

Ms Mary Hudson
Oxfordshire County Council
Planning Implementation
County Hall New Road
Oxford
Oxfordshire
OX1 1ND

Our ref: WA/2021/129358/05-L01
Your ref: MW.0115/21
Date: 24 May 2023

Dear Ms Hudson

Extraction And Processing Of Sand And Gravel Including The Construction Of New Site Access Roads, Landscaping And Screening Bunds, Minerals Washing Plant And Other Associated Infrastructure With Restoration To Agriculture And Nature Conservation Areas, Using Inert Fill

Land At White Cross Farm, Wallingford, Oxfordshire

Thank you for consulting us further on this application. In response to our previous letter (WA/2021/129358/04-L01, dated 12 January 2023), we have received a document titled *Rebuttal to EA In Principle Policy Objection* (Simon Heaton, 6 March 2023).

Whilst this document touches upon flood risk issues at the site, it mainly focusses on our in principle policy objection. Additional modelling information and a *Technical Note* (Edenvale Young Associates, April 2023) regarding hydraulic modelling have also been provided and we are reviewing this separately in relation to our flood risk objection.

Environment Agency Position

As such the comments below relate **only** to our previously raised policy objection. Our standalone **flood risk objection still stands** and we will provide further feedback on this separately, once the review of modelling is complete. We apologise for the delays in reviewing this model so far.

At this stage and on the basis of current information, we do **maintain our policy objection** and this is further explained below.

In principle objection

We have been considering the Rebuttal document and have sought advice from internal specialists and our legal team regarding the issue of an in principle objection to landfilling in flood zone 3b.

We note the references to legislation and national and local policy including Oxfordshire Minerals and Waste Plan Local Plan Part I Core Strategy (September 2017). We have read relevant sections of the Core Strategy and understand paragraph 6.13 of the plan to be particularly relevant:

“Waste development is not appropriate in the functional flood plain. This includes landfill operations” Also “Inert waste may need to be imported to a site to achieve the satisfactory restoration of a sand and gravel working situated in the flood plain and this can take place in certain circumstances and where there is overall improvement to flood storage capacity”.

In terms of the acceptability or otherwise of the restoration element of the proposed development to the Environment Agency, this depends on how the “infill” element of the activity is categorised, what material is used (is it waste?), whether an environmental permit is required for that activity – and if yes, what sort of permit? Planning and Waste Permitting are of course separate, albeit complementary, regimes. Where an environmental permit is required in addition to planning permission, the Environment Agency encourages the submission of simultaneous applications to enable contemporaneous consideration of all relevant issues, although there is no obligation on the applicant to do this.

The applicant has stated, variously, that the restoration works involve: *“the use of inert fill”* (planning application form, description of development); *“backfilling with inert construction waste”* (September 2021 planning statement, paragraph 10.5.2); *“recovery and restoration operations”* (statement of Simon Heaton, March 2023). Furthermore, Simon Heaton’s statement includes on page 11: *“The planning application is not for landfill development. The planning application is for sand and gravel working and restoration of the land to agriculture and ecological improvement. Due to the circumstances of the need to protect aviation safety no open water can be left and the site needs to be restored to original levels to secure agriculture and flood plain grazing marsh after-uses using inert fill as a recovery operation”.*

Should the applicant request permitting pre-application advice from the Environment Agency’s National Permitting Service, the Environment Agency would be able to assess whether the activity as described is a recovery or disposal operation, and will then determine the correct type of permit required. Where an applicant proposes a “deposit for recovery” permit, they must submit a Waste Recovery Plan (WRP) providing evidence that the proposed operation is a waste recovery activity. Guidance for applicants on WRPs and the permit application process and tests can be found here: [Waste recovery plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-recovery-plans-and-deposit-for-recovery-permits).

The infill material is described as ‘waste’ in the applicant’s September 2021 planning statement, and we therefore anticipate permitting pre-application communication from the applicant as mentioned above in order to establish the appropriate environmental permit for these works. At this stage, it is also worth highlighting the Definition of Waste; Development Industry Code of Practice (DWCoP), in case it is suggested that the proposed infill material is not waste and no permit application is needed. DWCoP (Development Industry Code of Practice: Definition of Waste) is a voluntary code of practice which provides a framework for determining whether or not excavated material arising from site during remediation and/or development works is waste. If the Applicant considers that DWCoP applies it will need to obtain the services of a qualified person who can submit a declaration of their behalf to the Environment Agency’s Permitting Support Centre.

We strongly recommend that the applicant makes early contact with the Environment Agency's for pre application permitting advice. If the applicant intends to apply for a recovery permit in order to undertake the restoration works, then confirmation from the Environment Agency's National Permitting Service that the activity meets the relevant criteria and can be considered to be a recovery operation may allow us to review our position in planning. If it is confirmed by NPS that the restoration is a recovery operation, then it will be clear that the current application does not involve or propose landfill within flood zone 3b. This would also provide the necessary clarity, and would explain the "certain circumstances" (Minerals and Waste plan, paragraph 6.13) for this case which would allow for the importation of inert waste within flood zone 3b in order to restore the site. Please note that it will also need to be demonstrated that *there is overall improvement to flood storage capacity* (paragraph 6.13).

Should the applicant not be willing at this stage to request pre-application advice from the Environment Agency, the LPA may consider it appropriate to request further information from the applicant relating to the nature of the material to be used for the restoration infilling, such that it can be demonstrated that the requirements of the local plan policy will be met.

Final comments

Thank you again for consulting us on this application. Our comments are based on the best available data and the information as presented to us.

If you are minded to approve this application for major development contrary to our flood risk objection, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2021.

This statutory instrument prevents you from issuing planning permission without first referring the application to the Secretary of State for Housing, Communities and Local Government (via the National Planning Casework Unit) to give them the opportunity to call-in the application for their own determination. This process must be followed unless we are able to withdraw our objection to you in writing. A failure to follow this statutory process could render any decision unlawful, and the resultant permission vulnerable to legal challenge.

Should our objection be removed, it is likely we will recommend the inclusion of condition(s) on any subsequent approval.

In accordance with the planning practice guidance (determining a planning application, paragraph 019), please notify us by email within two weeks of a decision being made or application withdrawn. Please provide us with a URL of the decision notice, or an electronic copy of the decision notice or outcome.

We will provide a separate response in relation to our review of the flood modelling and our flood risk objection, as soon as we are able.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours sincerely

Mrs Sarah Warriss-Simmons
Planning Advisor

Direct dial 0203 025 9855

Direct e-mail Planning_THM@environment-agency.gov.uk