

Permitting decisions

Variation and consolidation including Environment Agency initiated variation

We have decided to grant the application to vary and consolidate the permits at Hythe End Farm operated by Fowles Crushed Concrete Limited.

The variation number is EPR/PB3038RM/V004.

We have also carried out an Environment Agency initiated variation to the permit and included an improvement condition to request a Noise and Vibration Management Plan for approval within 3 months of issue of this variation and consolidation.

We consider that in reaching our decision we have taken into account all relevant considerations and legal requirements and that the consolidated and varied permit will ensure that the appropriate level of environmental protection is provided.

Purpose of this document

This decision document provides a record of the decision making process. It:

- highlights [key issues](#) in the determination
- summarises the decision making process in the [decision checklist](#) to show how all relevant factors have been taken into account
- summarises the engagement carried out because this is a site of high public interest
- shows how we have considered the [consultation responses](#)
- shows how we have considered [other legal requirements](#)

Unless the decision document specifies otherwise we have accepted the applicant's proposals.

The permitting decisions should be read in conjunction with the environmental permit and the variation notice. The introductory note summarises what the variation covers.

1 Key issues of the decision

1.1 Permit variation

The application submitted to us sought approval to consolidate 2 household, commercial and industrial waste transfer station permits at Hythe End Farm into 1 permit with the modern conditions contained in our present template permits. At present the conditions of the permit for the outer part of the site (permit number DB3007MX) are largely contained in the waste management licence granted on 27 July 2001 (which became an environmental permit upon the introduction of the Environmental Permitting Regulations in 2007), although the conditions for the permit for the inner part of the site granted on 16 May 2013 (permit number PB3038RM) are in more modern form.

The site is permitted to accept non-hazardous and inert wastes and the treatment operations are carried out outdoors. Current waste storage allowed under the existing permits in total is 160 tonnes - this variation increases this to 4,154 tonnes at any one time (see section 1.4). It will also remove the composting activity from the permits and modernise the description of waste codes from UK Waste Classification Scheme to European Waste Catalogue codes, adding a few additional waste codes which are similar to those currently permitted.

The activities currently taking place under the 3 waste exemptions authorise the storing of waste in a secure place, preparatory treatments such as baling, sorting and shredding, and the treatment of waste wood and waste plant matter by chipping, shredding, cutting or pulverising. The operator has confirmed that it will deregister the 3 exemptions upon the grant of this application; and also the local authority's Part B permit which authorises crushing. The operator's agent has recently indicated that the operator crushes a wider range of wastes than those specified in Part B of section 3.5 of Schedule 1 of the Environmental Permitting Regulations 2016 (bricks, tiles and concrete). As these wastes are crushed as an integral part of wider waste operations the Environment Agency is solely responsible for regulating crushing, and it is therefore desirable that the local authority Part B permit is de-registered so that it is clear who has responsibility for regulating this activity.

The total annual throughput of waste authorised to be accepted on site is to remain unchanged at 125,000 tonnes.

Present site operations

Since 2015, the site has been operating with waste storage volumes as applied for in the variation, rather than the 160 tonnes currently permitted for the inner part of the site. A brief explanation of this is given below.

In July 2015 the operator submitted an application to vary permit number PB3038RM, to increase the waste storage on site to 200,000 tonnes and annual waste throughput to 500,000 tonnes. Waste volumes on site increased above the permitted limit of 160 tonnes before that application had been determined.

In September 2015, we issued 2 enforcement notices to the operator for not complying with the storage conditions. We later served 2 permit revocation notices on the grounds of lack of operator competence. The operator appealed these notices, disputing our

interpretation of the storage conditions. These appeals were due to be heard at a public inquiry in January 2017, but we received this application to consolidate and vary beforehand, in August 2016.

We took the view that if granted, the consolidation and variation application would authorise the waste storage that was the subject of our enforcement action. After carrying out a review of operator compliance (including the improvements the operator had made to its operating methods), we concluded that it was not appropriate or proportionate to continue with the enforcement action. We therefore withdrew the enforcement and revocation notices, and indicated that we would not enforce the disputed storage conditions pending determination of the consolidation and variation application, in the expectation that we would be able to determine the application promptly, and ensure site operations were complying with the conditions of any consolidated and varied permit.

Unfortunately determination of this application was significantly delayed by the investigation into historic land raising, as we needed to consider the implications of that before deciding (amongst other things) what quantity of waste could be stored on site. During this period the disputed storage conditions have still been breached. Non-compliance with the disputed storage conditions has been recorded, but enforcement action has not been taken while the variation application is being determined. We have continued to regulate the site and require compliance with all other conditions of the environmental permits and exemptions.

1.2 Off-site flood risk

The site is bordered to the south by the River Thames, and to the east, in part, by the Colne Brook. The majority of the site is within Flood Zone 3, the area of natural floodplain with the highest probability of flooding. This means there is a 1 in 100 (or greater) chance of flooding each year. The site is also partly located within Flood Zone 3b (functional floodplain) as designated by the local authority, in this case, the Royal Borough of Windsor and Maidenhead. Flood Zone 3b is defined in the National Planning Policy Framework (NPPF) and the associated guidance as having a 'high probability' of flooding from rivers and the 'land where water *has* to flow or be stored in times of flood'.

The applicant submitted a Flood Risk Assessment in response to a request for further information. We required the operator to undertake a Flood Risk assessment to assess the risk to the site and to the surrounding area arising from the increase in storage at the site and to demonstrate how flood risk from all sources will be managed and not increase flood risk to others.

In early 2017 we received allegations of land raising at the site. We needed to investigate these allegations, and any associated impacts to flood risk in the surrounding area under our flood risk regulation duties. We also needed to understand if any resulting enforcement action would affect our decision whether to allow an increase in waste storage at the site.

As part of our investigation we carried out our own Flood Risk Assessment to understand the consequences of the land raising. The results of our modelling showed negligible impact to the flood risk in the areas surrounding the site as a result of the land raising (see sections 3.66 to 3.68 for further details on the modelling results). The investigation showed that unconsented land raising had taken place between 2003 and 2014, prior to the current operator owning the land.

Prosecution would only have been possible if charges had been laid within 6 months of the date of the offence. (Flood risk activities only became regulated by Environmental Permitting Regulations in 2016 and offences committed after this can be prosecuted at any time.) Given the complexity and historical nature of the offence our only available enforcement option was to lower the ground levels ourselves (assuming that the landowner did not agree to do this), and try to recover the expenses reasonably incurred. This would in all likelihood have involved significant legal action. Taking into account the negligible impact on flood risk shown by our modelling (as explained below), we decided not to return the ground levels to their original level. The land raising remains unconsented.

Using the results of our modelling we are satisfied that even together with the land raising, the increase in waste storage applied for will not have a negative flood risk impact on the surrounding area.

1.3 On-site flood risk management

As the site is within Flood Zone 3, it will flood during certain rainfall events. The operator will therefore need to prepare in advance for this to minimise the impact both upon its activities and the wider environment. As a result of this variation application to increase storage in Flood Zone 3, we have included an improvement condition in the consolidated permit requiring the completion of a flood plan for approval within 3 months of permit issue. This plan must include steps to safeguard processes and secure polluting material and stock. We have not insisted that the operator completes a plan for our approval prior to our determination of the variation application as in impact terms it is low risk and therefore can be dealt with by way of improvement condition. Regarding risk, we know that this is a catchment that responds slowly to rainfall – this means any flooding is gradual and can be prepared for. The bunds that surround the majority of the site should also help prevent larger waste from exiting the site. And from our own flood risk modelling we also know that changes to the site, including increased storage amounts, do not impede flood flows. For these reasons we consider the improvement condition requesting the extra detail within 3 months to be satisfactory.

1.4 Waste storage limit

Permit PB3038RM (inner site) has a limit of 160 tonnes of waste storage and permit DB3007MX (outer site) had no storage allowed under the permit. We do not normally include waste storage limits as standard in our modern environmental permits. However, in this instance we have added a limit of 4,154 tonnes to the Table S1.1 Limits of activities section of the permit. This is comprised of 1,694 tonnes inert waste and 860 tonnes non-hazardous waste as referenced in Application Statement dated August 2016, and waste previously allowed to be stored under exemptions bringing the total to 4,154 tonnes as indicated by the operator's agent in February 2018 in response to a request for further information.

Although our Flood Risk Assessment demonstrated that site operations (including the accumulation of piles of material) has a negligible impact on flood risk to the surrounding area, we were concerned that an increase in levels of waste storage could result in amenity issues, such as wind-blown dust from stockpiles, pile heights of waste, increased fire risk (some of the waste types are combustible), and odour (a couple of the permitted

wastes degrade or are odorous). The inclusion of a waste storage limit was therefore considered to be an appropriate way for us, and the operator, to manage these potential environmental risks. The fire prevention plan submitted as part of this variation and consolidation application has been assessed and approved on the basis of a storage limit of 4,154 tonnes, as acknowledged by the applicant's consultant in its email of 28 February 2018.

If the operator wishes to further increase this storage above 4,154 tonnes at any one time, it would need to submit a further variation application for our consideration.

1.5 Operational hours

We do not customarily include operational hours in our modern environmental permits - we leave this to the local authority through the planning process. We are aware, however, that at the Hythe End Farm site a certificate of lawful use from 1998 is in place, which does not contain any conditions regarding operational hours. The existing outer site permit does contain operational hours restrictions, but not the more modern inner site permit.

This application was for a consolidated permit containing modern conditions, and as such we have not included operational hours. We have received a small number of consultation comments stating that trucks often arrive at the site in the early morning, and the local authority Environmental Protection team's consultation response suggested that early morning and weekend work is a 'major' issue for residents. No complaints have been made to our incident hotline within the last 2 years, and the local authority environmental protection team confirmed that they have recorded only 6 complaints of this nature in over 3 years. We therefore consider that there is insufficient evidence to suggest that the operator will carry out work on site outside of normal operating hours, and cause amenity issues as a result.

The conditions we have included in the permit regarding noise, dust, odour, pests and fire enable us to enforce against any amenity issues arising from site operations. Any breach of the permit conditions will be subject to appropriate enforcement measures.

1.6 Noise Management

The proposed increase in storage (from 160 tonnes with additional storage associated with exemptions to 4,154 tonnes in total) does not increase noise, mainly because the existing throughput of waste at the site remains the same (125,000 tonnes).

The Environmental Permitting Regulations only allows us to vary the permit conditions to the extent that is a consequence of the variation application. We did request a Noise Management Plan (NMP) and Noise Impact Assessment (NIA) as part of a request for further information during determination, but we decided in 2018 not to pursue this further as the main change as we thought at that time – increased waste storage - would not result in an increase in site noise. We were under the impression at this time that the regulation of crushing at the site would still rest with the local authority under the Part B permit, given the apportionment of regulatory responsibilities specified in regulation 32 of the Environmental Permitting Regulations.

Although we did not pursue the request for the NIA and NMP at that time, we did not agree that the submitted NIA and NMP plan had sufficient information to be approved.

The NIA monitoring was carried out while the site was operating, which is not in line with our guidance 'Risks from noise and vibration' which states that when applying for a variation the noise from the existing site (before changes) should not be included as part of the background. All noise resulting from the proposed variation – the existing site and the variation together - should be considered, with both components shown clearly and added together to give the new impact on identified receptors. For this reason, the NIA cannot be relied upon to adequately assess the impact of noise from the proposed variation.

Despite not receiving noise complaints for the past 2 years ourselves, noise has recently been raised in several representations received from the general public, and from Royal Borough of Windsor and Maidenhead (RBWM) Environmental Protection department. (All representations however relate to general site operations, rather than the proposed increase in storage limits).

Also, as mentioned in section 1.1, the operator's agent has recently confirmed that they will de-register the local authority's Part B permit and we are to regulate all crushing activity on site. We note that crushing has specifically been referred to in some recent complaints/representations.

As a result of these factors, we have included a requirement for an updated Noise and Vibration Management Plan (NVMP) by Environment Agency initiated variation in line with our guidance "Control and monitor emissions for your environmental permit" and [Environmental Permitting: H3 part 2 noise assessment and control](#) to ensure the site has considered all possible measures to minimise pollution from noise. Without an updated NVMP we will not be able to be satisfied that the operator is implementing Appropriate Measures for the permitted operations' noise risks. It will also help address the noise issues raised and regulate any noise impacts going forwards.

The NMP which was submitted had deficiencies and did not adequately identify the specific noise sources on site, and whilst mitigation measures were included, details on individual control measures for each noise source and why those measures are appropriate and how the measures will be reviewed were missing. Details of staff training, noise monitoring, and an assessment of potential or actual impact on local receptors, including prevailing wind direction and topography, needed to be included. The NMP sought a site noise limit of no more than 10 dB over background noise levels at the nearest residential properties. There is no set numeric noise limit that we consider to be suitable as each environment and industry needs to be considered on its own merits (as per the Noise Policy Statement for England). The ideal would be 'no pollution', which we would interpret to be a Rated noise level that was 10dB below Background (as per BS4142). If this is not possible, the Rated noise level should still be minimised as far as is possible.

The NVMP needs to read as a definitive operating procedure of how the waste site will be run to minimise noise and should be a complete document with reference to all associated documents (such as the sections and appendices in the 'EMS Manual' referenced, protocols on things such as routine inspection/maintenance of mitigation measures and equipment, regular noise monitoring at specific defined site locations, complaints procedure etc. and maintenance of documentation and records on all of the protocols). The resulting document must be capable of being used effectively and with ease by relevant employees.

1.7 Site surfacing

The proposed increase in storage (from 160 tonnes with additional storage associated with exemptions to 4,154 tonnes in total) needs to take place on the correct site surface to protect the ground and groundwater beneath the site.

The waste types which can be accepted at the regulated facility have been specified in Table S2.1 of the permit.

An additional Table S2.2 has been included which refers to waste types that can be stored and treated on hardstanding. These inert wastes will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which they come into contact in a way likely to give rise to environmental pollution or harm human health.

All waste types within Table S2.1 that are not listed in Table S2.2 must be stored and treated on an impermeable surface with a sealed drainage system, as stated in Table of activities S1.1. These waste types are not inert, or are a mixture of inert and non-inert waste types and are difficult to separate into their constituent parts without cross-contamination. They therefore have the potential to cause environmental pollution or harm human health and require an impermeable surface with sealed drainage so that any runoff from the waste, or the waste itself if fine particles, can be contained and not released into the ground and potentially the groundwater beneath.

The existing inner site permit requires for all waste to be stored on an impermeable surface with a sealed drainage system; the outer site permit allows no storage. The new consolidated permit allows storage on all parts of the site, but it differentiates between waste types that could cause pollution or harm and need to be stored on an impermeable surface, and waste types that are of lower risk and can be stored on hard standing. As far as treatment of the waste is concerned, the inner site permit again requires all waste to be treated on an impermeable surface with a sealed drainage system, whereas the outer site permit does not.

The inclusion of Table S2.2 as far as treatment is concerned is therefore made by Agency-led variation: restrictions are being imposed on the operator, regarding the outer part of the site which were not there before. The inclusion of Table S2.2 in so far as storage is concerned however forms part of the determination of the application to vary and consolidate. Storage of any waste on the outer part of the site is not presently permitted and the imposition of restrictions is therefore consequent on the application.

The operator's agent, in his email dated 11 October 2020, states that he disagrees with our omission from Table S2.2 of waste codes 17 05 06 and 17 09 04, and that they should be included with a general limitation to inert waste or specific limitations taken from the Inert Aggregates Quality Protocol (for 17 05 06 *Allowed only if inert aggregate from dredgings. Must not contain contaminated dredgings. Must not contain fines*; for 17 09 04 *Allowed only if the waste is inert waste generated from utilities trenchings or it consists of sub base aggregates i.e. granular material or it contains only inert waste that would be described by any of waste codes 17 01 01, 17 01 02, 17 01 03, 17 01 07, 17 03 02, 17 05 04 or 17 05 08 if the waste had not been mixed*). He says that excluding these wastes

from Table S2.2 is contrary to the crushing activities that take place on site currently to produce secondary aggregate.

Appendix C of the Inert Aggregates Quality Protocol takes certain waste codes that are comprised of a mixture of wastes and suggests that they could be separated into their constituent inert and non-inert parts, with the inert parts acceptable for the production of recycled aggregates. We are not prepared to allow the waste codes 17 05 06 and 17 09 04 to be stored and treated on hard standing upon the terms proposed by the operator's agent, as it would not be possible for us to determine at inspections whether these were truly inert wastes, that no cross-contamination was present from the segregation that had taken place, or that there were no fines, fibres or small pieces (ascertaining this is not usually possible on visual inspection). We can regulate the site applying the European Waste Catalogue codes, but is not possible with the caveats contained within the protocol. This may lead to incorrect breaches being recorded, or an inability to adequately assess compliance, with resultant risks to human health and/or pollution of the environment. Also the Agency has just initiated a general review of the Quality Protocol and so it is possible that the limitations specified above may change following the present consultation exercise.

We acknowledge this may mean that practices undertaken by the operator with regards to waste codes 17 05 06 and 17 09 04 may need to change, either the location of current operations or alteration of the site surface on part of the site.

1.8 How we deal with reports made to our national incident hotline

While this issue is not relevant to this determination, we address this in the text below so that members of the community in the vicinity of the site reading this are made aware of our approach.

Should members of the public experience significant amenity issues which relate to the permitted waste operations we ask that they notify us as soon as practicable on our 24 hour incident hotline number 0800 80 70 60. This will allow us to determine an appropriate response to any incident reported to us, if required, and to develop a better understanding of potential issues.

Our response can vary, from attendance at site for major and significant incidents to informing the site operator of complaints for them to follow up. We can also follow up incidents during routine site inspections. We do not have the resources to attend every incident that is logged with us. We will have to consider our response on a case by case basis, taking a variety of factors into account. Even if we are unable to attend the site in response to each reported incident, each report helps us build a picture of potential issues that warrant further investigation. (Under the General Data Protection Regulation we do not pass information on the incident reporter to site operators). There is information we can ask of the Operator in response to an incident, for example information they would hold in line with their environmental management system.

Should we receive any incident reports for activities outside of our remit we will notify the Royal Borough of Windsor and Maidenhead (RBWM). We would likewise expect RBWM to notify us of incidents which have been reported to them which are within our remit.

It is our responsibility to regulate against environment issues arising from the varied and consolidated permit. This includes amenity issues such as odour, dust and noise relating

to site operations. It is not within our remit to investigate issues which, even though they relate to the site, are not regulated by the permit, such as noise from traffic travelling to and from the site, outside of the site boundary. Issues of this nature need to be reported to the Royal Borough of Windsor and Maidenhead (RBWM). We appreciate that for the local community it may not always be immediately clear which organisation should be contacted. We will work together with RBWM to ensure each of our organisations understand each other's roles and responsibilities for the site and that any issues raised by the community are handled appropriately.

2 Decision checklist

Aspect considered	Decision
Receipt of application	
Confidential information	A claim for commercial or industrial confidentiality has not been made.
Identifying confidential information	We have not identified information provided as part of the application that we consider to be confidential. The decision was taken in accordance with our guidance on confidentiality.
Engagement	
Engagement	<p>We considered this application to be of high public interest and therefore publicised the application in line with our guidance.</p> <p>The application was advertised in the Surrey Advertiser and Windsor Express newspapers. We also communicated with key stakeholders and sent letters to approximately 300 properties in the local community.</p> <p>We consulted the following organisations:</p> <p>Royal Berkshire Fire and Rescue Service</p> <p>Royal Borough of Windsor and Maidenhead – Planning</p> <p>Royal Borough of Windsor and Maidenhead – Environmental Protection</p> <p>Royal Borough of Windsor and Maidenhead – Lead Local Flood Authority</p> <p>The comments and our responses are summarised in the consultation section of this document.</p> <p>We also used our internal process to engage with Natural England – see relevant section in the checklist below.</p>
The site	
Extent of the site of the facility	The operator has provided a plan which we consider to be satisfactory, showing the extent of the site of the facility. We have included a slightly amended plan in the permit (removing a pink line near the entrance of the site).
Biodiversity, heritage, landscape and nature conservation	<p>The site is within the relevant distance criteria of a site of nature conservation and of protected habitats.</p> <p>We have assessed the application and do not consider that the application will affect the South West London Waterbodies Special Protection Area and RAMSAR site. We informed Natural England of our assessment.</p> <p>We also consider the application will not affect the Wraysbury & Hythe End Gravel Pits Site of Special Scientific Interest and consulted Natural England on our assessment. They responded to say they were satisfied that the application, provided it is carried out in strict accordance with the proposals as submitted, is not likely to adversely affect the features of special interest</p>

Aspect considered	Decision
	for which the SSSI is notified.
Environmental risk assessment	
Environmental risk	<p>We have reviewed the operator's assessment of the environmental risk from the facility.</p> <p>The operator's risk assessment is satisfactory.</p>
Operating techniques	
General operating techniques	<p>We have reviewed the techniques used by the operator and compared these with the relevant guidance notes and we consider them to represent appropriate techniques for the facility.</p> <p>The operating techniques that the applicant must use are specified in table S1.2 in the environmental permit.</p>
Emissions management	<p>Increased storage of inert wastes at the site means that we required a revised dust and emissions management plan to be approved as part of this variation and consolidation application, so this was requested from the operator during determination. We have reviewed the dust management plan in accordance with our guidance on dust management.</p> <p>We consider that the dust management plan is satisfactory. This has been included in table S1.2 and the operator must operate in accordance with this approved plan.</p>
Odour management	<p>The operator can accept a couple of odorous wastes at the site. Increased waste storage at the site therefore meant that we required a revised odour management plan to be approved as part of this variation and consolidation application, so this was requested from the operator during determination. We have reviewed the odour management plan in accordance with our guidance on odour management.</p> <p>We consider that the odour management plan is satisfactory. This has been included in table S1.2 and the operator must operate in accordance with this approved plan.</p>
Fire prevention plan	<p>The site can accept combustible wastes. Increased storage of waste at the site meant we required a fire prevention plan to be approved as part of this variation and consolidation application, so this was requested from the operator. We have assessed the fire prevention plan and are satisfied that it meets the measures and objectives set out in the fire prevention plan guidance. This has been included in table S1.2 and the operator must operate in accordance with this approved plan.</p>
Permit conditions	
Updating permit conditions during consolidation	<p>We have updated the permit conditions to those in the current generic permit template as part of this permit consolidation. The conditions will provide the same level of protection as those in the previous permit(s).</p>

Aspect considered	Decision
Waste types	<p>We have specified the permitted waste types, descriptions and quantities, which can be accepted at the regulated facility.</p> <p>We are satisfied that the operator can accept these wastes for the following reasons:</p> <ul style="list-style-type: none"> • they are suitable for the proposed activities • the proposed infrastructure is appropriate; and • the environmental risk assessment is acceptable. <p>We made these decisions with respect to waste types in accordance with Technical Guidance WM3: Waste Classification – Guidance on the classification and assessment of waste (1st Edition v1.1).</p> <p>Waste types which can be accepted at the regulated facility have been specified in Table S2.1 of the permit.</p> <p>An additional Table S2.2 has been included which refers to waste types that can be stored and treated on hardstanding.</p> <p>All waste types within Table S2.1 that are not listed in Table S2.2 must be stored and treated on an impermeable surface with sealed drainage system, as stated in Table of activities S1.1</p> <p>Please see section 1.7 for more on site surfacing.</p>
Emission limits	No emission limits have been added, amended or deleted as a result of this variation.
Operator competence	
Management system	There is no known reason to consider that the operator will not have the management system to enable it to comply with the permit conditions.

3 Consultation

The following section summarises the responses we received to our consultation from organisations listed in the consultation section, and representations from local MPs, councillors, parish/town community councils and individual members of the public, and explains how we have considered them in the determination process.

Responses from organisations listed in the engagement section of the checklist

Response received from
Royal Borough of Windsor and Maidenhead – Lead Local Flood Authority
Response
<p>After reviewing the information provided regarding the environmental permit for the 'Fowles' site (Hythe End Road) LLFA have the following comments:</p> <p>The site is within fluvial Flood Zone 3 and the EA surface water flood map does not identify any clear surface water flow path through the site. Surface water flood map also indicates that there are only small pockets within the site with low-medium flood risk. Therefore, LLFA do not have any comments regarding the surface water flood risk to the site. However, LLFA have recently discharge the condition (18/03545) related to the planning application 16/01725 for replacement concrete surfacing associated with the lawful storage and processing of waste material, with associated drainage infrastructure and access ramps at the above site.</p>
Summary of actions taken or show how this has been covered
<p>3.1 Our flood risk assessment has satisfied us that the increased waste storage applied for will not negatively impact fluvial (river) flood risk in the area. The comments from the Lead Local Flood Authority do not raise any concerns regarding the surface water flood risk of the proposals. Through our compliance checks of the site, we will check that the associated drainage infrastructure and surface water management scheme are in line with the variation application documents and associated sections of the Environment Management System.</p>

Response received from
Royal Borough of Windsor and Maidenhead – Planning
Response
<p>The Local Planning Authority can provide the following comments in respect of the application for a consolidated permit at Hythe End Farm.</p> <p>It is the LPA's understanding that the application seeks to combine the two existing permits into one permit, increase the waste storage allowed on site from 160 tonnes to 4154 tonnes, modernise the conditions of the permit and remove the activity of composting. It is understood that the annual throughput of waste will remain at 125,000 tonnes.</p> <p>The lawful planning use of the site is as detailed in a certificate of lawfulness granted in 1998- it describes the 'storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery' on land identified in the certificate. The certificate was granted with notes attached clarifying that the certificate was issued for the purposes of s191 of the 1990 Act, that it certifies the lawfulness of the described use on the identified land, and that it is limited to the extent of the development described in the application and to the land shown on the attached plan.</p> <p>In planning use class terms, the lawful use of the site is considered to be Sui Generis. In light of the fact</p>

that the permit proposes no increase in throughput but an extremely high increase (26 times higher) in storage at the site, the LPA considers that this permit variation, if granted, could amount to a material change of use in the planning context. This is because the proposed storage use (B8), will clearly become the primary use of the land. As such planning permission may be required for this variation.

Further to the above, it is noted that at Annex D, the applicant refers to a modernised list of waste types that may be accepted at the site. The LPA considers that the waste detailed in this list far exceeds the waste types identified within the scope of the certificate. Accordingly, permitting this variation could result in an intensification in the use of the site which may require planning permission.

The Local Planning Authority have received complaints in the past regarding an intensification of the use of the site, as a result any intensification would have to be carefully considered.

Summary of actions taken or show how this has been covered

3.2 It is for the operator and the local planning authority to ensure the correct planning consents are in place to carry out the operations on site.

3.3 As our own Flood Risk Assessment has demonstrated no adverse flood risk impact from the increased material on site, and the operator’s Environment Management Systems should ensure that no significant amenity impacts arise from operations at the site, we believe any “intensification of the use of the site” has been covered with regard to our remit.

Response received from

Royal Borough of Windsor and Maidenhead – Environmental Protection

Response

Proposal:

Fowles Crushed Concrete Limited (FCC), submitted a permit variation application to combine its 2 permits into 1, increase the waste storage allowed on site from 160 tonnes to 4154 tonnes, modernise its permit conditions and remove the activity of composting. The annual throughput will remain at 125,000 tonnes.

Location:

Fowles Crushed Concrete Hythe End Farm, Hythe End Road, Wraysbury, Staines TW19 5AW

BACKGROUND

The site is split into two processes, the crushing of concrete and the storage of inert waste.

Current Permits

The site currently has 3 Environmental permits:

The Environment Agency (EA) has issued two permits for waste actives.

The Royal Borough of Windsor and Maidenhead (RBWM) has issued one Part B Environmental Permit for 3 crushers and 2 screeners on site, reference MC04.

This application is in part to combine the 3 Environmental Permits into a single permit.

Complaints

Since 1 January 2017 the RBWM’s Environmental Protection team has recorded the following complaints against the site:

Reference	Complaint	Date Received
17/00941/NOISE	Mechanical noise	3/04/17

18/04581/NOICON	6am working	25/10/18
19/00832/NOIIND	Sunday working	17/02/19
19/04558/ODOUR	Rotten Food	12/09/19
19/04564/ODOUR	Odour	12/09/19
20/01353/NOIIND	Mechanical noise	09/04/20
20/01362/NOIIND	Concrete crusher	09/04/20
20/01645/NOIIND	Crushing equipment	5/5/2020
20/01710/NOIIND	Noise on Saturday	11/05/20
20/02617/NOIIND	Noise pre 6 am	06/07/20

COMMENTS

Type of Waste

Environmental Health Officers from RBWM have discussed this application with the EA. The EA has confirmed the waste will be inert waste from household waste such as skips and demolition material. Asbestos and putrescible waste, such as food waste, will not be permitted. Composting will be removed from the permit at the request of FCC.

Permits

The application is to combine the 3 Environmental Permits into a single permit. This will simplify regulation for the regulators, FCC and the general public.

Noise

Noise from the site is the biggest cause of complaint from the site.

This noise should be assessed in accordance with British Standard (BS) 4142:2014+A1:2019, "Methods for rating and assessing industrial and commercial sound."

From this report a noise management plan can be completed which will include boundary noise levels and these can be set with permit conditions.

Early morning and weekend noise are major issues for local residents. This noise is like that from construction sites. RBWM sets the following working hours for noisy activity on construction sites and these should be attached to the permit:

The site shall only operate during the following hours:

08:00 until 18:00 Monday to Friday

09:00 until 13:00 Saturday

No times Sundays or Public holidays

Dust

The risk of dust causing harm to the environment will increase with the increased amount of material stored on site.

A dust management plan is recommended as a permit condition which will include dust suppression measures such as water spraying at the site boundaries.

The concrete crushers have their own water sprays for dust suppression which are used automatically when the machines are in use.

Odour

Complaints about odour have been received from residents. Fermenting wood can cause odour problems. An odour management plan is recommended as a permit condition.

Pests

The increase in stored material will increase the harbourage for pests.
A pest management plan is recommended as a permit condition.

RECOMMENDATIONS

It is recommended that the permit variation is approved with the following permit conditions:

1. All three of the current Environmental Permits are combined into a single Environmental Permit that is enforced by the Environment Agency.
2. A noise management plan
3. Site Boundary noise levels shall be set
4. The site shall only operate during the following hours:
08:00 until 18:00 Monday to Friday
09:00 until 13:00 Saturday
No times Sundays or Public holidays
5. A dust management plan
6. An odour management plan
7. A pest management plan

Summary of actions taken or show how this has been covered

3.4 Please see section 1.6 for comments on noise.

3.5 Please see section 1.5 for comments on hours of operation.

3.6 A dust and emissions management plan has been approved as part of this variation and consolidation application, it is part of the operating techniques in the permit.

3.7 An odour management plan has been approved as part of this variation and consolidation application, it is part of the operating techniques in the permit.

3.8 A pest condition is in the permit, if pests become an issue we can request a pest management plan from the operator for approval.

No responses received from other listed consultees.

Representations from local MPs, councillors and parish/town community councils

Response received from
Wraysbury Parish Council
Response
<p>We, the Wraysbury Parish Council, are of the opinion that these licences cannot be consolidated, particularly as the current licences have been revoked by the EA and the site is subject to a multiple-point enforcement notice from the RBWM dated 28 March 2019 (17/50035/ENF). We believe that any move by the EA to allow consolidation under these circumstances would enforce the fact that the EA is not fit for purpose, and would therefore likely be subject to a Judicial Review.</p> <p>The items below reference some of the documents on https://consult.environment-agency.gov.uk/psc/tw19-5aw-fowles-crushed-concrete-ltd/</p> <p>About this consultation</p> <p>"We will only issue a permit if we believe that harm to the environment, people and wildlife will be minimised and that the operator has the ability to meet the conditions of the permit. Providing a business can prove that the proposed activities meets all the legal requirements, including environmental, technological and health requirements, then we are legally obliged to issue a permit, even if some people do not approve of the decision."</p> <p>Minimised in this context has no meaning - it is a subjective statement, but who or what is the subject? All it means is that the result is at the bottom of a curve, but not how low the curve is. It must be objective and quantifiable, otherwise the door is open to major arguments, delays and obfuscation. Belief must not come into the equation - it must be fact based. Implies that not EA's fault if you don't like it! The only relief is the "meets all legal requirements" - I trust that this also means that the EA cannot issue a licence unless ALL legal requirements are met. That aside, it surely falls at the first hurdle. The enforcements and revocation of licences are still outstanding - how can it be legal to attempt to create new licences on the basis of licences that have been revoked. I would suggest that to do so would show that the EA is not fit for purpose and is not a competent agency to issue new licences. Indeed, to do so could render the EA liable to a Judicial Review.</p> <p>There is also the matter of the enforcement notice served by RBWM against multiple items (17/50035/ENF) which has been outstanding since 28 Mar 2019</p> <p>One has to ask why would Fowles wish to consolidate these permits.</p> <p>Covering Letter</p> <p>This references reasons for refusal in 2016 as just non-payment and poor fire prevention plan. This cannot possibly be right. The pre-application document of 2016 mentions these items but does not limit refusal to just those items. There must at least be the issue of revocation of licences and once again the use of 'minimise' re risk of pollution. There was a major fire on site (last year?) so the current fire prevention plan is obviously not fit for purpose. Arguments that it is not needed or that the limitations are not specified and that therefore not required are specious. We suggest that you review the report by the Fire Service. It should make interesting reading. The fire plan must be available and acceptable BEFORE any new permit is even considered.</p> <p>Application for consolidation</p> <p>I think this needs further review in relation to licences and assumed working and drifting usage over the years possible extras items particularly in relation to the revocation of the licences and the ongoing RBWM enforcement action.</p> <p>Interesting paragraph 1.6</p> <p>"On 21 September 2015 the Environment Agency served enforcement notices, one in respect of Environmental Permit number EPR/PB3038RM and the other in respect of Environmental Permit number EPR/DB3007MX. Subsequently, on 9 February 2016 the Environment Agency served revocation notices one in respect of each permit. Fowles has appealed to the Secretary of State against both the enforcement</p>

notices and the revocation notices. Those appeals are currently pending"

How on earth can you consolidate something that you consider illegal anyway?

Appendix A Pre-Application – Not Duly Made

Dated 23/6/2016 Request by EA for additional information regarding consolidation - this would result in a MODERN permit (whatever that means), but the statement of flood area is wrong - it talks of zone 1 and zone 2. However, your own flood plain map (<https://flood-map-for-planning.service.gov.uk/confirm-location?easting=502045&northing=172492&placeOrPostcode=tw19%205aw>) is definitively all within flood plain 3 If the raising of the land has taken this area above the zone 3 that must by definition be contrary to the rules you stipulate on development within flood plain. Indeed we can very much understand the concerns of local residents when they see that while they are only allowed at most a 30 sq m extension base with mitigation, other bodies can introduce large scale concreting.

We also take issue at the casualness when considering the effect of this site on flooding in the local area.

1. The previous EA modelling of the site showed the effect on flooding was to locally raise the water level by 20mm. This is significant when we consider the level of increase opening the Jubilee River was 10mm.
2. The model does not seem to take into account the effect on properties further East of the site. During the floods of 2013/14 there was encroachment into gardens as far away as Wraysbury Road. A further 10mm would spell disaster.

This concrete is one of the items subject to an enforcement notice by RBWM. The volume of concrete on site is excessive over the original levels which is as stated previously an outstanding planning enforcement. The increase in the amount of stored materials if stacked 2M high would be an increase of 2600% approximately which cannot be acceptable.

Appendix A – Pre-Application Returning Application

Dated 13/7/2016 - seems to be the email upon which the current request is based. It says not duly made and cites fee and fire plan - It doesn't say anywhere that these are the only items but does seem to be implied by the applicant.

OPRA Spreadsheets

These are Macro-enriched spreadsheets - these should not be made available to the general public. These macros should be disabled by their reader or Anti-Virus software, so you cannot be sure that people are looking at the right figures. We are particularly concerned about the apparent level of self-certification.

More details are needed.

Appendix F Management System Working Plan Permit

There is a list of permitted waste (how does this accord with reality - where are the logs) - is this checked at frequent intervals - the fire 'plan' is obviously not effective - see statement earlier. Waste dumped on impermeable surfaces - good for normal conditions but what if there is flooding or torrential rain? We have no confidence in the protection of properties outside the site. Interesting statement about control of spillages - 1. does it work 2. where is the record?

There is a statement that no hazardous waste accepted on site but also statement of what to do if there is. If not accepted, how can it get there - "will be removed from site as soon as practicable or within 7 days". From a logical interpretation this statement implies that if it is not practicable, the stuff can remain on site more than 7 days! Hazardous materials must be banned, and penalties imposed for breaches otherwise the statement is not fit for purpose.

Appendix G Site Condition Report

Definitely needs re-visiting - looks like it has been self assessed and is ambiguous

Schedule 1 FRA Addendum

This conflates the two presumed assumption 1. that there has always been storage since 2001 and 2.

There is no need to consider this. This cannot be right can it?

Schedule B Odour Management and Schedule C Dust Management and Schedule C Noise Management Plan and Schedule F Operator response to request for EAS

The response is attempting to imply these are not needed. This cannot be right surely

Legal considerations

There are a number of items that bring into question the whole legality of this request which need to be addressed by the EA

Application in the name of Fowles Crushed Concrete Ltd who are a company registered as – Agents involved in the sale of timber and building materials.

This therefore brings in the question as to whether they are a competent company to carry out this type of waste management which has been considered by the EA in the past.

The contact for the application is Fowles Haulage Ltd who are not the entity making the application.

The land appears to be held by Fowles Property Ltd who have this showing in their accounts at £15,000,000

The whole Fowles operation is held by Fowles Holdings Ltd and whilst we appreciate that the holding company is run by the same family members, the individual entities are legally separate.

The addresses on the application for Fowles are incorrect as they have changed their registered offices.

Summary of actions taken or show how this has been covered

3.9 Environment Agency revocation notices:

See section 1.1 above which explains present site operations.

3.10 As stated there, at the time of deciding not to proceed with the appeals against the revocation and enforcement notices, we were of the belief that we would be able to determine the variation application reasonably quickly. Therefore, choosing not to enforce the waste storage amounts in the short term was seen as a good way to proceed. However we could not have foreseen at that time that we would need to investigate the allegations of historical land raising on the site or the flood model complexities we encountered, both of which took much longer than we could have anticipated (or desired)', to come to a conclusion. It was necessary to obtain the evidence to enable us to progress this variation determination with confidence in our decision making. However this has meant that the waste storage amounts in the permit have not been adhered to for the past 4.5 years.

3.11 Completely eliminating all amenity impacts at waste sites is unlikely. In reality, there will almost certainly be some noise, odour and dust etc. at times by the very nature of what activities are carried out during operations. What we expect and require in the conditions we have put in place is that operators will do everything they can to eliminate any amenity impacts and, where that is not practicable to minimise the pollution, the operator shall submit to the Environment Agency for approval within the period specified and amenity plan which identifies and minimises the risk of pollution, then they must minimise the sources of the amenity impacts. The steps an operator will take to achieve this will be documented in their Environment Management System. We would then expect operators to take all those steps in their daily running of the site.

3.12 The plans that the operator has submitted, which are referred to in the permit, demonstrate what is necessary to minimise impacts and will ensure adherence to these plans through site inspections.

3.13 Our consideration of variations to environmental permits is separate to any enforcement action taken by the Local Planning Authority.

3.14 The Flood Risk Assessment we commissioned has helped us to understand flood risk at this location, and as the land raising has been shown to have a negligible impact on flood risk to the surrounding area, so too will the concrete surface and any piles of material on top of the concrete.

Consolidated permit

Regulation 18 of the Environmental Permitting Regulations 2016 enables the Environment Agency to

replace old permits with a consolidated permit. Having 1 consolidated modern permit on site, rather than 2 older permits with outdated waste codes, will help our officers to regulate the site more efficiently. We therefore welcomed FCC's application to consolidate, as well as its commitment to deregister their exemptions and Part B permit at the site. All processes in 1 permit will help with any future regulation that may be required.

3.15 Covering letter

The covering letter from the consultant working on behalf of the operator, which was available as part of this consultation and referenced by the Parish Council in their consultation response, explained that they were resubmitting the application initially sent to us in May 2016. Upon receipt of any permit variation we carry out certain checks before undertaking any technical review of the documents submitted. This is called 'duly making' the application. In this instance we did not feel the correct minimum information was present to enable us to move on to assessing the information – the 'determination stage' – namely the fee paid was not sufficient and the fire prevention plan was not adequate for the for the application to be duly made. This should not be confused with 'reasons for refusal', and are things that could be rectified in order for us to progress the variation. Indeed we did 'duly make' this application in November 2016, as by then the information we needed had been provided to us.

3.16 Fire Prevention Plan

In 2016 the Environment Agency introduced a requirement for operators that hold an environmental permit and store any amount of combustible waste on site to hold an approved Fire Prevention Plan (FPP). An approved FPP must be designed to meet the 3 objectives of the guidance, which are:

- minimise the likelihood of a fire happening
- aim for a fire to be extinguished within 4 hours
- minimise the spread of fire within the site and to neighbouring sites

As part of this variation and consolidation application we have requested, assessed and approved a Fire Prevention Plan in line with our guidance. This includes a range of measures which seeks to ensure the applicant/operator meets the objectives set out above. These measures include, but are not limited to, continuous 24 hour monitoring of the site. During our determination process, we have scrutinised the applicant/operator's submissions in line with our current guidance and have found it satisfactory. It should be noted that the aim of the FPP is to minimise the risk of a fire occurring, because eradicating the risk entirely is not possible. The fire that occurred at the site in 2018 was extinguished within 4 hours, which is the expected duration for extinguishing a fire in line with our guidance and to this extent the spread of the fire within the site was minimised. We consulted the Royal Berkshire Fire and Rescue Service as part of this application and we received no comments.

3.17 Appendix A

We are aware that the site is predominantly within Flood Zone 3, and have taken this into our considerations regardless of whether any submitted information from the applicant states otherwise. The submitted Flood Risk Assessment does state the site is located within Flood Zone 3. Section 1.2 explains our position regarding the historic land raising that has taken place on the site.

3.18 We have considered the effect of this site on flood levels in the local area. Please see sections 1.2 and 3.65 to 3.72 for more detail on the results we found and the modelling we carried out. There was no increase in flooding depths to any of the properties in the area, including those properties further east of the site. It should be noted that the land raising had already taken place during the floods of 2013/14, so there would be no further increase from the land raising to the flood levels experienced then.

3.19 OPRA spreadsheet

Although the spreadsheet was macro-enabled it was available for users to download and use as part of their application, this didn't allow them to change the original available spreadsheet on gov.uk.

Under the previous charging scheme in force at the time this variation application was made, we required that operators applying for bespoke permits and variations submitted an Operator Performance Risk Assessment spreadsheet as part of their application. The spreadsheet helped work out the charge for the application. This has now been superseded by our current charging scheme.

OPRA returns are completed and submitted by the operator, and it is their responsibility to ensure they are correct. Our National Operator Waste Returns Team carry out checks based on the returns and the permit,

and our local Environment Management teams would look at waste returns if they have any concerns regarding waste quantities.

3.20 Appendix F

Each load of waste accepted at the site has a duty of care waste transfer note. This creates a record of the type and amount of each waste received. This is why it is important for the existing permits to be updated with the modern definitions and codes of waste types (from the European Waste Catalogue) so it is clear what is being accepted on to site.

A summary of the duty of care waste transfer notes are then submitted to us on a quarterly basis as a requirement of permit compliance, and we carry out a desktop check of the information. Our officers can inspect the waste transfer notes during site inspections.

Our frequency of site inspections will depend on what we find on site. We employ a risk based approach to our site inspections across the geographical area we cover. The non-hazardous waste which could potentially cause an issue due to runoff has to be stored on an impermeable surface with sealed drainage (or drainage which goes to foul sewer).

See section 3.16 for fire plan comments and sections 1.3 and 3.77 to 3.78 for waste storage in flooding or torrential rain and the protection of properties outside of the site.

Whilst hazardous waste is not permitted to be accepted on site, on the odd occasion hazardous waste may arise as part of a mixed load. What is important is that this is then held appropriately in a quarantine area awaiting disposal and or transfer to a suitably permitted facility. The operator has a waste acceptance procedure in place; as part of its pre-acceptance procedure information from the producer/holder of the waste is requested, if the information provided identifies the waste as unsuitable then the waste shall not be accepted. However, if it is accepted and found to be unsuitable, it is quarantined and removed from the site usually within 7 days to an appropriate alternative facility. We are satisfied with this approach. The suitability of the quarantine area is especially important given the location of this site in a flood zone. It may take longer than 7 days for the waste to be removed from site, but what we are most concerned with is that it is safely held in an appropriate quarantine area until such time as it is removed to an appropriately permitted facility.

3.21 Site Condition Report

As part of a request for further information, we requested details of current site surfacing, drainage, containment and associated pollution control infrastructure, alongside baseline soil and groundwater data, a site history and historical contamination that may have taken place at the site. This is fairly standard practice for new applications, and helps when the permit comes to be transferred or surrendered in the future. We also considered the consolidation of the permit would benefit from an updated site condition report as 2 permits were being combined into 1 permit. We thought it was reasonable to request this, however, the operator insisted they did not need to provide further information in relation to the site condition, and legally we were unable to obtain this information as it wasn't strictly required to determine the application. We therefore did not pursue the request any further.

3.22 FRA. As part of an investigation into land raising at this site we produced our own modelling in order to fully understand the situation. As this superseded the modelling used in the submitted FRA, we used our own model as the evidence for our decisions. This means that we have not fully reviewed all aspects of the submitted FRA, therefore will not be commenting all the points raised within it. See section 1.2 for our assessment of flood risk impact of the proposals.

3.23 The application submitted contained revised management plans for odour, dust and fire prevention, which detail how the operator will work to prevent or minimise these amenity issues. We have assessed and approved these plans in line with our guidance.

3.24 Operator competence

The permit holder is Fowles Crushed Concrete Limited. The description given to the company on Companies House does not represent an indicator of operator competence for us. At the application stage the only checks we do on competence is to check the correct person/company is applying (the director details for this application match those on Companies House). We also look at past history and previous competency (so apart from the increase in site activities in 2015, FCC has acted on the actions we have

asked of them in Compliance Assessment Report (CAR) forms and has run their site competently). Once a permit is granted, we then check competence through our site regulation. It is continuously assessed when we inspect the site, and a key component is for the operator to have a technically competent person, recognised by an assessment which is repeated every 2 years, and should always be up to date. If the company is operating elsewhere then their operational history may also be relevant.

3.25 Other 'legal considerations'

The permit is in the name of Fowles Crushed Concrete Limited, it applied to vary and consolidate its permits. The change of office address took place after the variation application was submitted, and the new permit reflects the change of office address as per Companies House.

Representations from individual members of the public.

Please note that responses on common issues from individual members of the public have been combined to avoid repetition in how we have addressed the issues raised.

Brief summary of issues raised

Dust and pollution

- Increased activity at Hythe End Farm has led to consistent levels of dust outside the site's boundary.
- Dust is particularly bad in the summer.
- Dust is consistently evident on local cars, houses and windows and in local gardens e.g. on greenhouses and plants.
- Dust enters houses, so windows have to be kept shut, even on warm days.
- Potential impact of dust on the environment and people's health.
- The dust gets worse closer to the site and at times, dust can clearly be seen rising from the site.
- The dust isn't constant, but the busier the site gets, the more dust is generated.
- Dust suppression practices on site are inadequate and/or not routinely followed.

Summary of actions taken or show how this has been covered

3.26 We have not received any dust complaints via our incident hotline for over 2 years.

3.27 We have assessed and approved a dust and emissions management plan (DEMP) as part of this variation and consolidation, which details how the operator will work to prevent or minimise dust and other emissions, including but not limited to 5 mph speed limit on site, vehicles sheeted to contain loads, vehicles to use wheel wash facility before leaving site, concrete site surface and site access road is swept with a mechanical road sweeper on a daily basis.

3.28 We have included emissions conditions in the consolidated permit. These conditions will help our officers to regulate the site. If a problem with dust is observed at a site inspection or in response to a complaint, then our officers will discuss this with the operator, note it on the record made of the site visit (the CAR form), and the site will have a breach of its permit recorded against this condition. There will also be a corresponding action or actions for the operator to carry out to resolve the issue.

3.29 Given the comments received we will look specifically at dust and emissions as part of our first site visit following the granting of the variation and consolidation.

3.30 We grant applications to vary permits if the applicant demonstrates to us that that they can carry out the proposed activity without significant risk to the environment or human health.

3.31 We do not routinely carry out any form of dust monitoring. If a specific problem is identified at a site we would carry out investigations which could include, regular site visits and dust monitoring (by us and/or the operator).

Brief summary of issues raised

Odour

- The site produces foul odours.
- Frequently the smell can be so bad outside that it causes nausea.
- An increase in waste storage amounts and in operations on site will create significantly more odour.
- Odour is dependent on wind direction.
- Wastes from vegetable fibres, vegetable waste and vegetation have the potential for putrefaction and will cause odours in the nearby residential area.
- Odour is only occasional.

Summary of actions taken or show how this has been covered

3.32 We have received 2 odour complaints via our incident hotline over the past year.

3.33 We have assessed and approved an odour management plan (OMP) as part of this variation and consolidation, which details how the operator will work to prevent or minimise dust and other emissions. The wastes predominantly accepted on site do not consist of odorous wastes. The waste types that are odorous, or come in unexpectedly via skip, should be dealt with in line with the submitted OMP to ensure mitigation measures are in place. Garden and food waste will not be processed on site.

3.34 The OMP has measures including but not limited to waste acceptance, pre acceptance checks, and if odorous wastes are identified and could result in odour beyond the site must be removed from the site within 24 hours of identification.

3.35 We have included odour conditions in the consolidated permit. These conditions will help our officers to regulate the site. If a problem with odour is observed at a site inspection or in response to a complaint, then our officers will discuss this with the operator, note it on the record made of the site visit (the CAR form), and the site will have a breach of its permit recorded against this condition. There will also be a corresponding action or actions for the operator to carry out to resolve the issue.

3.36 Given the comments received we will look specifically at odour as part of our first site visit following the granting of the variation and consolidation.

3.37 We grant applications to vary permits if the applicant demonstrates to us that they can carry out the proposed activity without significant risk to the environment or human health.

3.38 We do not routinely carry out any form of odour monitoring. If a specific problem is identified at a site we would carry out investigations which could include regular site visits and odour monitoring (by us and/or the operator).

Brief summary of issues raised**Noise and vibration**

- Noise from the site can be constant and excessive and has increased year on year.
- Noises include a persistent drone, mechanical grinding and clunking, reversing alarms and trucks travelling to and from the site constantly (and often out of normal business hours).
- Noise levels at the site can be louder and more intrusive than the noise from the M25 and Heathrow.
- The noise is worst on hot days and when a north wind is blowing
- The noise prevents the enjoyment of resident's gardens.
- Prolonged exposure to the noise can be wearing and feels oppressive.
- The operator is not compliant with the noise allowance of 50db at the site's edge.
- Despite complaints from residents, reversing alarms on vehicles have not been silenced.
- Increased activity and further land-raising at the site will lead to increased noise.
- In the current Covid 19 climate it is not possible for the Royal Borough of Windsor and Maidenhead to effectively deal with noise complaints. More people are now working from home, furloughed or have been made redundant and are therefore spending more time at home – they will be exposed to increased noise pollution from the site.

Summary of actions taken or show how this has been covered

3.39 Please see section 1.6 for details on how we have considered noise.

3.40 The original permit for the outer part of the site contained a noise limit of 55dB. We have not retained this limit as there is no set dB number that we consider to be acceptable or unacceptable. It is for the applicant/operator to demonstrate they have taken all preventive measures against pollution when making an application and that it continues to do so when granted.

3.41 Given the comments received we will look specifically at noise and preventative measures as part of our first site visit following the granting of the variation and consolidation.

3.42 We are not responsible for the noise caused by vehicles driving to and from the site, or any noise generated outside the permit boundary (unless it is covered within the NMP and/or Environmental Management System); this is the responsibility of the local authority's Environmental Protection team. However, the noise condition will cover noise created by vehicles on-site, including reversing alarms.

3.43 We grant applications to vary permits if the applicant demonstrates to us that that they can carry out the proposed activity without significant risk to the environment or human health.

3.44 We do not routinely carry out any form of noise monitoring. If a specific problem is identified at a site we would carry out investigations which could include regular site visits and noise monitoring (by us and/or the operator).

3.45 The land levels will not increase further. The previous land raising took place before the current operator owned the site and before the current concrete was laid. There is no need for the ground to be raised further.

Brief summary of issues raised

Fire

- There have been 2 large fires at the site in recent years and there is no guarantee it won't happen again. Smoke covered the local area, including Hythe End Road and Ferry Lane.
- An increase in waste stored on site will make the fire risk more dangerous and more likely.
- Concerns regarding unknown toxicity of the smoke, including from burnt plastic, and its effect on local residents' health e.g. smoke inhalation and respiratory issues, especially in current climate of Covid-19.
- Proposed changes to the list of accepted waste types will increase the fire risk.
- Paper and cardboard will be a particular fire risk.

Summary of actions taken or show how this has been covered

3.46 Please see section 3.16. The FPP fundamentally relates to waste acceptance, waste activity and waste storage.

3.47 We grant applications to vary permits if the applicant demonstrates to us that that they can carry out the proposed activity without significant risk to the environment or human health.

Brief summary of issues raised

Waste enforcement

- Since 1995 the Environment Agency has failed in its enforcement duties. Residents do not have confidence in the Environment Agency as an effective regulator.
- How will the Environment Agency regulate a new permit and enforce the limits? Or can the operator retrospectively set the limits based on what they already do?
- If residents were to build a small extension without the necessary permissions, the Environment Agency would take enforcement action, yet activity at Hythe End Farm 26 times higher than the permit allows has continued.
- The Environment Agency and Royal Borough of Windsor and Maidenhead have been asked on numerous occasions to enforce the current permit limits at the site. Despite positive reassurances, their failure to do so has meant residents have had to live with more noise, dust, congestion and an increased risk of flooding for 5 years.
- Immediate action should be taken to ensure Fowles Crushed Concrete Ltd complies with the current permitted 160 tonnes storage.
- A competent site operator would abide by the current storage limits while the variation application was being determined.

Summary of actions taken or show how this has been covered

3.48 Please see sections 1.1 and 3.10 for information about the enforcement history at the site and length of time we have allowed the permits' waste storage conditions to be breached. Previous enforcement decisions are beyond the scope of this determination. We chose to let the decision on this application determine whether we would enforce the 160 tonne waste storage limit (if the variation was refused) or allow the new waste storage amount (if the variation was granted). We could have spent a considerable amount of time and tax payers' money to enforce the 160 tonne waste limit, only to grant the variation to allow the limits we were simultaneously taking enforcement action against. The permit variation decision has taken significantly longer than initially expected, which has had a knock on effect on the length of time the operator has been operating as if the variation and consolidation had been granted.

3.49 Now that we have granted the variation, the new waste storage limit is stated in the permit. The operator must stay within this limit, or it will breach this permit condition and we will consider our enforcement options at each visit where this is observed.

3.50 We decide what types of waste can be processed based on the location of activity and measures proposed to mitigate off-site amenity issues.

3.51 We do not decide where things can be processed, either with regard to the site's overall location (this is for the local planning authority to decide) or within the site (for the operator to decide and design in line with our guidance and approved plans). However, the permit does set out limits of activities i.e. non-hazardous waste shall be stored and treated on an impermeable surface with sealed drainage.

3.52 See section 3.61 to 3.64 on our planning and enforcement decisions in the area.

3.53 The 2015 enforcement action we took was based on operator competence, due to the operator failing to adhere to the 160 tonne storage limit. The operator disputed our interpretation of the condition, and as such we needed the planning inspector to decide who was correct. At the time, appeals were taking nearly a year to be heard, and during this time the only grounds for operator incompetence were the storage conditions, and therefore as time went on it is likely that the operator would have been able to adduce more evidence to show competence. Section 3.24 explains in more detail how we assess operator competence.

Brief summary of issues raised

Proposed waste storage amounts

- How can the public or the Environment Agency be confident that the operator will remain within the increased waste storage amounts if they were to be granted?
- The last application to increase the waste storage amounts at the site was refused and there are no subsequent reasons to change that decision. The Royal Borough of Windsor and Maidenhead's objection is still valid, even more so given the large increase in waste storage proposed.
- The operator failed to submit self-certified waste tonnage documentation to the Environment Agency for at least 2 quarters. Failure to submit records suggests the operator has something to hide or is simply incompetent.
- No significant changes to the original restrictions at the site were requested by the previous operator, Charles Morris Fertilizers Ltd, yet they successfully operated the waste transfer business for over 16 years. Whether you agree or disagree that waste transfer should take place in an area subject to high risk of flooding, even with the imposed restrictions, a successful business is possible at this site.

Summary of actions taken or show how this has been covered

3.54 See section 3.49 about the enforcement of waste storage amounts going forward.

3.55 All operators should act in compliance with their permit. If they wish to make changes to operations on their site that are not permitted within their permit, they will need to submit another variation to us for our consideration. As with any operator, if we find that they are carrying out operations that are not permitted, depending on the seriousness of the offence, we will either set actions that will bring them back into compliance and/or consider our enforcement options.

3.56 The operator is within its rights to apply to increase the scale of operations on the site, and have submitted to us plans they will use to manage the impact on the environment as they do so. Our role is to assess whether this can happen without detriment to the environment, for areas covered by the Environmental Permitting Regulations which sets out our responsibilities. The increase of 160 tonnes to 4154 tonnes of waste storage allowed by the permits may on the face of it seem like a large increase, but given that this includes the large amount of additional waste storage allowed by the exemptions, the actual increase in waste is not as significant as it sounds.

3.57 Throughput at any regulated site is determined by self-certified tonnage documentation submitted by the operator to the Environment Agency. The submitted waste returns are assessed by our National Operator Waste Returns Team. When the current operator first took over both permits at the site, they submitted their returns for the site under one permit only. We then asked them to submit as two returns, one for each permitted area. Following issue of this permit, we will expect only one submission going forwards.

Brief summary of issues raised

Waste types

- The wastes accepted by the existing permits should not change, but all wastes that cause pollution e.g. asbestos, should be removed from the permit.
- The site does not only accept inert 'construction and hardcore' waste or crushed concrete; it accepts household skip waste with only tyres, batteries and asbestos exceptions according to its own website.
- The quantity of concrete, including poisonous contaminants, is increasing by more than 20 times.
- Concrete doesn't burn, yet there has been 2 fires at the site in recent years. Therefore the waste stored is not just concrete. If this is true then surely the operator is incompetent.
- Skips are now the prime source of waste delivery – it is not possible to know what types of waste are in them before they are tipped. Some of the waste will cause pollution, odour and attract vermin. If the permitted waste storage amount is increased, then the problem will be exacerbated. If this waste is allowed, there should be a timescale of no more than a week before it must be removed from the site.
- Proposed changes to the list of accepted waste types will cause pollution, attract vermin and be a fire risk.

Summary of actions taken or show how this has been covered

3.58 The waste types accepted on site are not significantly changing. The waste types allowed in the current permits are being updated to use the current terminology (the European Waste catalogue rather than the outdated UK waste classification system), along with some additional waste codes which were requested by the operator and are similar to those currently permitted, so we are satisfied they can be included. The site is only permitted to accept wastes as per the waste codes listed in Table S2.1 of the permit, which also include combustible wastes. The site is not permitted to accept hazardous wastes. The way in which these wastes are stored and processed is planned in order to minimise any impact, and is outlined within the suite of Environment Management System documents and in line with the infrastructure they have on site.

3.59 If wastes end up on site accidentally i.e. some of the wastes in the skip do not conform to the list of wastes permitted, they will be handled in line with the sites environment management system waste acceptance/rejection procedures and removed from site as soon as possible to an appropriately permitted facility. This is also true for any hazardous waste which finds its way onto the site via a skip.

3.60 All wastes at the site are required to be on an impermeable surface with sealed drainage to prevent it polluting the ground below, except for those identified in the permit which are suitable for a hardstanding surface. More on this is contained within section 1.7.

Brief summary of issues raised**Land raising**

- The site has been filled, raised and capped with over 4 acres of concrete.
- Since 1995, the Royal Borough of Windsor and Maidenhead and the Environment Agency has failed to enforce the permit and stop the land raising taking place.
- The Environment Agency was aware of the land raising evidence but was dissuaded from taking core samples.

Summary of actions taken or show how this has been covered

3.61 Please see section 1.1 and 3.10 regarding our land raising enforcement decision (which decision is beyond the scope of this determination). The land raising is likely to have been insidious and as a result, difficult for officers to detect. However in 2012 we acknowledge that we should have considered any potential impacts of the new surface laid at the site.

3.62 Prior to April 2017 prosecution would only have been possible within 6 months of the offence taking place. Since then, flood risk activities have been brought under the Environmental Permitting Regulations 2016 and so taking action for offences committed April 2017 onwards is not so constrained.

3.63 The evidence we gathered shows that the land raising occurred prior to the current operator acquiring the site in 2015. Enforcement action is asked of the person undertaking the offence to rectify it and therefore the change in land ownership meant this would not be feasible. We were willing to rectify the land raising ourselves had the flood modelling we carried out shown a significant increase in flood risk to the surrounding areas, however the final results demonstrated this was not the case (see section 3.73).

3.64 When we were considering our enforcement options regarding the historic land raising, one option was to take core samples of the material below the concrete on site. However, before we carried out this work we needed to make sure it would help with the task at hand. Following advice, we would not have been able to use these samples conclusively with any of the legislation that was available to us, as regardless of what we found it would need to be attributed to an individual and a case brought against them. This was not possible given the complexity of the site.

Brief summary of issues raised

Flooding

- The land has been raised and the current owner has covered a large part of the field with impermeable concrete hard standing, constructed a large maintenance building and now stores thousands of tonnes of mixed waste – actions that have all increased the flood footprint considerably and contribute to increasing flood levels.
- An increase in waste storage amounts and operational activities at the site will put further pressure on the flood plain and increase the risk of flooding in the surrounding area.
- The site is designated as Flood Zone 3 and Flood Zone 3b, yet the Environment Agency has allowed tens of thousands of tonnes of hogging and concrete to raise the site on the basis that the impact is negligible. Surely the criteria, especially for Flood Zone 3b, has not been met.
- The site is in a critical high-risk flooding area and consequently the Environment Agency's own policy dictated the reasons for limiting operations at the site and setting the 160 tonne waste storage limit as stated in the original Environmental Permit EPR/PB3038RM. When the operational area was expanded under EPR/DB3007MX, those reasons were maintained and no increase to the storage limit was allowed. Those reasons are just as valid today. The current operator is suggesting that the current restrictions are an 'unnecessary regulatory burden', yet the Environment Agency imposed them originally as 'necessary' and now, under the current climatic conditions, they are vital for residents' protection and should be strictly adhered to.
- The last flood in 2013/14 was the highest since 1947. 11 houses were flooded in Hythe End Road and The Island, and many more avoided flooding by a few centimetres. If the variation is granted, in a similar flood many more houses will be condemned to the devastation caused by flooding. The Environment Agency predicts future weather will be more extreme and further flood level rises of millimetres, not centimetres, are now critical. The Environment Agency will be failing in their duty if they allow such a significant increase in stored material.
- Concerns regarding the flood risk modelling carried out by the Environment Agency, including that the model used is old and uses a discredited mathematical model, that it has been developed by the same company, JBA consulting, who produced the [operator's] second FRA submission, leading to a conflict of interest, that the modelling is suspiciously complex and incorrect for this section of the river and scepticism with its results showing a negligible increase in flooding as a result of the land raising. 3D modelling carried out by residents came to a different conclusion.
- When the Environment Agency explained the results of their flood risk modelling, it shows that they do not understand the risk of flooding to properties. In 2014 the river level rose by about 1m and homes flooded a few centimetres above the finished floor. Meanwhile neighbours' houses were not flooded by just a few centimetres under the floor. The Environment Agency were prosecuting offenders for increases of less than 20mm but not in this case.
- Strict legislation does not allow homeowners within Flood Zones 'to store materials on our land or raise ground level with hard standing or increase the flood footprint of structures' as these actions will impede the flow of floodwater, compromise the existing flood storage area and displace floodwater elsewhere. Yet a large commercial operation, through the storage of waste on concreted land, can be allowed to increase the risk of flooding for surrounding properties. Residents have the right to expect that the Environment Agency and the Royal Borough of Windsor and Maidenhead do everything in their power to protect residents from flooding by ensuring that these conditions are not flouted by anyone. However, an 'in time' report to the Environment Agency of unpermitted works taking place in the local area was not acted upon.
- The Environment Agency argues that while the impact of individual developments within the floodplain may be small, 'the cumulative effect of all these small increases is large'. The Environment Agency will therefore take action in all cases to prevent loss of floodplain. It is reasonable to assume that this was taken into account when the original storage capacity of 160 tonnes and the limited operating area of the site was laid down as in EPR/PB3038RM. All increases in storage capacity do have an effect on flood levels. The same rules should be applied to this site as those applicable to the surrounding neighbourhood – no storage of materials over and above the existing agreed amounts.
- To allow such a significant storage amount at the site would set a disturbing precedent and could well give grounds for litigation by all the households in the Datchet, Old Winsor and Wraybury areas. To say that such a massive increase in flood footprint is "negligible" and doesn't matter sets a dangerous precedent that will be ruthlessly exploited by many.
- An increase in permitted waste storage will impede flood flows at this critical flood flow funnel point. The route of the M25 forms a barrier across the River Thames floodplain. Under flood conditions, the flood water is forced to funnel under the bridge carrying the M25 and A30 roads. Hythe End Farm is 300 metres immediately upstream of the crucial funnel point. By locating a significant amount of

material immediately upstream, this funnelled water will cause the water to back up.

- The increased waste storage will significantly increase the speed of onset of a flood and increase the river's velocity. Existing escape routes will be blocked. Vulnerable people with less mobility will be at a higher risk.
- The Jubilee River reduces the flood risk for Maidenhead and Windsor, and the River Thames Scheme will reduce the flood risk for Datchet to Teddington but until then, any increase of impedance to the flow of floodwater should not be allowed.
- The proposed changes will undermine and reverse recent investment by Thames Water to protect eels in this high risk area of the river.
- An increase in permitted waste storage amounts could cause blockages downstream in severe weather. A report commissioned by the Environment Agency in 2012 stated that paper, cardboard, plastics, tyres, timber and wood should not be accepted at a site that is at high risk of flooding because 'they can be carried off site by floodwater, causing litter pollution and possibly blocking flood flow routes elsewhere.' Any blockages downstream, especially at weir sluices would lead to catastrophic increases to upstream flood levels. Concrete structures constructed to prevent this happening only further compound the flooding issues.

Summary of actions taken or show how this has been covered

3.65 See section 1.2 for a summary of flood risk regarding this permit variation application.

3.66 We used 2 particular results from our modelling to give us an understanding of the impact of the land raising and bund (embankment) enlargement between 2003 and 2014.

3.67 Firstly, we compared the 2003 and 2014 ground levels at 4 different rainfall events - a 20%, 5%, 1% and 1% plus an allowance for climate change likelihood of happening in any one year. We used the 2014 bund (embankment) outline in place throughout, thereby isolating the impact of the land raising. This meant we could specifically use the results to help us decide whether to enforce restoration of the original ground levels at the site. When we ran the model, the rainfall event with a 1% likelihood of happening in any one year failed to produce outputs – during runs of large complex models with significant data inputs this is not uncommon. However, since we had successful outputs for the rainfall events of both a greater and lesser magnitude, we were happy to proceed. The modelling outputs showed a negligible difference in flood risk to the surrounding area at all 3 rainfall events we had model results for. The results for the rainfall event with a 20% likelihood of happening in any one year showed no impact to residential or business properties. A very small number (up to approximately 5) residential and business properties were shown to experience an increase in flood depths of between 2 and 5 centimetres at the rainfall events modelled with a 5% or less likelihood of happening in any one year. These properties (and others in the surrounding area), however, would already be experiencing significant flooding during these rainfall events. Also, the increase shown for these properties represents a percentage change in levels that is less than the predicted accuracy/tolerance of the model. For this same reason, we have discounted any results that show changes of approximately 1 centimetre or less.

3.68 Secondly, we again compared the 2003 and 2014 ground levels at the 4 different rainfall events, but this time we removed the bunds (embankments) from the 2003 scenario. This was because we couldn't be sure of the exact layout of the bunds in 2003 from the LiDAR data collected at that time. Therefore the results from this modelling gave us a 'worst case scenario' unlikely to occur in reality but enabling us to quantify the upper extent of impact to base our decision making on. The results were used to help us decide whether to enforce restoration of the original ground levels at the site, and also whether to enforce removal of the bunds. The modelling outputs showed a negligible difference in flood risk to the surrounding area at all 4 rainfall events modelled. The results for the rainfall event with a 20% and 5% likelihood of happening in any one year were similar to the scenario explained in 3.67. At the rainfall events modelled with a 1% or less likelihood of happening in any one year, a number of residential and business properties located up to approximately 3.2 kilometres to the west of the site were shown to experience an increase in flood depths between 1 and 3 centimetres, with a smaller number experiencing an increase in flood depths of up to 5 centimetres. These properties (and others in the surrounding area), however, would already be experiencing significant flooding of over 1 metre. The properties to the east of the site are actually shown to experience a decrease in flood levels at these same rainfall events. Again, all changes shown for these properties represents a percentage change in levels that is less than the predicted accuracy/tolerance of the model. Whilst we know that any additional centimetres of flooding could have an impact, we stress again that this 'worst case scenario' looks at changes greater than those observed on site and was used to

provide an indication of the maximum range of impact. We would not expect to see these impacts realised during an actual event.

3.69 For reference, the 2013/14 flood in this area approximated to a 6.7% likelihood of happening in any one year. The rainfall event modelled with a 5% likelihood of happening in any one year is therefore closest to this event. Our modelling shows minimal increases in flood depths as a result of the land raising, even in the worst case scenario. We can therefore infer that the land raising at Hythe End Farm had a negligible impact on the flooding of 2013/14 in the area.

3.70 We used the most up to date modelling for this area - the Lower Thames model was only released in 2017 and is therefore a new and modern model, and is the best available for the area in question. The consultant JBA was responsible for producing the model, after the contract had been through a competitive tender in line with Government procurement rules.

3.71 The operator also used JBA to design their flood risk assessment (FRA) model. They did not use the new Lower Thames Modelling as an input, instead using the 2007 Lower Thames flood model which was the most up to date modelling at that time. The site owners are free to use any consultant they please, and we would expect any consultant producing FRAs to do so using agreed principles which stand up to scrutiny. Any modelling submitted to us to inform a FRA is reviewed by our Evidence and Risk team (formerly called the Modelling and Forecasting team) to ensure accuracy and technical compliance.

3.72 We then used a different consultant (Jacobs) to use the flood risk assessment model, created by JBA for the operator, to run our flood modelling for the site. We obtained results using both the 2007 old modelling and the 2017 new Lower Thames modelling, however we ultimately used the 2017 results to make our decisions given this was the most up to date and more detailed modelling and the older model didn't show anything different. We may have needed to use the 2007 modelling in comparison to the submitted FRA for the variation application, but in the end this wasn't necessary.

3.73 The modelling we carried out has allowed us to understand the nature of flooding and the floodplain at the site. We are an evidence based organisation. We have demonstrated through our modelling that in this specific location a decrease in the floodplain's storage area from the land raising does not have a significant effect on flood levels. This is likely to be due to the very wide floodplain from the Thames in this locality, and the fact that the site still floods and flood flow routes are not impeded by the land raising. We can extend this knowledge to the piles of waste and processed material on site, and are therefore confident that flood flows will not be impeded by them, nor the storage capacity of floodwater reduced by them.

3.74 We have never been shown the modelling carried out by residents.

3.75 With regard to flood water forced to funnel under the bridge carrying the M25 and A30 roads, this would have been picked up in the modelling we undertook. We have presented the maximum depths but the model would contain information on velocities – however based on the negligible impacts on flood levels it is reasonable to assume the velocities of the floods will not be significantly affected by the changes on site. The onset of flooding, and therefore existing escape routes in times of flooding, shouldn't be affected.

3.76 The land raising here is a permanent feature. It will still flood via the existing flood flow routes. This is different to structures within or close to watercourses, which in times of flood can be swept away and create blockages, or divert floodwater to have an impact elsewhere.

3.77 The cumulative effect of individual developments such as new structures or extensions within a floodplain are certainly important, and the magnitude of that cumulative effect will be driven by the scale of each individual impact. In this location however, and especially given the nature of the floodplain here, the cumulative effect may be less important than in other parts of the catchment, or in different catchments. Anyone wishing to do work in neighbouring areas within the floodplain should still get the relevant permissions and supply evidence of the impact of their works. Each case will have its own impact that needs to be assessed in its own right.

3.78 Through both our Flood Risk Activity Permitting process and our planning responses back to local planning authorities, we will not permit / will object to proposals that have an unacceptable impact on flood risk. It is for the applicant in both instances to demonstrate through a satisfactory flood risk assessment the impacts their proposals will have. If no negative impact is demonstrated, we will grant a permit/recommend approval. This is always the case, regardless of what is located in the surrounding area and its scale i.e. homes, businesses or industry.

3.79 It is therefore incorrect to say that the Environment Agency operates a policy of objecting to all attempts to store material on land at high risk of flooding. Indeed, our waste exemptions do not have a location factor and therefore certain quantities of low risk materials can be stored anywhere as we consider the impact from these specific types of activities to be low risk in their nature.

3.80 We are confident that material stored on site will not cause a risk of blockages off site during flooding. Any material big enough to cause blockages would need to exit the site first. The bunds surrounding the site would prevent this, with the gaps in the bunds being the only route off site for such material. During flooding events where this would be possible, the flooding would be so extensive that we would not be concerned about blockages doing any further damage.

3.81 The operator will need to prepare in advance for any on-site flooding to minimise the impact to its activities and the environment. We have included an improvement condition in the consolidated permit for the completion of a flood plan with our approval within 3 months. This plan will include steps to safeguard processes and secure polluting material and stock. If the operator does not comply with this improvement condition, a range of enforcement actions can be used to bring the site into compliance.

3.82 In 2007, we refused a previous variation application from the operator to increase waste storage limits, citing flood risk as one of the reasons. This was because the Flood Risk Assessment submitted at the time was not satisfactory and did not demonstrate how the proposals would not increase flood risk to the surrounding area. Now, our own extensive flood risk modelling carried out to investigate any impacts of the historic land raising has provided us with robust evidence to permit the increased amounts of storage.

3.83 Part of the Hythe End farm site is within Flood Zone 3b. Flood Zone 3b is an area of land designated by the local authority for planning purposes. Through the planning process, the local planning authority should look to avoid inappropriate development, in accordance with the Planning Practice Guidance, in these areas. This is not a consideration for our permit decisions.

3.84 Alongside our permitting and regulatory role, we are also a statutory consultee in the planning process. In this role we provide advice to the local planning authority who are the decision maker. We review each planning application on the best available flood risk information and the documents as submitted to us. It is for the applicant to demonstrate the impact of their proposals through a satisfactory flood risk assessment. Where a scheme will not meet the requirements of national or local planning policy, such as increasing flood risk elsewhere, we will object to the planning application and recommend that the local planning authority refuses planning permission. National and local planning policies state that development proposals should not increase flood risk elsewhere. This includes considering the cumulative effects of development on a floodplain.

3.85 We have previously objected to planning application(s) associated with the Hythe Farm site. The extended timescales required for our investigation into historic land raising at the site (refer back to section 1.2) did lead to a significant delay to our planning final response on one of the planning applications. After consideration the local planning authority sought to grant planning permission contrary to our advice. Therefore the planning application was referred to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction as we maintained our planning objection on flood risk grounds. The Secretary of State decided that the planning application should not be called-in for their consideration and that the local planning authority could proceed with their decision.

3.86 The Environment Agency does not operate a policy of objecting to all attempts to store material in areas liable to flood. As a statutory consultee in the planning process and as an environmental regulator we encourage material to be stored in the area at least at risk of flooding but acknowledge that this may not always be possible. When appropriate, a planning condition may be sought to ensure that the storage of material does not have adverse flood risk implications. However, our environmental permitting waste

exemptions do not have a location factor as certain quantities of low risk materials can be stored anywhere as we consider the impact from these specific types of activities to be low risk in their nature.

3.87 The unpermitted works reported to the Environment Agency are currently being looked into and will be followed up separately, however we did investigate at the time and also alerted the local planning authority to ensure the correct authority acted appropriately.

3.88 We do not believe the varied aspects of the permit (increased waste storage, modern waste codes, modern conditions and the removal of composting) will have an impact on the recent investment by Thames Water to protect eels in this area.

3.89 Green Belt designation or protection is not within the Environment Agency's remit.

Brief summary of issues raised

Letter dated 24 August 2007 from The Royal Borough of Windsor & Maidenhead Council in response to the application for modification of waste management licence held by Charles Morris (Fertilisers) Limited at the site with representation asserting the objections are just as valid today.

Summary of actions taken or show how this has been covered

3.90 The above mentioned response was in relation to an application made over 14 years ago. As part of the current application we have consulted the local authority and have considered their response in relation to the current application.

3.91 We believe all of the points raised within this letter have been addressed previously.

Brief summary of issues raised

River Thames Scheme (RTS)

- The River Thames Scheme is years behind its original schedule, has had changes of project management, has seen the cost almost double and is not yet fully funded. Even if it does progress, residents may have to wait a decade.
- The proposals completely sabotage the local council's own funded and approved plan to extend the Jubilee River and create a new lake and park in the very same place this business operates.

Summary of actions taken or show how this has been covered

3.92 The determination of this permit variation and consolidation is completely independent of the River Thames Scheme. The current land use is the waste site and we are legally required to grant new permits or variations to existing permits if the applicant satisfies all the relevant criteria and is able to demonstrate that they can carry out the activity without significant risk to the environment or human health.

3.93 We mentioned the RTS in our communications to acknowledge the latest situation and provide contact details for the project team The Scheme is currently in the outline design phase. The project team will be updating communities and seeking feedback on the final outline design as part of an online consultation and public events. You can visit the River Thames Scheme at www.gov.uk/riverthamescheme for more details about the current proposals.

Brief summary of issues raised

Issues not within our remit

Planning

- In 1995 the site was a field with a small lake in the corner and a gate that was rusted shut. Within a couple of years it had apparently become a 10 year waste management operation. Numerous officials have sympathised and empathised with residents that mistakes were made when a Certificate of Lawfulness was granted.
- When retrospective planning was applied for, it was clear from historic ordnance surveys and certified aerial photography that the site had been used as a dump and raised by 0.6-1m in Flood Zone 3b, where development is prohibited. The council should have rejected the application but left a casting vote to the Environment Agency's Flood Risk Assessment.
- The local council has broken their own planning rules for high risk flood areas. To allow the site to continue to expand because the current site, and eyesore, is well away from Maidenhead and Windsor and on the border of Spelthorne suits them well.
- The concrete crushing machine is not mobile and has never been granted planning permission. It does not have a permit, except from Hounslow council, from where the operation was evicted.

Trees surrounding the site

- There are Tree Protection Orders on a number of trees located from where the site road crosses Hythe End Road to the Thames Water intake. Through neglect and pollution, these trees are in a poor state of health and many have fallen, causing a health and safety risk. Increasing the waste storage amounts will only cause the trees more harm.

The road

- The entrance to the site from across Hythe End Road is a disgrace. Fowles Crushed Concrete Ltd changed the profile of the entrance to their site, filling in the drainage from the road. It is now crumbling and residents will have to fund the resurfacing.
- Despite no change to the maximum throughput of waste, there will be more HGV traffic in and out of the site because Fowles Crushed Concrete Ltd does not always comply with the limit. The sheer amount, size and weight of vehicles using this site has completely destroyed the crossing from the site's access road into the site, made worse by the fact that many vehicles accessing their site do not use the approved access road but instead go down or up Hythe End Road. Fowles Crushed Concrete should repair the damage and maintain the crossing in a fit and safe condition for residents, visitors, delivery drivers and their vehicles.
- The 5mph signs are no longer visible.
- The trucks often park along the street causing poor visibility and the potential for an accident.

Traffic

- The Traffic Commissioner said this site is an accident waiting to happen. Even with a banksman there have been several near misses. The few rubber speed humps that remain do not seem to stop speeding across the roadway and for the banksman it is almost impossible to be alert all the time, especially when most of the time he is in conversation on the phone.
- We have gone from a few movements per hour (single figures) to often over 50 movements per hour (that's counting 1 in 1 out). The road the site is located on is a small lane and there is constant congestion of lorries pulling in and out of the top onto the main road. If the variation is granted, it would significantly increase the number and size of truck movements on this site.
- An increase in waste storage will increase truck movements, diesel pollution, road noise and road damage and increase the likelihood of road accidents and concrete blocks being left on surrounding roads.
- The operator claimed that the site is not an 'HGV Operating Site', but a satellite of the main site in Feltham and so an application as an Operating Site was unnecessary. All searchable documentation seems to relate only to this site address. Does the Environment Agency believe that every single truck is returned to a larger operation in Feltham every evening? In light of the increase in traffic and dangers, the operator should now have to apply for permission as an Operating Site.
- Speeding of trucks in excess of 30 mph. The 5mph signs were never taken notice of in the first place.

- The trucks are often exceeding the weight limit of the bridge on Staines Road.

Summary of actions taken or show how this has been covered

All these issues are not in the remit of the Environment Agency.

Planning

3.94 Permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution. This is what we are assessing through this variation application. The scope of an environmental permit is defined by the activities set out in the Environmental Permitting Regulations.

3.95 Planning permission determines if a development is an acceptable use of the land. The Hythe End Farm site was granted a certificate of lawful use in 1998 by the Royal Borough of Windsor and Maidenhead. This establishes the land use of the site as acceptable for processing waste. Therefore all consultation responses relating to the location of the site cannot be taken into account as we make our decision.

3.96 The Environment Agency is a statutory consultee in the planning process, and we advise the local planning authority on topics within our remit, such as flood risk, contaminated land and river biodiversity. The National Rivers Authority, one of our predecessor organisations, was not consulted in 1998 when the certificate of lawful use was issued. We are an evidence based organisation, and base our decisions and advice on the evidence submitted to us through the planning and permitting processes.

Trees

3.97 We have a duty to conserve the environment as part of the relevant objectives in the Waste Framework Directive; we consider that the proposed variation and consolidation will not harm trees. Tree Protection Orders are not within the remit of the Environment Agency, they may be the responsibility of the local council and/or the landowner if on private land.

Road

3.98 The road is not within the remit of the Environment Agency, it may be the responsibility of the local council and/or the landowner if on private land.

Traffic

3.99 Traffic is one of the factors that should be taken into account when planning permission is granted; off-site traffic impacts are beyond the remit of the Environment Agency. Please see sections 3.95 and 3.96 above.

Brief summary of issues raised

Other

- Plastic waste from site found in surrounding area.
- Concern that Muntjac deer seen in the area would be lost should the site intensify its operations.
- The proposed changes to the list of waste types that can be processed at the site will attract vermin. Rats have already been seen crossing Hythe End Road at the boundary of the site.

Summary of actions taken or show how this has been covered

3.100 Please see section 3.26 to 3.31.

3.101 We will make the operator aware and they will need to liaise with Natural England with regards to Muntjac deer.

3.102 There is a pest management condition in the permit, if pests become an issue on site we can request the operator to submit a pest management plan for approval.

4. Other legal requirements

In this section we explain how we have addressed other relevant legal requirements, to the extent that they are applicable to this application and we have not addressed them elsewhere in this document.

4.1 The Environmental Permitting Regulations 2016 (EPR 2016) and related Directives

4.1.1 Schedule 9 to the EPR 2016 – Waste Framework Directive ('WFD')

As the operator it is carrying out a waste operation for the purposes of the EPR 2016, the requirements of Schedule 9 therefore apply. This means that we must exercise our permit consolidation and variation functions so as to ensure implementation of certain articles of the WFD.

We must exercise our relevant functions for the purposes of ensuring that the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste, and that any waste generated is treated in accordance with Article 4 of the Waste Framework Directive.

The modern conditions of the permit ensure that waste generation from the facility is minimised. Where the production of waste cannot be prevented it must be recovered wherever possible or otherwise disposed of in a manner that minimises its impact on the environment. This is in accordance with Article 4.

We must also exercise our relevant functions for the purposes of implementing Article 13 of the Waste Framework Directive; ensuring that the requirements in the second paragraph of Article 23(1) of the Waste Framework Directive are met; and ensuring compliance with Articles 18(1) and (2), 23(3), and 35(1) of the Waste Framework Directive.

Article 13 relates to the protection of human health and the environment. These objectives are addressed elsewhere in this document and we are satisfied that the varied activities will be carried out without endangering human health or the environment.

Article 18(1) requires that hazardous waste is not mixed subject to the exceptions contained in Article 18(2). The permit does not authorise the acceptance of hazardous wastes.

Article 23(1) requires the permit to specify:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical and any other requirements relevant to the site concerned;
- (c) the safety and precautionary measures to be taken;
- (d) the method to be used for each type of operation;
- (e) such monitoring and control operations as may be necessary;
- (f) such closure and after-care provisions as may be necessary.

These are all covered by permit conditions.

Article 35(1) relates to record keeping and its requirements are delivered through permit conditions.

4.2 Schedule 22 to the EPR 2016 –Groundwater Directive

To the extent that it might lead to a discharge of pollutants to groundwater (a “groundwater activity” under the EPR 2016), the permit is subject to the requirements of Schedule 22, which delivers the requirements of EU Directives relating to pollution of groundwater. The permit requires the taking of all necessary measures to prevent the input of any hazardous substances to groundwater, and to limit the input of non-hazardous pollutants into groundwater so as to ensure such pollutants do not cause pollution, and satisfies the requirements of Schedule 22.

No releases to groundwater are permitted. The permit also requires material storage areas to be designed to prevent accidental releases. The permit includes a list of inert wastes that can be stored and treated on hardstanding and wastes other than those listed shall be stored and treated on an impermeable surface with sealed drainage.

4.3 Directive 2003/35/EC – The Public Participation Directive

Regulation 60 of the EPR 2016 requires the Environment Agency to prepare and publish a statement of its policies for complying with its public participation duties. We have published our public participation statement.

This application has been consulted upon in line with this statement and our guidance RGS6 on Sites of High Public Interest, which addresses specifically extended consultation arrangements for determinations where public interest is particularly high. This satisfies the requirements of the Public Participation Directive.

4.4 National primary legislation

4.4.1 **Environment Act 1995**

(i) Section 4 (Pursuit of Sustainable Development)

We are required to contribute towards achieving sustainable development, as considered appropriate by Ministers and set out in guidance issued to us. The Secretary of State for Environment, Food and Rural Affairs has issued *The Environment Agency's Objectives and Contribution to Sustainable Development: Statutory Guidance (December 2002)*. This document:

“provides guidance to the Agency on such matters as the formulation of approaches that the Agency should take to its work, decisions about priorities for the Agency and the allocation of resources. It is not directly applicable to individual regulatory decisions of the Agency”.

Paragraph 4.2 of this Guidance provides the objectives we are to pursue when discharging our main operational functions.

For waste activities the guidance refers to ensuring waste is recovered or disposed of in ways which protect the environment and human health. The Environment Agency considers that it has pursued the objectives set out in the Government's guidance, where relevant, and that there are no additional conditions that should be included in the permit to take account of the Section 4 duty.

(ii) Section 5 (Preventing or Minimising Effects of Pollution of the Environment)

We are satisfied that our pollution control powers have been exercised for the purpose of preventing or minimising, remedying or mitigating the effects of pollution.

(iii) Section 6(1) (Conservation Duties with Regard to Water)

We have a duty to the extent we consider it desirable generally to promote the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and the land associated with such waters, and the conservation of flora and fauna which are dependent on an aquatic environment.

We consider that no additional or different conditions are appropriate for the varied permit.

(iv) Section 7 (General Environmental Duties)

Section 7(1) places a duty on us, when considering any proposal relating to our variation and consolidation of the permit, to have regard amongst other things to any effect which the proposals would have on

- sites of archaeological, architectural, or historic interest. None are affected by this permit variation.
- the economic and social well-being of local communities in rural areas. We do not consider the site to be in a rural area, but we have had regard to the interests of the community as set out in section 3 above.
- and to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects. We consider that the permit ensures that the varied activities can be satisfactorily controlled to have no adverse effect on the amenities in this area.

(v) Section 108 Deregulation Act 2015 – Growth duty

We considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 110 of that Act in deciding whether to grant this permit.

Paragraph 1.3 of the statutory guidance issued by the Department of Business, Energy and Industrial Strategy in March 2017 says:

“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”

We have addressed the legislative requirements and environmental standards to be set for this operation in the body of the decision document above. The guidance is clear at paragraph 1.5 that the growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections.

We consider the requirements and standards we have set in this permit are reasonable and necessary to avoid a risk of an unacceptable level of pollution. This promotes growth amongst legitimate operators because the standards applied to the operator are consistent across businesses in this sector and have been set to achieve the required legislative standards. It also ensures that any pollution that may arise from the regulated facility does not adversely affect local businesses.

(vi) Section 81 (National Air Quality Strategy)

We have had regard to the National Air Quality Strategy and consider that our decision complies with the Strategy, and that no additional or different conditions are appropriate for this Permit.

The site is not within a designated Air Quality Management Area.

We have also had regard to the Clean Air Strategy 2019 and consider that our decision complies with the Strategy, and that no additional or different conditions are appropriate for this permit.

(vii) National Emissions Ceiling Regulations 2018

We have had regard to the National Air Pollution Control Programme and consider that our decision complies with the Strategy.

4.4.2 Human Rights Act 1998

We have considered potential interference with rights addressed by the European Convention on Human Rights in reaching our decision and consider that our decision is compatible with our duties under the Human Rights Act 1998. In particular, we have considered the right to respect for private and family life (Article 8) and the right to protection of property (Article 1, First Protocol). We do not believe that Convention rights are engaged in relation to this determination.

4.4.3 Countryside and Rights of Way Act 2000 (CROW 2000)

Section 85 of this Act imposes a duty on Environment Agency to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (AONB). There is no AONB which could be affected by the activity.

4.4.4 Wildlife and Countryside Act 1981

Under section 28G of the Wildlife and Countryside Act 1981 the Environment Agency has a duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which a site is of special scientific interest. Under section 28I the Environment Agency has a duty to consult Natural England in relation to any permit that is likely to damage SSSIs.

We consider that the activities covered by the varied and consolidated permit will not damage the special features of any SSSI.

4.4.5 Natural Environment and Rural Communities Act 2006

Section 40 of this Act requires us to have regard, so far as is consistent with the proper exercise of our functions, to the purpose of conserving biodiversity. We have done so and consider that no different or additional conditions in the permit are required.

4.4.6 Countryside Act 1968

Section 11 imposes a duty on the Environment Agency to exercise its functions relating to any land, having regard to the desirability of conserving the natural beauty and amenity of the countryside including wildlife. We have done so and consider that no different or additional conditions in the permit are required.

4.5 National secondary legislation

4.5.1 Conservation of Habitats and Species Regulations 2017

We have assessed the application in accordance with our guidance and concluded that there will be no likely significant effects on any European Site.

4.5.2 Water Environment (Water Framework Directive) Regulations 2017

Consideration has been given to whether any additional requirements should be imposed in terms of the Environment Agency's duty under regulation 3 to secure compliance with the requirements of the Water Framework Directive, Groundwater Directive and the EQS Directive through, amongst other things, environmental permits, and its obligation in regulation 33 to have regard to the river basin management plan (RBMP) approved under regulation 31 and any supplementary plans prepared under regulation 32

No emissions to water are authorised by consolidated and varied permit and so we are satisfied that Water Framework Directive and EQS Directive will not be contravened. Groundwater is dealt with in paragraph 7.1.2 above.

4.6 Other relevant legal requirements

4.6.1 Duty to Involve

Section 23 of the Local Democracy, Economic Development and Construction Act 2009 require us where we consider it appropriate to take such steps as we consider appropriate to secure the involvement of interested persons in the exercise of our functions by providing them with information, consulting them or involving them in any other way. Section 24 requires us to have regard to any Secretary of State guidance as to how we should do that.

The way in which the Environment Agency has consulted with the public and other interested parties, and takes account of these representations is set out in section 3 of this document.