

Permitting decisions- Refusal

We have decided to refuse the permit application for Sweethayes Farm operated by Laci Land Restoration Ltd.

The decision was issued on 27/02/2024.

The proposed facility location is Sweethayes Farm, London Road, Hurst Green, TN19 7PS.

The application, reference EPR/LB3108LW/A001, is for a bespoke Deposit for Recovery permit to authorise the permanent deposit of waste to land.

The Applicant is seeking a permit for the recovery of up to 16,350m³ of inert waste as engineering fill to create a development platform to support the construction of new agricultural unit (4,350m³) and the regrading of slopes to support grazing livestock (12,000m³).

We consider that in reaching that decision we have taken into account all relevant considerations and legal requirements.

Purpose of this document

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

- highlights [key issues](#) in the determination.
- gives reasons for refusal.
- summarises the decision making process in the [decision considerations](#) section to show how the main relevant factors have been taken into account.

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

Read the permitting decisions in conjunction with the refusal notice.

Key issues of the decision

We consider that the Applicant has not provided sufficient evidence that the proposed works can be considered a recovery activity in accordance with the definition of recovery as set out in Article 3 (15) of the Waste Framework Directive 2008/98/EC as well as the Environment Agency's published guidance on waste recovery plans as set out on GOV.UK¹. As such the Applicant could not operate the proposed facility in accordance with the permit conditions if issued.

Summary of our decision

The Agency has decided to refuse the application for a new bespoke permit (Ref: EPR/LB3108LW/A001) from the Applicant.

The permit application ("the application") is refused on the basis that the Applicant has not demonstrated that:

- The proposed works would be a waste recovery activity and therefore, it is a disposal activity.

Description of the facility

Site plans [1], [2] provided by the Applicant as part of application EPR/LB3108LW/A001 show the proposed boundary for the permitted site. The plan cited by the Applicant [1] differs to the plan set out in the accompanying waste recovery plan [3] which also forms part of the application. Site plan [1] omits the site access road and material deposits that have been used to facilitate development on site. Both plans show the area and extent of the proposed development in the context of the local area.

The area proposed for development is land that forms part of the adjacent farm dwelling (Sweethayes Farm), associated gardens, working area and other agricultural structures and lies to the Southwest of the A21 - London Road.

The area of land subject to the permit application sits to the Southwest of the farm buildings on sloping agricultural land which falls to the West towards to the River Rother Valley and an Ancient Woodland (Ghyll woodland).

The entirety of the site sits within the High Weald Area of Outstanding Natural Beauty ("AONB") and as such is afforded additional protections under the Town and Country Planning Act 1990.

¹ [Waste Recovery Plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-recovery-plans-and-deposit-for-recovery-permits)

Application history

The current application to authorise development at Sweethayes Farm EPR/LB3108LW/A001 was preceded by permit application EPR/HB3900TY/A001 and pre-application EPR/KB3706MB/A001.

These applications were ostensibly for the same proposal to authorise the permanent deposit of waste to ground to support the construction of an agricultural barn and land raising and regrading activities for the purposes of improving grazing.

Supporting information contained within each of these former submissions has been cited by the Applicant within application EPR/LB3109LW/A001 and other relevant correspondences to date. These applications and significant correspondences are set out below to provide context to the refusal of application EPR/LB3109LW/A001.

Pre-application advice was provided by the Environment Agency to the Applicant on the 22 October 2019 [4]. It noted that due to the presence of an Ancient Woodland within 50m of the site boundary the Applicant could not apply for Standard Rules Permit under SR2015 No.39² and therefore a bespoke permit application would be required.

An application for a bespoke permit to authorise the deposit of waste as a recovery activity (EPR/HB3900TY/A001) was made on the 29 October 2020 with the associated fees paid on the 6 November 2020. The application sought to authorise the import of 24,500 tonnes of waste materials.

It should be noted that the current application seeks to authorise approximately 37,000 tonnes of material in total, which is greater than the amount applied for under permit application EPR/HB3900TY/A001. No explanation has been provided as to this disparity.

Following the application, the Environment Agency engaged with the Applicant on issues pertaining to the how they had sought to demonstrate recovery. On 8 February 2021, the Environment Agency served a Notice (“the Notice”) issued under Schedule 5 of the Environmental Permitting (England and Wales) Regulations 2016 (“EPR 2016”) which required the Applicant to submit a revised waste recovery plan for assessment [5].

As part of the statutory consultation notice for the bespoke permit application the Environment Agency received a response from a local interest group who provided written and photographic evidence suggesting that waste material was being brought onto site without permission and in contravention to the requirements of the Countryside Right of Way Act 2000, to protect AONB from incongruous

² [SR2015 No39 - Use of waste in a deposit for recovery operation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431111/SR2015-No39-Use-of-waste-in-a-deposit-for-recovery-operation.pdf)

development [6], [7]. The Environment Agency forwarded this information to the local enforcement team for their awareness.

Further information was provided by the Applicant on the 15 March 2021 which was considered by the Environment Agency at the time. The Environment Agency wrote to the Applicant on the 10 May 2021 confirming that the waste recovery plan and supporting information did not adequately demonstrate recovery [8].

The Applicant confirmed their intention to withdraw the application on the 1 June 2021 and confirmation was sent in writing by the Environment Agency to the Applicant on the 15 June 2021 along with a full refund of the application [9].

On 2 September 2021 Waterman Group acting on behalf of the Applicant submitted a revised waste recovery plan [3] as part of pre-application EPR/KB3706MB/A001. It should be noted that within the Appendices a number of correspondences and letters have been received from Mr Steve Kilmartin. It is the Environment Agency's understanding that Mr Kilmartin represents Laci Land Restoration Ltd as a Director³.

The pre-application request was to seek the Environment Agency's view as to whether in-principle the proposed works could be considered recovery in accordance with the definition of recovery in Article 3 (15) of the Waste Framework Directive (2008/98/EC) and in accordance with the published guidance of waste recovery plans on GOV.UK⁴.

Additional information was provided by the Applicant in response to the requests for further information made under Schedule 5 of the EPR 2016 by the Environment Agency. The responses included an addendum to the Waste Recovery plan [10] submitted on the 13 December 2021 which was cited by the Applicant as part of application EPR/LB3108LW/A001.

Based on this response the Environment Agency wrote to the Applicant on the 14 January 2022 advising that in-principle the proposed development could be considered recovery with the caveat that if any significant change to the proposal occurred the Applicant would have to revise the waste recovery plan at the application stage [11].

On 10 February 2022, the Applicant submitted a revised application with the application fee paid in full on the 9 March 2022 [12]. The application was placed on a work queue to await allocation.

³ [LACI LAND RESTORATION LTD overview - Find and update company information - GOV.UK \(company-information.service.gov.uk\)](https://www.gov.uk/company-information/service.gov.uk)

⁴ [Waste Recovery Plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/waste-recovery-plans)

On the 21 April 2022, a letter of complaint was made by Laci Land Restoration Ltd to the then Chief Executive of the Environment Agency, Sir James Bevan regarding delays in the determination of the permit and the long allocation timescales cited by the Environment Agency when the application was received.

The complaint was then passed to the Environment Agency's National Permitting Service ("NPS") and a response sent on the 3 May 2022 in accordance with our service level response for complaints of this nature **[13]**.

On the 5 May 2022, a U1 exemption was registered at the site under WEX310224. According to information submitted to the Environment Agency between June and August 2022 approximately 7,000 tonnes of waste soils were delivered to the site in addition to material brought to the site in 2019-2020 as evidence by the response to the public consultation under application EPR/HB3900TY/A001 **[6]**, **[7]**.

On the 26 September 2022, the Environment Agency met a representative of Laci Land Restoration Ltd on site and served a direction to leave premises undisturbed **[14]** in accordance with its powers under Section 108(4)(d) of the Environment Act 1995. The representative declined the opportunity to countersign the notice. The Environment Agency sent a copy of the notice by email on the following day restating its view that the waste material brought in under the U1 exemption was incorrectly placed and therefore remained waste **[15]**.

On the 27 September 2022, a request for a local enforcement position from Laci Land Restoration Ltd was made to the local area team **[16]**. The Environment Agency responded with a request for further information from the Applicant to justify the LEP request **[16]**. No response was received from the Applicant and therefore the request was not carried forward.

Waste material brought to site without authorisation is considered an unauthorised deposit and remains waste. This includes material brought to site under the registered exemption, where the conditions have not been complied with⁵.

On the 3 October 2022, a further complaint was made from the Applicant to the National Permitting Service about the repeated delays in the determination of the permit application **[17]**. The National Permitting Service responded to the complaint on the 12 October 2022 setting out the relative position of the application in the queue of work **[18]**.

On the 9 November 2022, the Environment Agency provided a written statement by email to the Applicant that the waste recovery plan was no longer valid due to the placement of waste material without authorisation **[19]**. The Applicant was advised that the waste recovery plan must be rewritten to take into consideration

⁵ [U1 waste exemption: use of waste in construction - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/u1-waste-exemption-use-of-waste-in-construction)

the waste already tipped to site for the Environment Agency to consider it a recovery operation.

On the 14 August 2023, the application was assigned to a Permitting Officer for duly making and determination. The Applicant had not submitted a revised waste recovery plan as requested on the 9 November 2022 and as such the application was considered not duly made. An email to this effect was sent to the Applicant **[20]**.

An addendum to the waste recovery plan was submitted by the Applicant on the 25 August 2023 **[21]**. The addendum covered only the hypothetical removal and importation of non-waste to demonstrate substitution. It was not a revision to the Waste Recovery Plan as requested.

Additional information was requested by the Environment Agency on the 15 and 27 September 2023 **[22]**, **[23]**. This information was required to account for inconsistencies in the statements made in the addendum and apparent contradictions between planning permission RR/2019/724/P issued by Rother District Council **[24]**, associated drawings **[25]**, **[26]**, **[27]** and the waste recovery plan and supporting information which accompanied the application.

The request for further information made by the Environment Agency on the 27 September 2023 requested the Applicant confirm the reason the cited planning permission made no reference to the land raising activities described in the waste recovery plan **[3]** submitted by the Applicant as part of pre-application EPR/KB3706MB/A001.

A letter from an architect sent on behalf of the proposed operator was received on the 12 October 2023. The letter made a statement that the land raising activities were not subject to planning requirements and could be completed as permitted development of agricultural land more than 5 hectares ("5Ha) under Part 6 (A) of the Town and Country Planning Act 2000 **[28]**.

On the 13 October 2023, the Environment Agency received a letter from Rother District Council setting out their position **[29]**, **[30]**. The letter stated planning permission RR/2019/724/P did not authorise the import of waste for land raising and that the expectation that the works to construct the footing of the barn was a limited cut and fill operation, with much of the material required sourced from site won material. The covering email to the letter also stated that in their view land raising activities were not considered permitted development.

On 25 October 2023, a Notice was served under Schedule 5 of the EPR 2016 was served on the Applicant requiring a revised waste recovery plan that took into consideration only the volume of material required to complete the works authorised under planning and that took into consideration the reuse of existing waste material on site **[31]**. The expectation at this stage was that the Environment Agency could consider the use of waste for the construction of the barn footings,

but any additional import of waste must take into consideration suitable material already on site.

On 15 November 2023, the Applicant responded to the Schedule 5 Notice **[32]**. The response principally did not include a revised waste recovery plan as requested in the served notice dated 25 October 2023 **[31]**.

Within the letter the Applicant states that upon approval of the waste recovery plan... 'the principle that the activity would be recovery was therefore settled.' This statement is incorrect. In the letter from the Environment Agency dated 14 January 2022 **[11]** it clearly states that if you change aspects of the proposal between the time the in-principal decision was made and when you submit the application, the advice provided at the pre-application stage may not apply.

The letter It also states that additional assessment will take place at the application stage that any agreement that the operation is a recovery activity does not guarantee that a permit will be granted.

In this instance material has been placed on site without authorisation and therefore the waste recovery plan was required to be updated to reflect this change. This update should have included details on how the proposal would demonstrate substitution in accordance with our published guidance as well as volumes of material was still required to complete the work taking into consideration material already on site.

The Schedule 5 response by the Applicant **[32]** also seeks to address prior acceptance of waste. It highlights an addendum to the waste recovery plan dated 25 August 2023 **[21]** which was submitted by the Applicant in response to the not duly made email sent on the 14 August 2023 **[20]**. The letter from the Applicant states that prior acceptance of waste was a 'misstep' and should be disregarded for the purposes of the recovery test. The letter goes onto state that for material accepted into the site.... assume all material is removed. It goes onto say that as all material accepted into the site would be removed – consider the site reverting to its original state.

Although the not duly made response **[21]** provides justification that the scheme could go ahead if all waste material placed without authorisation could be removed and non-waste used in its place to complete the scheme, it does not follow that the waste brought and placed to site will be removed. The Environment Agency have no evidence that this is being considered by the proposed operator.

It is this reason why a revised waste recovery plan was requested on the 25 October 2023 through a Notice issued under Schedule 5 of the EPR 2016 **[31]**. The assertion that the Environment Agency should consider the waste recovery plan to remain valid is incorrect.

The letter goes onto state that in response to the served Schedule 5 notice any considerations under planning are outside of the ambit of the Environment Agency.

This is also not correct as the Environment Agency have evidence from the local planning authority that the works described within the Waste Recovery Plan cannot be completed under the extant permission referenced by the Applicant [24]. In addition, the Environment Agency have a duty through Natural England as the competent authority to consider impacts of waste activities on protected areas, in this case the South Weald AONB.

The Environment Agency take the view that where there is clear evidence from the local planning authority that the scheme is not authorised and is in a protected area, we should not be issuing permits that cannot be realised.

The letter goes onto state that in the Applicant opinion points (b) and (c) within the served Schedule 5 notice [31] do not need responding to because the Applicant undertakes the 'reversion of its misstep'. There is no evidence presented that this the case and we take the view that this statement is factually incorrect.

A confirmation email was sent by the Environment Agency to the Applicant on the 14 December 2023 [33] that no further information was required for the Environment Agency to determine permit application EPR/LB3108LW/A001 and that we would communicate our decision in due course.

The legal framework

1 – Legal definitions of Waste 'Recovery and 'Disposal'

In assessing proposals to permanently deposit waste on land we apply the legal definitions of waste 'recovery' and waste 'disposal' as set out in the Waste Framework Directive (2008/98/EC) ("the Directive"). We are assisted in doing so by online guidance we have developed – 'Waste Recovery Plans and Permits,' available at:

[Waste recovery plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-recovery-plans-and-permits)

Article 3(15) of the Directive defines 'recovery' as meaning:

"any operation the principal result of which is waste serving a useful purpose by replacing other material which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations"

Article 3 (19) of the Directive defines 'disposal' as:

"any operation that is not recovery even where the operation has a secondary consequence the reclamation of substances or energy. Annex 1 sets out a non-exhaustive list of disposal operations".

Annex I of the Directive includes, for example:

"D1 Deposit into or on to land (e.g. landfill etc.)".

Annex II includes, for example:

“R5 Recycling/reclamation of other inorganic materials”

which includes recycling of inorganic construction materials and

“R10 Land treatment resulting in benefit to agriculture or ecological improvement”.

The proposal for the site could potentially fall within D1, R5 or R12. That being the case, we are required to categorise the activity into one of the Annex I or II operations and to examine the principal objective of the operation and whether it meets the recovery definition.

For that definition to be met, an operator must demonstrate that waste is being used in substitution for non-waste, i.e. that its proposed activity would go ahead with non-waste if waste could not be used. The operator has not provided sufficient evidence to demonstrate that this would be the case, as described in the Key Issues section of this decision document.

Article 6 (1) of the Directive also states:

“(d) use of substance will not lead to adverse environmental or human health harm.”

For the definition of recovery to be met, the waste deposit must not cause pollution.

Recovery vs. Disposal decision

It is a requirement of all permit applications involving the permanent deposit of waste to land as a recovery activity to submit a Waste Recovery Plan with their application or at the pre-application stage for assessment.

The Environment Agency can only issue a permit if we agree that the plan demonstrates that the proposals will meet the definition of recovery as set out in Article 3 (15) of the Waste Framework Directive (2008/98/EC) which is expanded on in greater detail within the relevant regulatory guidance⁶.

As set out above the Environment Agency informed the Applicant on the 9 November 2022 [19] that a revised waste recovery plan must be submitted to consider the existing waste on site and to provide detail and supporting evidence as to what additional volume would be required to complete the scheme.

In addition, information received from the local planning authority on the 13 October 2023 indicated that planning permission RR/2019/724/P cited by the Applicant in their waste recovery plan did not authorise the placement of waste

⁶ [Waste Recovery Plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-recovery-plans-and-deposit-for-recovery-permits)

material for the purposes of regrading the land. This was confirmed in writing by Rother District Council [29], [30].

As such there was an inconsistency between what was agreed under planning, namely, the construction of the agricultural barn and associated groundworks and what was being proposed as part of the permit application and associated waste recovery plan [3].

In addition, planning permission RR/2019/724/P requires that the landowner to remove the trackways and associated waste deposits from the site as part of the development. This material which is waste needs to be incorporated into any waste recovery plan as its reuse is an activity that requires permitting.

The waste recovery plan as of 14 August 2023 [3] also did not consider the existing waste on site in terms of its hypothetical removal to satisfy the recovery test or its incorporation into the scheme that would have been authorised under planning.

As a result of these disparities the Environment Agency requested further information from the Applicant on the 15 and 27 September [22], [23].

A letter from a Mr Pollington received on the 12 October 2023 on behalf of Laci Land Restoration Ltd also stated that they considered land raising to fall under permitted development and as such in their view there was no disparity between the waste recovery plan and planning [28]. This statement was however directly contradicted by Rother District Council on the 13 October 2023 [29], [30].

As such a Schedule 5 notice was served on the Applicant requesting a revised waste recovery plan that considered only the development authorised under planning permission RR/2019/724 [24]. The notice stated that the revised waste recovery plan must take into consideration the reuse of existing waste material imported to the site to complete works and provide a description of these wastes [31].

The served notice [31] also required the operator to consider the need for revised cross sections and surveys and provide adequate justification for any omission in their response.

The Applicant's responded on the 15 November 2023 in the form of a letter [32]. The response did not include a revised waste recovery plan but sought to address the principal points contained within the served notice.

The letter states that the Environment Agency must consider the Applicant's proposal as submitted and that the principle of the proposal remains unaltered. It goes on to state that the Environment Agency should assume all the material is removed and that 'since all material accepted onto the site would be removed – consider the site revering to the original state.'

Whilst the Environment Agency did ask the Applicant on the 9 November 2022 [19] to satisfy us that the works could proceed if the unauthorised waste was removed, and non-waste imported. This was to satisfy the Environment Agency that the proposal was a genuine act of substitution in accordance with the published guidance. It does not follow that the permit should authorise the placement of all material required under the plan where material has already been placed and the waste recovery plan should have been amended to reflect this.

As per the Schedule 5 notice [31] the Environment Agency require an accurate and evidenced balance of fill that considers site won non-waste material and existing waste material and compares this to what is required in terms of import to complete the scheme as authorised under planning. This is separate to demonstrating recovery through the hypothetical removal of unauthorised waste to satisfy the substitution test as set out in the published guidance on waste recovery plans on GOV.UK⁷.

In addition, the statement that drawings submitted with the original waste recovery plan are still valid is incorrect on the same basis, in that they do not describe the state of the land at the time and fail to consider deposits of waste already made.

The Applicant also states in its letter that the Environment Agency must approve the waste recovery plan as it is the same as what has been agreed before with the caveat that the 'misstep' i.e. importation of waste has not been considered. As above the Environment Agency required that the waste recovery plan be amended to take into consideration the waste brought onto site without authorisation. This was not undertaken by the Applicant.

The Applicant also states that planning issues should not be considered by the Environment Agency as it is beyond its ambit. The Environment Agency do not accept this argument. As per the Environment Agency's guidance the Applicant must set out how the proposed works are authorised under planning which constrains the scope of the works and gives confidence that the works could proceed.

In this instance we have a statement submitted by the Applicant in the Waste Recovery Plan submitted on the 2 September 2021 that the development is authorised under planning and a letter dated 12 October 2023 that regrading of grazing land is permitted development. The Environment Agency have correspondence from Rother District Council that land raising is not an authorised activity under planning and that only groundworks associated with the construction of the barn are acceptable.

Without a revised waste recovery plan that takes into consideration what is authorised under planning and what additional material is required to be imported in terms of unauthorised waste material already tipped to site the Environment

⁷ [Waste recovery plans and deposit for recovery permits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-recovery-plans-and-deposit-for-recovery-permits)

Agency cannot be certain that there is a genuine act of substitution taking place and therefore cannot have confidence that the operator would be able to comply with the conditions of the permit if granted.

Decision considerations

Section 108 Deregulation Act 2015 - Growth Duty

We have 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 100 of that Act in deciding whether to grant this permit.

Paragraph 1.3 of the guidance 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. This also 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.

Appendices

- [1] - Permit boundary plan_905_19_SPL_11_Rev D
- [2] - Permit boundary plan_905_19_SPL_11_Rev E
- [3] - Pre-Application RvD Assessment Waste Recovery Plan 020921
- [4] - Pre-Application Basic EPR_HB3900TY - Advice Letter – 221029
- [5] -Application EPR_HB3900TY_A001 Schedule 5 notice – 080221
- [6] - Public Response - Redacted - 150221
- [7] - Public Response - Image - 150221
- [8] - RvD advice letter EPR_HB3900TY - 100521
- [9] - Confirmation or withdrawal email – 150621
- [10] - Pre-Application RvD Assessment RFI response 2 - WIE18431-100-BN-3.1.2-AddWRP
- [11] - Pre-Application RvD Assessment RvD Pre-application Advice Letter 140122
- [12] - Application email – 100222
- [13] - Complaint response letter – 030522
- [14] - EA Direction to leave premises undisturbed - 26.09.2022 NFG
- [15] - Sweethayes Farm enforcement letter - correspondence – 270922
- [16] - Local enforcement position response from Environment Agency – 181022
- [17] - Complaint Letter - 031022
- [18] - Compliant response – 081022
- [19] - Advice from NPS to Laci Land Restoration Ltd - 091122
- [20] - Not duly made letter - 140823
- [21] - WRP Addendum EPRLB3108LWA001
- [22] - Request for further information - 150923
- [23] - Request for further information - 270923
- [24] - RR2019_724_P_Sweethayes Farm
- [25] - 905_19_SPL_02_Sweethayes Farm

[26] - 905_19_SPL_03_Sweethayes Farm

[27] - 905_19_SPL_04_SweetHayes Farm

[28] - Architect letter – 121023

[29] - Rother council covering email - 131023

[30] - Rother District Council - Planning Letter - 131023

[31] - Schedule 5 Notice - Sweethayes Farm - 251023

[32] - Schedule 5 response - WIE18431-100-231115-MM-EALtr

[32] - Schedule 5 response - WIE18431-100-231115-MM-EALtr