauthorised waste operations were taking place at the land at that time as the Authority's records of 2006/7 show.

The photograph at page 21 of RJB2 appears to show soil processing taking place. It is known that the agricultural activities undertaken at Carr Hill Farm include turf growing, and it is not clear whether the processing taking place was ancillary to that activity. The Council's own records include a file note produced following a meeting at the farm between the Council's Waste Team Leader, Mr Barton and his planning agent on 13 April 2007. There is no indication in that note of any continuing breach of planning control relating to the processing of waste materials at that time.

Mr Barton states that the image at pages 22 of RJB2 is a copy of a 'Google Earth' image stated to have been taken between 10 and 26 August 2007 and demonstrates the use of the land at the time for the storage and processing of waste material.

Page 23 of RJB2 is a copy of a 'Bing' aerial image stated to have been taken some time between 15 September 2008 and 4 October 2008. The image clearly shows that, since August 2007, the yard has been extended eastwards to the boundary hedge. There is a pile of crushed hard-core, which had previously been recorded at the end of the silage clamp which appears on it to be reduced.

Page 24 of RJB2 shows an aerial photograph stated as being taken in 2009. Whilst piles of material can be seen around the land, it is difficult to discern what the piles consisted of. The silage clamp structure in the picture can also be seen to contain other items which are square in appearance and may be pallets of bricks and blocks which have been observed during site inspections by this Authority's Planning Enforcement Officer.

Page 25 of RJB2 is also stated to have been taken in 2009, however, it is not possible to discern what is recorded in the photograph other than the two figures which are the main subjects.

The photograph which appears at Page 26 of RJB2 has been extracted from a report prepared by Dustscan Ltd. Mr Barton states that the image was taken in 2009 by Dustscan Ltd. (*The Dustscan Ltd report records that the photograph was taken on 20 January 2009*). The image appears to show storage of hay bales, soil and possibly lengths of drainage pipes.

The photographs at Pages 27 and 28 of RJB2 are stated to have been taken in 2010. It is not possible to discern what piles of material they might include are or where they are located in relation to the application area.

No photographs are included for 2011 or 2012.

Page 29 of RJB2 appears to show part of an excavator in front of a pile of material. Mr Barton states that this photograph was taken on the application land in 2013. Page 30 of RJB2 is copy of another 'Google Earth' image, which Mr Barton believes was taken between 20 April 2013 and 30 May 2013. Mr Barton suggests that the photograph provides evidence of the storage and processing of waste material at that time.

Mr Barton states that the image at page 31 of RJB2 was taken in 2014 around the time that a planning officer from EBC inspected the area of the proposed agricultural building. It is not possible to discern any detail within the photograph. It is known that the EBC Enforcement Officer visited the farm and met Mr Barton on 30 July 2014.

Pages 32 and 33 of RJB2 are stated by Mr Barton to have been taken in 2015 and pages 34 and 35 stated to have been taken in 2016. All 4 images are of insufficient quality to provide any detail of what activities might have then been occurring or what the various piles contained.

Page 34 of RJB is a very dark copy of a 'Google Earth' image stated to have been taken some time 13-19 September 2016. Little detail is discernable.

Many of the photographs show items on the land that were not connected with the claimed waste activities (such as drainage pipes, hay bales, containers) or items that would be useable either in connection with a waste activity or some other activity, such as vehicles and equipment that might have been used in connection with the plant hire and contracting business, and soils that might have been used in relation to turf growing.

### **Statutory Declarations**

One of the declarations is by Martin Willis, who states that he has employed by BM Plant Ltd and Barton Plant Hire and Contractors Ltd, as a plant operator and site manager, from 9 October 2003 until 27 November 2015 mainly on a full time basis but with some periods of part time working. Mr Willis states that he was involved in working on construction and demolition sites and at Carr Hill Farm itself. He states that he. He states that he has never seen the site empty or clear of unprocessed or processed materials of waste.

He states that he has worked for the company on construction and demolition sites, and at Carr Hill Farm. There is a lack of clarity as to his activities at the

farm, although he refers to these having taken place within the red line area identified on the application, and to having operated plant and machinery at the site in connection with the storage and processing of construction and demolition materials such as soil, sand, brick and concrete. Mr Willis has not provided any detail to describe how any distinct use of the land for waste storage and processing might have been taking place over continuous period of several years. This is the area within which plant and machinery, vehicles and supplies, associated with the company has been stored.

Another declaration is by Robert Dawson, who states that he has worked at Carr Hill Farm on a part-time basis since 2001, undertaking agricultural work, such as ploughing and cultivating the land but also operating plant and machinery both at construction and demolition sites and at Carr Hill Farm. He states that the operation of plant and machinery has involved the movement, screening and crushing of materials.

Another declaration is by Stuart Swindell, who states that he worked at Carr Hill Farm on an annual basis since 1999, operating farm machinery. He states that he is currently a self-employed Plant Operator for Barton Plant Hire and Contractors involved with operating machinery at the Farm and that since February 2002 he has operated plant and machinery on a regular basis, either on a full or part-time basis, in connection with the storage and processing of inert materials such as soil and rubble.

Another declaration is by Shaun Cotton, a director of a Speed Tyre Services Ltd, a company specialising in the supply of tyres and tyre repairs. Mr Cotton states that he has supplied tyres and carried out tyre repairs to machinery at Carr Hill Farm on a regular basis since 22 September 1999, on both domestic vehicles and on lorries involved in the haulage of materials to and from the Farm. Mr Cotton states that he has known that the storage and processing of materials such as topsoil and aggregates has been taking place on the land edged red on the plan attached to the application for a period in excess of ten years. Mr Cotton also states that he has at no time since 1999 seen the site clear or empty of these materials.

Another declaration is by Steven Doohan, who states that as a director of Doohan's Grab Hire Limited, a company specialising in lorry haulage involving the removal of waste from, and the delivery of stone, sand and topsoil to, both commercial and domestic customers, he was an occasional visitor to the farm from June 1998 to February 2010. He states that since February 2010 he has attended the farm on an almost daily basis in connection with the transportation of unprocessed and processed materials such as topsoil, subsoil, stone, builders and demolition rubble, and has witnessed both the storage and processing of materials at waste at the site. He says that at no point during this time has he seen the site cleared or empty of materials either unprocessed for processed.

The other declaration is by Frank Walvin, a turf grower and the operator of 'Dale Lawn Turf', who he states that he has been attending the farm since 1996 in connection with turf growing. He states that he visits the site at least once a week and that during spring, summer and autumn the visits would be almost on a daily basis. He refers to having deposited waste materials, spent turf, soil and slabs, concrete and bricks on the land shown edged red on the plan attached to his declaration (being the land subject to the application) and has collected processed materials such as topsoil and aggregates required in connection with the laying of turf.

He also refers to having witnessed processing and storage of such materials on a continuous basis for in excess of 10 years and states that at no time since 1998 has he seen the site cleared or emptied of waste materials.

### **Conclusion**

The one fundamental question this application raises is whether the current ongoing use of land for processing and storage has been taking place continuously for in excess of ten years (up to the time of the application).

It would appear having regard to all the available evidence that within the area of land in respect of which the CLEUD is sought, storage of various materials and business activities have taken place during the ten year period. However some of the storage and some of these activities were almost certainly in connection with the ongoing agricultural use of Carr Hill Farm rather than the current ongoing use for waste storage and recycling which this Authority is required to address under this application. Some storage of mobile plant may also have been connected with plant hire rather than waste treatment.

There is no detail in the witness statements of where or how waste has been stored or processed over time within the application land. Furthermore the evidence from the Council's records shows that, whatever the exact waste storage and waste related activities were that took place on the land over the ten year period, they must have lacked the continuity as well as the consistency necessary for founding a new lawful use in respect of the land.

It appears fairly certain that over the periods from December 2006 to May 2008 and from August 2014 onwards, some processing and associated storage of unprocessed waste and products has, at times, taken place within the land, However I do not believe that such processing or storage was occurring through much of 2008 and 2009 other than a small amount which was associated with a planning permission for building work issued by EBC, agricultural permitted development, and the use of soil in turf growing.

Whilst it is clear that a waste recycling operation was taking place on the land at the time of the Planning Enforcement Officer's first visit on 12 December 2006, by the Planning Enforcement Officer's second visit on 22 February

2007, the pile of crushed material had reduced significantly, although a fair quantity remained piled up against the former silage clamp. Crushed material was also noted piled within the clamp.

A pile of soil was also observed in the yard. Significantly, when asked about the remaining piles of crushed material, Mr Barton explained that the material within the former silage clamp would be used around the farm. As farmers benefit from 'permitted development rights' relating to the use of waste materials and the storage of the crushed material within the former silage clamp was not adversely affecting anyone, it was allowed to remain. The Planning Enforcement Officer did ask that the crushed material outside the silage clamp be removed by the end of May 2007.

Between 7 March 2008 and 16 April 2008, this Authority received the first of three complaints relating to several agricultural trailer loads of broken concrete being taken into the farm later followed by the sound of crushing on 15 and 16 April 2008. When Carr Hill Farm was inspected on 24 April 2008, Mr Barton confirmed that waste had been imported and crushed and that the two piles of crushed brick and concrete were to be used in the base of agricultural building recently permitted by EBC. Photographs taken by the Planning Enforcement Officer during the visit of 24 April 2008 only show two piles of crushed brick in the yard. An almost identical layout of crushed brick piles and a grassed over pile of what is assumed to be topsoil was recorded by the Planning Officer on 20 June 2008. The same Planning Officer observed what he believed were very likely the same piles of crushed material during the Planning Committee visit which took place on 8 October 2008. The Planning Officer recorded that he had discussed the piles with Mr Barton and received the explanation that they were to be used in connection with the large agricultural building which was to be erected in the yard.

These events were revisited during the course of appeal against this Authority's refusal to grant planning permission. Around 7 May 2009, Mr Chris Thorp, the Planning Agent representing Mr Barton, in his final comments to the Planning Inspectorate, stated that *'There seems to be a general misconception amongst several local residents that the proposed operations have been continuing despite a cessation of works over 18 months ago. Operations have in fact ceased pending the outcome of the application and this appeal.'*

This was followed soon afterwards by a second submission in which Mr Thorp elaborated on his earlier statement *"The Council refers to complaints that were made between December 2007 to April 2008. At this period there was no waste processing activity taking place on the site, other than a very limited operation over a period of two days in order to produce some hardcore for the 'permitted development' general purpose agricultural building that has been*

*referred to in our statement. It was categorically not carried out over a period of 5 months as has been alleged."*

Further evidence that 'permitted development' agricultural activities were being undertaken by Mr Barton are provided through a comparison of aerial images obtained by this Authority dated 10 August 2007 and 16 August 2008. At some point between the two dates the farm yard on the land can be seen to have been extended eastwards by approximately 15 metres up to the boundary hedge. The later photograph appears to show that the extended area has been hard-surfaced, presumably using crushed material known to be stored on site.

Further evidence that a significant break in any waste processing activity at Carr Hill Farm is provided by the Planning Inspector who heard the appeal and carried out his own inspection on 11 August 2009. In his report, the Inspector stated that "*On the question of openness, I saw that the present site is largely undeveloped save for an enclosure serving as a material store. Elsewhere there is a soil mound and open storage of items such as farm machinery, trailers, containers and bails of straw.....*" There was no mention of any processed or unprocessed materials being present outside the materials store.

On the basis of the above analysis, I do not consider that the Statutory Declarations provide convincing evidence to the contrary (that the development described in the application has somehow been ongoing continuously for the period of 10 years up to the date of the application over the whole or any part of the application area). I am also doubtful whether any activities involving waste, waste products and aggregate products and the presence of such materials which might have been elements of such a use are distinguishable from similar activities and presence which would have been associated with agricultural or other operations taking place at the farm. I therefore recommend that the application is refused.

(3) **Financial Considerations** The fee of £1,385 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 requirements under the European Convention on Human Rights (including a person's 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.

### **Other Considerations**

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

(6) **Background Papers**

Application, together with Statutory Declarations of Richard Barton, Frank Walvin, Martin Willis, Robert Dawson, Shaun Cotton, Steven Doohan, Stuart Swindell, items held on file.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that the application referred to in this report for the grant of a Certificate of Lawful Use for the stated use of land at Carr Hill Farm, 79 Cole Lane, Ockbrook be **refused**.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**





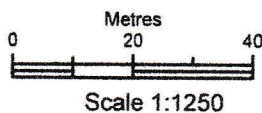
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