
Appeal Decisions

Inquiry held on 10, 11, 12 and 17 May 2017

Site visits made on 10 and 17 May 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 June 2017

Appeals Ref: APP/T0355/C/16/3159536 and 3159537

Land at Hythe End Farm, Hythe End Road, Wraysbury TW19 5AW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Fowles Crushed Concrete Limited and Fowles Property Limited against an enforcement notice issued by the Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 6 September 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from (Sui Generis) storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery to a mixed use comprising the storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery and skip hire, ship storage and skip distribution (SG/B8).
 - The requirements of the notice are:
 - i. Cease the use of the land for the hire, storage and distribution of skips.
 - ii. Remove all skips from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: The appeals are allowed and the enforcement notice is quashed.

Procedural Matters

1. The appellants are identified on the appeal form as being Mr Timothy Fowles, as director of Fowles Crushed Concrete Limited (appeal Ref: 3159536), and Fowles Property Limited (appeal Ref: 3159537). However, the appellants explained at the opening of the Inquiry that the reference to Mr Timothy Fowles was included only because it was necessary to input a name as part of the electronic submission process. The appellants were confirmed as being simply Fowles Crushed Concrete Limited (FCC) and Fowles Property Limited (FPL), as set out in the heading above.
 2. In addition to a formal site visit following the close of the Inquiry on Wednesday 17 May 2017, I undertook a preliminary accompanied site visit on the afternoon of Wednesday 10 May 2017. Prior to the opening of the Inquiry, I carried out an unaccompanied site visit from the public highway in order to familiarise myself with the location of the appeal site and its surroundings. As part of that latter visit, I spent some time observing vehicular movements to and from the appeal site.
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3. The appellants have not made an appeal under ground (a) namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. I explained at the opening of the Inquiry that the planning merits of the use alleged in the enforcement notice are therefore not before me. The representations made by local residents, both in writing and orally at the Inquiry, refer to matters such as increased vehicular movements, flood risk and air quality. In the absence of an appeal on ground (a), I have had regard to these matters only insofar as they relate to the legal grounds of appeal that are before me.
4. Shortly before the Inquiry closed, a number of further written representations were received from local residents who had intended to speak at the Inquiry but who in the event were not able to do so. There was not an opportunity for these representations to be copied to the main parties whilst the Inquiry was sitting, and therefore those representations were forwarded to the appellant and the Council with a request that any comments on them should be made in writing. Insofar as they are relevant to the legal grounds on which these appeals have been made, I have had regard to those representations as well as any comments received in relation to them.
5. The evidence at the Inquiry was given on affirmation.

Background

6. The appeal site covers an area of some 7.6 hectares and is located on the east side of Hythe End Road.
7. In September 1998, a Certificate of Lawful Use was granted by the Council which confirmed that, as of 19 May 1997, the lawful use of the appeal site was the storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery. It is convenient to capture this lawful use in short form, and for the purposes of this appeal I shall hereafter refer to this lawful use a waste processing centre.
8. The Certificate of Lawful Use was granted on the basis of the evidence presented to the Council in the application. Note 3 of the Certificate indicates that it only applies to the extent of the development described in the application but, in terms the scope and intensity of the use for which the certificate was sought, there is very little information in the application beyond the description of the use on the application form itself. There is a Memorandum issued by the then Borough Secretary prior to the Certificate being issued advising that it was imperative that any Certificate issued should clearly identify the scope of activities and their intensity. However, this was not done. As a result, there is no definition of the scope of activities or the intensity of the use found to be lawful in the Certificate to serve as a benchmark against which to assess the subsequent use of the site.
9. There is no specific mention of skips in the Certificate of Lawful Use or the application, either in terms of being used to bring waste into the site for processing or being stored on the site, whether empty or for the storage of waste. It is, however, instructive that there is similarly no mention of other types of container that may have been used. Beyond confirming that the import of waste was by road and water, the application is silent as to how the

waste was imported to or exported from the site. As a matter of logic, if waste was imported into the site by road, then some form of container must have been used to transport that waste. To my mind, the absence of any specific reference to skips in the certificate itself or the application is a very different thing to the Certificate of Lawful Use or the application specifically saying that skips were not used.

10. The Council accepts that this Certificate of Lawful Use is not controlled by limitations set out within the certificate itself. The Council therefore accepts, for example, that there is no limitation imposed by the Certificate of Lawful Use on the amount of materials that can be brought onto the site for processing, provided the materials fall within the categories specified (excavated/dredged/builders materials, and timber) and are brought onto the site for the purposes of being processed. The Council also accepts that there are no limitations in the certificate itself on how waste is stored on the site, whether in the open or in containers, or the amount of plant and machinery that can be stored on the site provided that is for purposes of the storage and processing of waste. Furthermore, the Council accepts that the certificate does not in itself limit the number or type of vehicles that can enter or leave the site for the purpose of bringing waste into the site or exporting materials that have been processed on the site.
11. It is helpful at this point to identify other facets of the lawful use of the site in relation to which there is no dispute between the main parties. It is common ground that the delivery of waste materials to the appeal site forms part of the lawful use. It is also common ground that it is immaterial whether this delivery is made by third party hauliers, by the operator of the site using its own vehicles and skips, or by a subcontractor of the operator using its own vehicles and skips. It is common ground that the delivery of waste materials to the site by heavy goods vehicles (HGVs) carrying the waste in skips is capable of forming part of the lawful use, as is the deposit of that waste material by unloading such skips and the resulting empty skips leaving the site.
12. At the time that the Certificate of Lawful Use was granted, the appeal site was being operated by Charles Morris Fertilizers Limited (CMF). Most of the waste processed at the appeal site by CMF came from construction and demolition sites. Processing of this waste at the site involved screening with a trommel, shredding and, on occasions, concrete crushing. Because the business focused on waste from larger-scale construction and demolition projects, the waste was brought to the site in Roll-On, Roll-Off containers rather than skips.
13. In July 2011, CMF let the inner part of the site to Carcarc Limited. The latter went into liquidation the following year and, in February 2013, FCC took a lease of effectively the same part of the site that had previously been occupied by Carcarc Limited. In March 2015, FPL purchased the freehold of the entire appeal site, with FCC then taking exclusive possession of the appeal site under an informal tenancy agreement.
14. It is helpful to briefly describe the use of the appeal site operated by FCC. The waste is delivered to the site by road, usually in skips, but also in larger Roll-On, Roll-Off containers. On arrival at the site, the driver first reports to an office located towards the end of the internal haul road, where the waste is checked for compliance with the description on the transfer note. Once the

waste has been accepted, drivers are directed to set down the skip or container at the appropriate area of the appeal site.

15. Just beyond the office where drivers first report is an initial sorting area in which the waste, all of which is either inert or non-hazardous, is deposited and stockpiled pending sorting and processing. The latter includes the screening, shredding, crushing, sorting and segregation of the waste, both mechanically and by hand. This involves a variety of plant and machinery, including shredders, trommels and density separators, some of which are large pieces of equipment. The sorted and processed waste is then deposited in designated storage bays or areas. There are, for example, separate bays for the storage of plastic pipes, plastic windows and metals, with separate areas for the stockpiling of processed and unprocessed wood.
16. During the course of my two accompanied site visits, I observed that plant and machinery were stored in various parts of the site, including a large area specifically reserved for that purpose adjacent to the internal haul road but also in various locations close to where the waste is sorted and processed. At the time of my visits, a number of empty skips and Roll-On, Roll-Off containers were stored at the southern end of the site. The majority of the skips were branded "Fowles", although some were clearly owned by other companies.

The appeal on ground (b)

17. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. There is no dispute that the lawful use of the appeal site is for the storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery. It is therefore only necessary to consider under this ground of appeal whether the hire, storage and distribution of skips have occurred as a matter of fact.
18. I have been provided with screen shots of the website advertisement posted by "Fowles Skip Hire" which advertises the hire of skips. The appellant explains that "Fowles Skip Hire" is the trading name for the skip hire business operated by FCC. The advertisement clearly states the address of Fowles Skip Hire as the appeal site. As part of my first site visit, I was shown the portable office from which Fowles Skip Hire operates, and from where orders for skip hire are received by e-mail or telephone. This was also the arrangement at the time the enforcement notice was issued.
19. The Council have produced photographs showing skips stored on the site in August 2016. At least some of the skips in these photographs are empty, being stacked together with other empty skips. A further photograph shows a quantity of new skips, all empty and bearing the name "Fowles", being delivered to the appeal site.
20. Having regard to the above, I am satisfied that the hire, storage and distribution of skips have occurred as a matter of fact.
21. The appellants do not deny that Fowles Skip Hire hires out skips, or that the skips are delivered from the site to its customers and returned to the site laden with waste. The essence of the appellant's case on this ground of appeal is that the skip hire is ancillary to the lawful use of the site, and that the breach

of control alleged in the notice has on that basis not occurred as a matter of fact. However, to my mind, that amounts to an appeal on ground (c) and I consider this argument under that ground of appeal below.

22. Accordingly, the appeals on ground (b) fail.

The appeal on ground (c)

23. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matter stated in the notice, those matters do not constitute a breach of planning control. In an appeal on this legal ground, the burden of proof is upon the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. In this case, the main issue is whether the hire, storage and distribution of skips alleged in the notice amounts to a material change in use.
24. The appellants and the Council have approached this question from different directions. The appellants consider that the correct approach is to ask firstly what is the primary use of the site and then ask whether the hire, storage and distribution of skips is ancillary to that primary use. The appellants conclude that the hire, storage and distribution of skips are ancillary to the lawful use of the site as a waste processing centre. The Council, on the other hand, considers that the starting point is the characteristics of the use enforced against, and then compare that to the character of the lawful use of the land. In undertaking that comparison, the Council concludes that the character of the use enforced against is materially different to that of the lawful use of the land, and that a material change of use has therefore occurred.
25. It seems to me that the correct approach is, in effect, a combination of these two approaches. I shall therefore consider first the relationship between the use for the hire, storage and distribution of skips and the lawful use of the site as a waste processing centre. I shall then turn to the effect of the use for the hire, storage and distribution of skips on the character of the site as a whole.
26. Ancillary uses are not distinguished by scale, although that may be relevant¹. The essential feature is that there should be some functional relationship between the ancillary use and the primary use. Moreover, that functional relationship must be one that is normally found².
27. In applying these principles to the breach of planning control alleged in the notice, it is first necessary to identify the planning unit in which the primary use takes place³. In this case, there is no dispute that the planning unit can be defined as being all of the land to which the Enforcement Notice relates. There is also no dispute that this area is the same as that covered by the Certificate of Lawful Use granted in September 1998.
28. Next, it is necessary to determine whether or not there is a functional relationship between the primary use of the site as a waste processing centre and the hire, storage and distribution of skips. I shall consider this question in relation to each of these three aspects separately in the first instance, before drawing them together in a conclusion. In doing so, it is convenient to depart from the order in which these elements are stated in the notice.

¹ *Main v Secretary of State for the Environment and Another* [1998] 77 P & CR 300

² *Harrods v Secretary of State for the Environment, Transport and the Regions* [2002] J.P.L. 437

³ *Burdle v Secretary of State for the Environment* [1972] ALL ER 240

29. In his evidence, Mr Fowles explicitly states that skips are only hired out to customers whose waste will be returned in the skips provided back to the site for processing. No skip hired out by FCC is, once filled with waste, taken to any other site for that waste to be processed. Although not supported with documentary evidence in terms of any contractual arrangements with customers, this is accepted by the Council.
30. The rationale behind that policy is in part commercial. As Mr Fowles explained, if FCC did not hire out its own skips, it would be reliant upon third party waste hauliers for its supply of waste to the waste processing centre. As it currently stands, some two-thirds of waste processed at the site originates from skips or other containers hired out to customers by FCC. On that basis, Mr Fowles considers that it would not be commercially prudent for FCC to rely solely upon third party waste hauliers for its supply of waste. Indeed, in Mr Fowles' opinion, again not challenged by the Council, the use of the appeal site as a waste processing centre would not be viable without the hiring out of skips by FCC itself.
31. The appellants concede that the hiring out of these skips is an additional, and not insignificant, source of revenue. Nevertheless, the prime motivation for the hiring out of skips to customers is to ensure a steady supply of waste to the waste processing centre. In my opinion, that is a clear functional link to the primary use of the site.
32. The hiring of the skips, that is to say the actual process of accepting orders and receiving payment from customers, takes place at the portable office on the site itself. Given that the distribution of the skips to customers is itself dependent upon the hiring out of the skips to those customers, there is a clear interdependency between the two activities. To the extent that there is a clear functional link between the distribution of skips and the primary use as a waste processing centre, to my mind it logically follows that there is an associated link with the hiring out of the skips.
33. Not only does FCC store its own empty skips on the site, it also allows other third party waste hauliers to store empty skips on the site. The uncontested evidence to the Inquiry, from a number of the third party waste hauliers that store empty skips on the appeal site and a specialist risk insurer, is that the storage of empty skips is a normal business model in the industry. The practice stems from the efficiency and consequential cost savings of leaving skips at locations where waste is regularly deposited for processing.
34. In that respect, I can accept that the storage of FCC's own skips is an integral part of the skip hire operation. When a skip hired out by FCC returns from a customer laden with waste, which is then deposited and processed at the appeal site, I can understand that the skip may not be required immediately for hiring out to another customer. It seems reasonable to me that the skip should be stored on the appeal site pending hiring out to the next customer. In that respect, the functional link with the distribution of skips is not severed: it is merely interrupted for a period of time before the skip is required by the next customer.
35. I am not, however, persuaded that the same applies to empty skips owned by other third party waste hauliers but stored on the appeal site. I recognise that there may be a loyalty held by that waste haulier to FCC for allowing the skip to be stored on the site and that this could result in the skip returning to the

- appeal site laden with waste for processing, perhaps even on several recurring occasions.
36. However, the storage of skips by these other operators is undertaken on what may be best described as a 'gentleman's agreement' with the site operator. There is no formal contract. Consequently, to my mind there can be no guarantee that it always will be the case that the skip returns to the site. Should operational considerations dictate, the skip could on the next occasion just as easily be used to deposit waste at a different waste processing centre. In that scenario, the functional link with the lawful use of the appeal site would be severed.
37. Whilst this could in those circumstances constitute a free-standing storage use, there is a further consideration in this regard. The Certificate of Lawful Use granted in September 1988 expressly includes the storage of associated plant and machinery as part of the primary use. In this context, 'plant' has been defined by the Courts to mean "in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business..."⁴.
38. The Council accepts that the larger Roll-On, Roll-Off containers do constitute plant for the purposes of the Certificate of Lawful Use but considers that skips do not fall into that definition. I fail to see the distinction. Both are metal containers used for storage and/or transportation of waste. It seems to me that both Roll-On, Roll-Off containers and skips do constitute 'plant' for the purposes of the Certificate of Lawful Use. It follows that, provided that they were associated with the primary use of the site for the storage before and after processing and processing of excavated/dredged/builders materials, and timber, that the skips operated by the third party waste hauliers could lawfully be stored on the site. In this context, there is no evidence to suggest that the skips stored on the site by the third party waste hauliers are used to deliver waste to other waste processing sites to a significant degree.
39. Having regard to the above, I am satisfied that the hire, storage and distribution of skips at and from the appeal site by FCC has a clear functional link with the primary use of the site as a waste processing centre. I recognise that not all waste processing centres operate on the same business model as does FCC. Nevertheless, given the clear link between the hiring of skips and the requirement to maintain a constant supply of waste to the waste processing centre, I am satisfied that this functional link is one that may be regarded as being normally found in the context of *Harrods v Secretary of State for the Environment, Transport and the Regions*⁵. I am also satisfied that the storage of skips associated with the primary use of the site falls within the scope of the Certificate of Lawful Use granted in September 1998.
40. The Council take a different view, suggesting that the hire, storage and distribution of skips falls outside the express terms of the Certificate of Lawful Use. The Council considers that the hire, storage and distribution of skips is not ancillary to the primary use stated in the Certificate of Lawful Use but is in itself a primary use of the land.

⁴ *Hinton (Inspector of Taxes) v Maden and Ireland Ltd* [1959] 3 ALL ER 356

⁵ *Harrods v Secretary of State for the Environment, Transport and the Regions* [2002] J.P.L. 437

41. In that respect, the Council refers to the judgment of the High Court in *Trio Thames Ltd v Secretary of State for the Environment*⁶, in which it was established that an ancillary use may grow to the point where it is no longer ancillary but has become a separate use in its own right. The Council suggest that, in considering whether this has occurred, regard should be had to function, physical extent and scale of the use. I have concluded that there is a clear functional link between the hire, storage and distribution of skips and the primary use of the appeal site as described by the Certificate of Lawful Use. But it is the Council's view that the scale and extent of the use disclose a primary use, and it is to these aspects that I now turn.
42. In relation to the scale of the use, FCC operates some 200 skips and 40 containers from the appeal site. This scale of the use for the hire, storage and distribution of skips must be assessed in the context of the use described in the Certificate of Lawful Use. There is, as the Council accepts, no limitation imposed by the Certificate of Lawful Use on the amount of materials that can be brought onto the site for processing. Similarly, there is no limit set out in the Certificate of Lawful Use on the number or type of vehicles that can enter or leave the site for the purpose of bringing waste into the site or exporting materials that have been processed on the site. Looked at in that context, I am satisfied that the scale of the use for the hire, storage and distribution of skips at present falls within the scope of the Certificate of Lawful Use.
43. Moreover, the functional link between the hire, storage and distribution of skips and the primary use ensures that the scale of the former is related to the latter. An increase in the number of skips laden with waste coming into the site results in a commensurate increase in the amount of waste being processed. Similarly, any drop off in the number of skips coming into the site, be it for seasonal or wider economic reasons, would result in an equivalent reduction in the amount of waste processed at the waste processing centre. For that reason, this is not the scenario contemplated in *Trio Thames*, whereby an ancillary use overtakes or displaces the primary use. Rather, in this case the use for the hire, storage and distribution of skips and the primary use are both functionally linked and proportionate to each other in terms of scale.
44. In terms of the physical extent of the use, the Council does not suggest that the storage of skips takes place beyond the boundaries of the planning unit. At the time of my site visits, the storage of empty skips was confined to an area towards the southern end of the site. This area was neither physically enclosed nor delineated in any way. I understand that this was also the position at the time the enforcement notice was issued. Compared to some aspects of the primary use, such as the processing area for inert waste, the initial waste reception/sorting area and the waste storage area, the area occupied by the storage of skips was relatively modest. The skip hire component occupies only part of a portable office, the remainder of which is required in relation to the primary use. Taking the site as a whole, the hire, storage and distribution of skips does not occupy a significant proportion of it and therefore cannot be said to have overtaken or displaced the primary use in terms of physical extent.
45. In addition to the above, it is also necessary to consider whether the overall character of the planning unit remains unchanged⁷. In this case, the question is whether the use for the hire, storage and distribution of skips has altered the

⁶ *Trio Thames Ltd v Secretary of State for the Environment* [1984] J.P.L. 183

⁷ *Emma Hotels v Secretary of State for the Environment* [1981] J.P.L. 283

overall character of the primary use as a waste processing centre. This must be looked at by comparing the totality of the activity before and after the changes⁸, having regard to both on-site activities and off-site impacts⁹. Evidence of the former comes from a number of sources, including the material submitted with the application for the Certificate of Lawful Use, the report produced by Jacobs in March 2007, the evidence to the Inquiry from Mr Morris as a previous operator of the site and from aerial photographs.

46. In relation to on-site activities, it is evident from these sources that the scale of the use was lower at the time that the Certificate of Lawful Use was granted, and it would appear continued to operate at that lower scale until FCC began operating from the site. In part, this stems from the method of operating employed by CMF which was primarily based on the use of fewer but larger Roll-On, Roll-Off containers rather than skips: Mr Morris himself indicates that CMF operated two Roll-On, Roll-Off heavy goods vehicles and approximately 25 (later 30 plus) containers.
47. Aerial photographs from that period tell a similar story and show a less intensive use of the site compared to that currently taking place. The photographs taken in 2007 and 2008 show the storage of waste confined mostly to the central part of the site, with significant portions of the site apparently unused. Before that, the photograph taken in 2003 also shows parts of the site not being used together with a lake in the south-west corner of the site albeit, by 2007, that lake had been infilled.
48. However, these same aerial photographs also show the storage of waste taking place. The photograph taken in September 2003 also shows a number of Roll-On, Roll-Off containers on the site, as well as plant and machinery associated with the sorting and processing of waste. By April 2007, the storage of waste was more widespread across the site, extending to areas not so used in the earlier photograph, including in part the area that was previously the lake. A number of permanent structures and portable buildings had also been erected by that time. The photographs taken in 2008 show that the sorting of the waste had become more formalised, with the construction of a picking station towards the centre of the site. The photograph taken in 2012, taken at the time that Carcarc Limited occupied the inner part of the site, shows limited activity in the central part of the site but the storage of waste and Roll-On, Roll-Off containers in other parts.
49. I recognise that these aerial photographs represent only a snapshot in time and that the precise nature of the uses/structures/equipment shown is difficult to interpret given the altitude(s) from which the photographs were taken. Nevertheless, it is evident from the aerial photographs provided to me that at least some of the components of a waste processing centre, including the storage of waste, Roll-On, Roll-Off containers, as well as plant and machinery associated with the sorting and processing of waste, were present to varying extents between 2003 and 2012.
50. More detail on the various activities, structures and equipment shown on the aerial photographs is provided by the photographs taken from ground level appended to the report produced by Jacobs. These photographs, taken in

⁸ *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin)

⁹ *Beach v Secretary of State for the Environment, Transport and the Regions* [2002] J.P.L. 185.

March 2007, show in detail the piles of waste on the site, not only in terms of the type of waste stored there but also the height to which the waste was piled. These photographs also show in detail the equipment used on the site, in terms of both the type and size of that equipment: this same equipment can be identified as that appearing on some of the aerial photographs.

51. Both sets of photographs, that is to say the aerial photographs taken between 2003 and 2012 and those taken at ground level in 2007, to my mind reveal that the character of the site as a whole was that of a waste processing centre during that period.
52. I observed during my site visits that the operation conducted by FCC is more organised than that undertaken when CMF occupied the site. The activities taking place on the site, as shown on the Site Operation Plan, may for descriptive purposes be categorized into three parts. At the north-west part of the site is an area used for the processing of inert waste, dominated visually by a crushing machine. Opposite that is an area dedicated to the storage of plant and machinery.
53. The southern part of site includes the area for the reception and initial sorting of waste, close to which are the segregated storage bays each holding a different material. Towards the eastern boundary were piles of unprocessed and processed wood. In this area too were plant and machinery, including tromeels, shredders and a density separator. The latter in particular is a sizeable piece of equipment. Much of this southern part of the site is covered by hardstanding. The skips, together with some other containers and vehicles, were stored at the southern end of this part of the site.
54. Compared with the use of the site between 2003 and 2012, the current use of the site is more intensive. Nevertheless, having regard to the activities taking place on the site; the presence of stockpiled waste; the use and storage of sizeable pieces of plant and machinery required for the sorting and processing of waste, the clear impression that I gained from my site visits is that the appeal site as a whole has the character of a waste processing centre. In that sense, it is no different from the character of the site when CMF and Carcarc Limited occupied the site.
55. In this respect, I consider that the storage of the empty skips is entirely consistent with the character of the site as a waste processing centre. The Council accepts that the delivery of waste materials to the appeal site in skips forms part of the lawful use. To my mind, the storage of those skips when empty and awaiting hiring out also forms part of the character of that lawful use.
56. In terms of off-site effects, local residents were remarkably consistent in their views that the number of heavy goods vehicles using the site has increased since FCC occupied the site. Adjectives such as "exponentially", "dramatically" and "phenomenal" and the like were widely used by local residents to describe the scale of the increase in the number of vehicular movements that has taken place in the last two or three years. I have no reason to doubt the accuracy of these descriptions, which are entirely consistent with the consolidation of the business at the appeal site from disparate locations at Bedfont and Stanwell Moor that took place around that time. I also heard and read accounts of other impacts arising from the current use of the appeal site, including noise and dust.

57. The evidence before me, including that from Mr Morris, is that the operation of the site as a waste processing centre by CMF involved movements by heavy goods vehicles (two heavy goods vehicles and up to 30 Roll-On, Roll-Off containers). Setting aside the movements by skip lorries operated by FCC, some 35% of the waste delivered to the site arrives in skip hire lorries operated by third party skip hire companies. The Council accepts that these vehicular movements all form part of the lawful use of the appeal site. It follows that movements by heavy goods vehicles, including by skip lorries, are part of the character of the appeal site as a waste processing centre.
58. I recognise that the operation of the appeal site by FCC has resulted in an increase in the number of vehicle movements and that, for the reasons expressed in representations and in evidence at the Inquiry, this has had an effect on the amenities of local residents. In addition, I have no reason to doubt the views expressed by local residents that the operation of the appeal site by FCC has resulted in increased noise and levels of dust both of which, in my view, would be consistent with the more intensive use of the site compared with when CMF occupied it.
59. However, I consider that neither the increase in the number of vehicular movements nor the increase in noise and dust has, as a matter of fact and degree, resulted in materially different planning consequences. All of these effects, albeit to a lesser extent, are likely to have been effects associated with the lawful use of site before FCC began the use for the hire, storage and distribution of skips. I therefore consider that the use of the site alleged in the notice has not resulted in definable change in the character of the lawful use of the planning unit, taken as a whole.
60. I am satisfied that, on the balance of probabilities, the appellants have shown that in functional terms the use alleged in the notice is ancillary to the primary use of the site as defined by the Certificate of Lawful Use. I am also satisfied that, as a matter of fact and degree, the use alleged in the notice has not resulted in a material change in the character of the site and that the character of the site remains that of a waste processing centre. For those reasons, I find that the use alleged in the notice does not amount to a material change in use of the site. The matters alleged in the notice do not, therefore, constitute a breach of planning control. Accordingly, the appeals succeed on ground (c).

Conclusion

61. For the reasons given above, I conclude that the appeals should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances, the appeals made on grounds (d), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended do not need to be considered.

Formal Decisions

62. The appeals are allowed, and the enforcement notice is quashed.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Satnam Choongh

Of Counsel, instructed by Mr
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LLP

He called:

Mr William Fowles

Director, Fowles Crushed
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Mr Karl Knape

Director, Risksure Limited

Mr Alan Morris

Director, Charles Morris
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Mr John Francis

Skip Co-ordinator, Fowles
Crushed Concrete Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Guy Williams

Of Counsel, instructed by the
Head of Legal Services, Royal
Borough of Windsor and
Maidenhead

He called:

Ms Arron Hitchen

Senior Enforcement Officer,
Royal Borough of Windsor and
Maidenhead

INTERESTED PERSONS:

Mr Michael Taylor
Mr Hugh Gurney
Mrs Jackie Atkins
Mr Michael Luff
Mr Reginald Marsh
Ms Anita Ruff
Mr Kenneth Wood
Mrs Joy Bell
Mr Timothy Barry
Mr Henry Butt
Mr Kevin Burrows
Mrs Katrina Musgrove
Mr Kenneth Miles

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Statement of Common Ground.
- 2/ Case Law bundle, submitted by the Appellant.
- 3/ Site Operation Plan - Version A.
- 4/ Full transcript of the judgment of the High Court in *R (on the application of Bennett Fergusson Coal Ltd) v First Secretary of State and another* [2003] EWHC 1858 Admin.
- 5/ Appeal Decision dated 13 February 2007 in relation Land at east of Hythe End Road, Wraysbury, Staines, Middlesex TW19 5AW.
- 6/ Opening Submissions on behalf of the Appellant, with attachments.
- 7/ Opening Submissions of the Council, with attachments.
- 8/ Aerial photograph of land to the west of Hythe End Road, dated 8 April 2007.
- 9/ Business card of Alan C.Morris
- 10/ Aerial photographs of the appeal site, submitted by Mr Michael Luff, occupier of 88 Hythe End Road, Wraysbury.

- 11/ Copy of page 2 of the Summary Proof of Evidence of Mr John Francis.
- 12/ Statement by Mrs Musgrove, occupier of 8 Sarsby Drive, Wraysbury, read out at the Inquiry.
- 13/ Appeal Decision dated 31 March 2010 in relation to land at Wallace Way, Hitchin, SG4 0SE.
- 14/ Final Submissions of the Council
- 15/ Closing Submissions on behalf of the Appellant, with attachments.