

FAO – Rachael Simpkin
High Peak Borough Council - Planning
Buxton Town Hall
Market Place
Buxton
Derbyshire
SK17 6EL

01.04. 2026
EP ref: 22-615

Dear Rachael

Re: Further comments following withdrawal from March Development Control Committee - HPK/2022/0568 - Newfield Garage, Manchester Road, Tunstead Milton, Whaley Bridge, SK23 7ER.

Further to the deferral of the above referenced application from the March Development Control Committee, we write in relation to the *Certificate of Lawfulness for existing use B8 - Storage or distribution* to address the outstanding matters as set out in the committee report and our letter to committee members dated 18.03.26.

We request the Council provide feedback on the points made in this letter and allow us the opportunity to discuss any outstanding queries prior to the application being taken to the next Development Control Committee, scheduled for 20.04.26.

For clarity, 'Committee Report' in the context of this letter refers to the Committee Report dated 13.03.26, as intended for the committee on 23.03.26.

Response to officer assessment and points of clarification

The Committee Report accepts at paragraph 5.14 that *"since at least 2005... at least part of the area of land in question has been accessed from the JE Morten land to the North and used as part and parcel of their business operations as and when required."* (Para 8.6 of the committee report). No queries have been raised regarding any intervening use and therefore this use has taken place uninterrupted for in excess of 20 years.

At paragraph 7.2 of the committee report it is stated, *to succeed [in obtaining a positive certificate] the applicant would need to demonstrate that the commercial B8 storage use had been ongoing continuously and uninterrupted for a period of ten years prior to the date of the application i.e. 22nd December 2022.*

We have demonstrated in the application that the use has been ongoing since the early 2000s (post the applicant purchase of the site in 2003), hardcore has been laid on part of the site to create an access and parking area, and

the use of the site for storage and parking has followed after this around circa 2005 where it is clear the land in question, as demonstrated by the photographs, has been accessed from the JE Morten land to the North and used as part and parcel of their business as and when required (paragraph 5.13 of the supporting planning statement).

The area has formed part and parcel of the planning unit that comprises JE Morten's operations for well in excess of 10 years.

It is fully acknowledged the extent of the hard standing has evolved over time however, parking / storage has occurred on the site even when parts of the hard standing had turned to grass (as set out in the applicant's Statement of Truth). This is typical of areas that are used for fluctuating levels of storage, representative of the nature of the business bringing in and sending out varying levels of product as demand varies throughout the year. That is still a substantive use and does not constitute a break in the use, especially given the operational development (the hard standing) that has remained on the land.

Whilst there are gaps in the google aerial imagery available / submitted with the application, it is clear on the 2011 aerial extract obtained by the Council that there is hard standing on part of the original site edged red.

Regarding third party comments, we direct the Council to the previous rebuttal letter dated 14.03.23, a copy of which is enclosed with this letter for reference.

Paragraph 7.8 of the committee report states:

"The red site area falls within the applicant's ownership and that he purchased the land in June 2003 is accepted. The Council, however, do not accept that at the time of the purchase the land then formed part of the planning unit that is the industrial and business premises of the applicant. Notwithstanding his stated intentions for that land, it has remained as an undeveloped green field and separate planning unit and that remains the case until such time as the planning position changes, for example if this certificate is granted."

It has been demonstrated in the application and acknowledged by the Council (paragraph 5.14 of the committee report) that the site is not an undeveloped green field, given the presence of hardstanding and use of the site for parking and storage associated with the Newfield Garage site. The assertion that the planning status is changed by the certificate itself is simply incorrect. A certificate merely confirms that a use or operation has become lawful and is related to the actions that have taken place on the subject site which there cannot be dispute over given the evidence. Whilst it is current to say that the site would not have been part of the same planning unit at the time of purchase, it is clear that immediately following that it was used in association with the Newfield Garage and has since that time been directly related to that site and has become part of that planning unit. It is both physically and functionally related to Newfield Garage as it's primary purpose.

Without prejudice to our view that the application site as submitted forms part and parcel of the single planning unit that is JE Morten as being established through the use of the site, at the very least, the site has been in ancillary use to the main Newfield Site, as considered at Paragraph 7.11 of the committee report.

It is stated at paragraph 7.12 of the committee report:

"Of note, the Planning Statement (dated July 2022) did not claim any lawfulness of the application site for B8 storage uses to be considered as a material consideration in the determination of the refused planning permission dated 15th August 2022 ref. HPK/2019/0223 for the proposed industrial building."

To clarify, no lawfulness of the site subject to the CLEUD was claimed to be considered as a material consideration in application ref. HPK/2019/0223. In our view, very special circumstances had been demonstrated to justify approval of the proposed development on designated Local Green Space i.e. a separate matter.

Paragraphs 7.13 – 7.20 of the committee report draw on how the Inspector in their assessment of the proposed Local Green Space allocations within the Chapel-en-le-Frith Neighbourhood Plan (dated 15.01.15), did not specifically reference the storage of vehicles etc. on the site and how this strongly suggests an absence of storage uses, which would have been likely to be highly intrusive in its appearance.

This was addressed in our response to the objections letter dated 14.03.23 where we concluded:

“The Examiners Report does not provide evidence that the land subject to this application was not used for storage at that time. The area covered by LGS11 extends significantly beyond the confines of the application boundary, which comprises a much smaller area of land in the western most part of the designation. The Examiner would have been commenting in general terms rather than on individual areas of the site and at its highest level the comments simply confirm that the area was absent any buildings.”

Furthermore, if the Council were to expect the Inspector to acknowledge the use of the site for parking and storage in their assessment, one would expect the Inspector to acknowledge the presence of hardstanding, given there is no dispute a significant amount of hardstanding has been on site since (at least) 2011, as shown in the aerial imagery extract below (from the Committee Report):



We do not consider the Council’s conclusion that this lack of acknowledgement “*strongly suggests an absence of storage uses*” in 2014-2015 (at the time the Neighbourhood Plan was examined) holds weight as claimed, especially in light of the fact there is no conclusive evidence to support that position and the evidence of the applicant, including aerial photographs and witness statements, clearly demonstrate that the use of the land was taking place throughout the period. Furthermore, ‘*strongly suggests*’ does not meet the burden of proof required to contradict the clear evidence submitted by the applicant.

Paragraphs 7.21 – 7.39 of the committee report set out the officer’s assessment of the aerial photography and photographs available concerning the site.

It is recognised both in the supporting planning statement and the committee report that there are gaps in the timeline between the aerial imagery – notably between 2005 and 2011, however that in itself is not a reason to suggest that there had been any break in the use which is addressed in the comments below.

At paragraph 7.24 of the committee report, the officer acknowledges:

“On the 6th November 2014, the Council’s Compliance & Monitoring Officer recorded the storage use of four trailers, including three heavy good vehicle trailers and a freight container. In addition, some sundry materials including: wood logs, wheel barrows, oil drums, stone flags, road cones, plastic tank, remnants of a burnt out trailer and plastic buckets were also noted.”

going on to acknowledge at paragraph 7.25:

“The recorded and dated photographs below evidence the above items stored within both a contained and limited site area in close proximity to the field gate entrance to the northern boundary of the red location plan submitted for the certificate. The land is clearly in agricultural use whereby sheep can be seen grazing nearby.”

Reference to photographic evidence for this period is made at paragraphs 7.43 of the committee report.

The Council by their own admission, have a record of storage on the site dating back to 2014, albeit on what they consider a smaller site area as indicated above. Given this use continues to the present day, this area at the very least would be immune from enforcement action, given a period in excess of 10 years has elapsed. Indeed, if the relevant immunity period had not elapsed then we are sure that the Council would be reliant on records of this nature to prove the case that unlawful development was taking place if they were in a position to take any action against it.

It is acknowledged some of the land appears to be in agricultural use at this time. However, the area of hardstanding / parking area to which this application relates, is not / could not have been used for agricultural use at the same time i.e. you cannot graze sheep on an area of hardstanding / areas where trailers and vehicles are parked.

Furthermore, as shown in the photographs in the Committee Report from the Council’s Compliance and Monitoring Officer’s visit on 06.11.14, patches of gravel / underlying hardstanding can be seen under the grass which does not have the appearance of grazing land, rather scrub land. At the very least a mixed use would have been taking place incorporating any agricultural use, albeit we remain of the view that the primary use are the operations of JE Morten.

At paragraphs 7.26 and 7.27 of the committee report it is acknowledged some of the parking / storage is taking place on grass. However, this is still within the red edge as indicated on the site location plan submitted with the certificate. Whether the parking / storage is taking place on grass or hardstanding is not determinative in establishing the lawfulness of the use.

Furthermore, the applicant has explained at paragraph 12 of their statement of truth why grass re-established itself on some areas of the site (poor load bearing qualities enabling soil to percolate through the hardcore and grass to re-establish itself).

It is acknowledged the area of hardstanding has changed over time however assumptions have been made. For example at paragraph 7.22:

“The nature of chattels within the tear drop hardcore area is unclear, but the items appear to be of modest scale and may have been related to the agricultural use of the land holding.”

The applicant has since confirmed the chattel (by the access) was left over from the previous agricultural use of the field.

Since the applicant's purchase of the site, this chattel and any others sited after the applicant's purchase, have not been used for agricultural purposes. They have been used for the storage of items associated with the JE Morten unit.

At paragraph 7.59 of the committee report we dispute the officer's conclusion that:

"Fundamentally, officers consider the material change of land use occurred from agricultural to B8 (storage / distribution) in relation to the Google Earth Image above dated 24th April 2020."

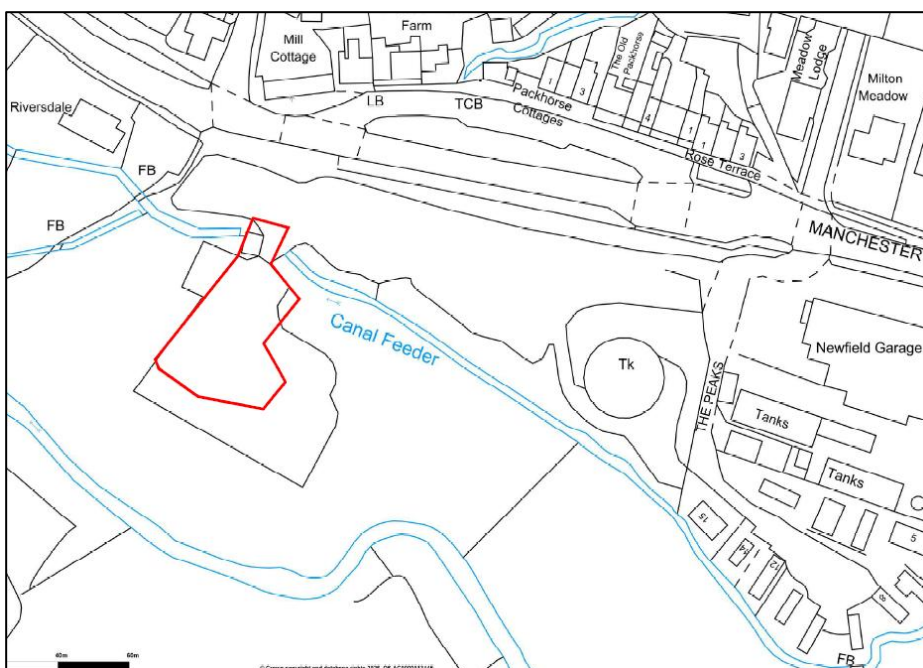
These assumptions have led to a flawed assessment and conclusion (para 7.59) which could have been avoided if we had been given the opportunity to discuss such queries and this conclusion directly contradicts the Council's own evidence that the use was taking place at the time of Officer visits in 2014.

Given the assessment of the statements of truth submitted with the application (paragraphs 7.40 -7.51) and the degree to which these have been scrutinised and notwithstanding paragraph reference ID: 17c-006-20140306 of the NPPG specifically referring to the justifying *"the grant of a certificate on the balance of probability"*, it is unclear why it has been concluded the third party comments are awarded a notable degree of weight alongside the relevant aerial images and photographic evidence (paragraph 7.58 of the committee report) that contradict the assertions of the third parties. This is a point we seek to discuss with the Council further, prior to the next Development Control Committee.

We do not consider any substantive counter evidence has been provided to disprove the applicant's timeline of events and to date and the Council's own file evidence.

Amended red edge for discussion

Without prejudice to the above and our conclusion that we have demonstrated the land as originally submitted with the CLEUD formed part of the planning unit formed by Newfield Garage and has been used for the parking / storage of items associated with the JE Morten unit, we suggest an amended red edge (as enclosed) in order to progress the application with the Authority. An extract of the amended red edge is provided below:



We consider the revised red edge is a point of common ground between the applicant's timeline of events and the Council's timeline of events, as set out in the committee report, given the Council have acknowledged the site *"has been accessed from the JE Morten land to the North and used as part and parcel of their business operations as and when required"* however the specific 'red edge' denoting the storage and parking use remains a point of dispute. The Authority however, have not provided any clear counter evidence to reduce the area from that originally submitted or to contradict the applicant's version of events. The case has been demonstrated to the thresholds of the relevant test which is 'on the balance of probabilities.

The reduced red edge tightly follows the area where storage and parking has occurred from (at least) 2011 and backed up by the later 2017 images with nothing to suggest any form of intervening use, as clearly shown in the google aerial imagery (please refer to overlay plan enclosed).

The reduced area does not mean that the use of the wider area is not lawful or that it creates different planning units. The certificate simply confirms what is lawful within the red edge if amended.

The certificate would reflect an agreed position for what was being used in 2022 as the Council's own observations of what was there in 2014 and which simply reflected the use that had been ongoing for some time.

Should you have any queries following receipt of this letter, please do not hesitate to contact this office on the details enclosed.

Yours sincerely
Emery Planning

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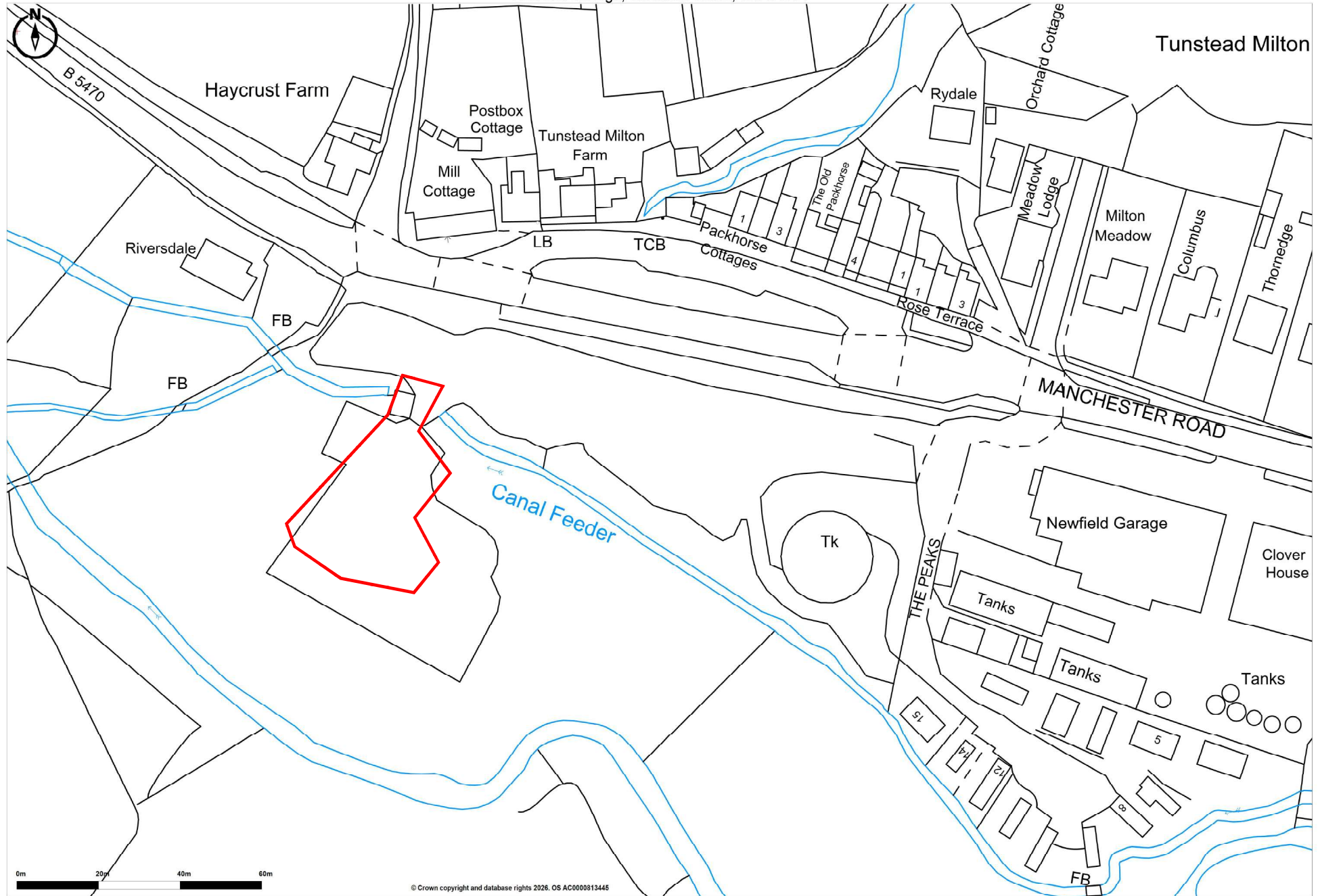
Enclosures:

Site Location Plan (Rev A)

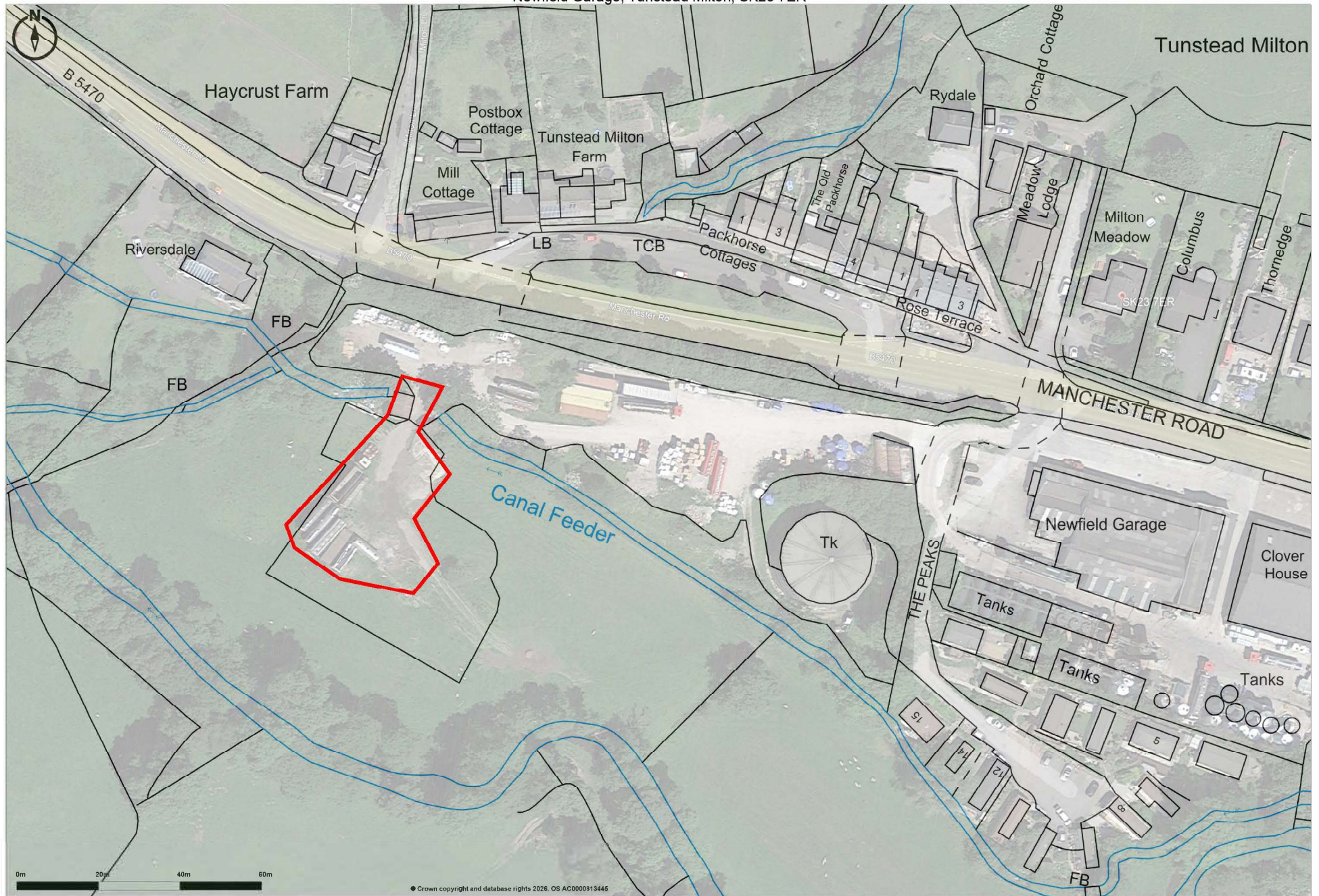
Site Plan Overlay

Location Plan

Newfield Garage, Tunstead Milton, SK23 7ER



Os/aerial overlay
Newfield Garage, Tunstead Milton, SK23 7ER



Rev A