

DR/62/13

Committee: DEVELOPMENT & REGULATION

Date: 13 December 2013

INFORMATION ITEM - APPEAL DECISION

Proposal: **Retrospective planning application for the change of use of the site from storage land to the manufacture and storage of blocks using waste tyres as raw material and the storage and sale of waste tyre products and the use of existing offices.**

Location: **Unit 2, Level D, Fulton road, Manor Trading Estate, Benfleet, Essex, SS7 4PZ**

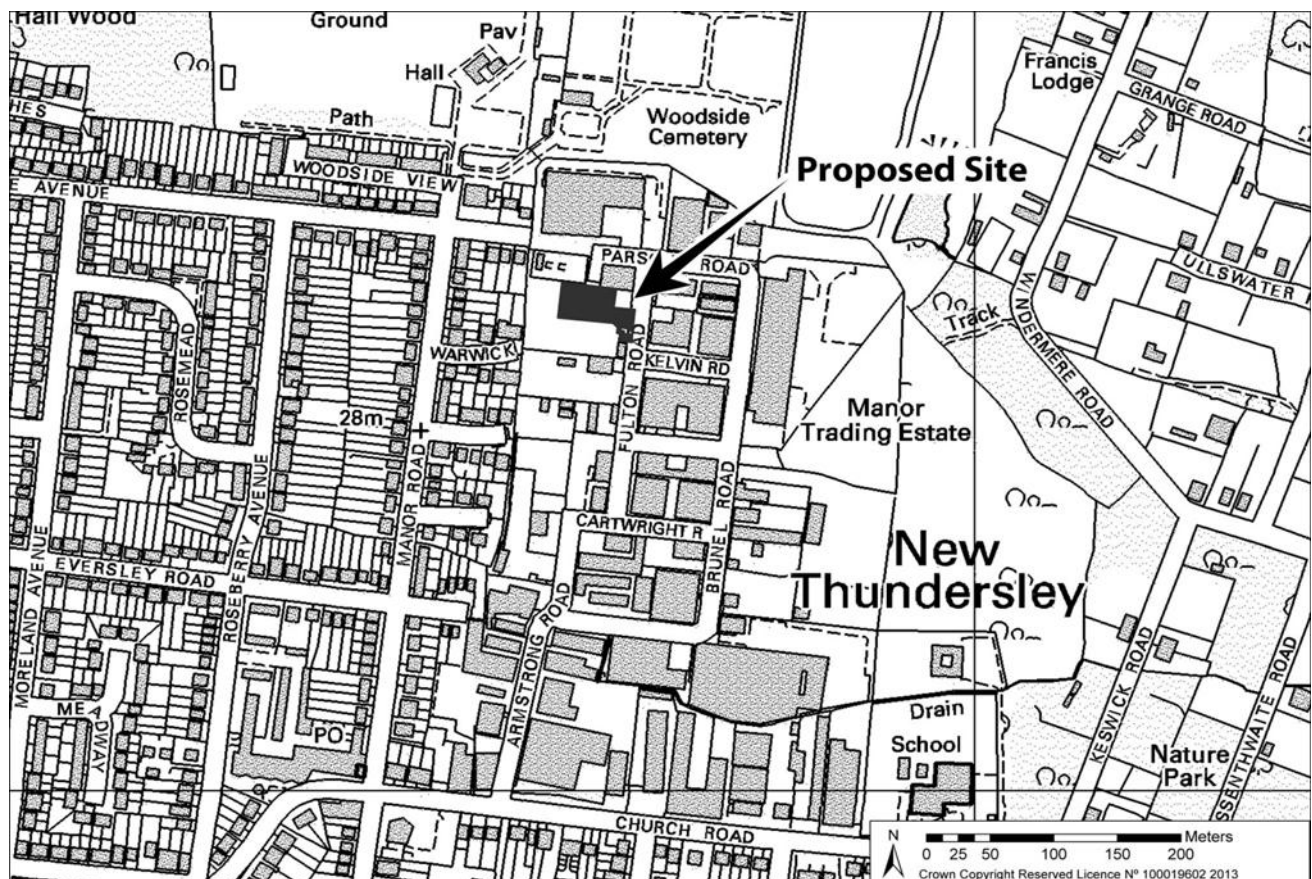
ECC Reference: **ESS/76/12/CPT**

Planning Inspectorate Reference: **APP/Z1585/A/13/2198242**

Applicant/Appellant: **Tyre UK**

Report by Director for Operations, Environment and Economy

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BACKGROUND

The planning application for the above development was considered at the Development and Regulation Committee on Friday 19 April 2013.

Members resolved to refuse the retrospective planning application for the change of use of the site from storage land to the manufacture and storage of blocks using waste tyres as raw material and the storage and sale of waste tyre products and the use of existing offices for the following suggested reasons:

- Omissions of Odour from the site
- Fire risk from the storage of tyre blocks and loose tyres.

Members also requested that it is consideration is given to the affect the development would have on potential flooding issues from the Manor Trading Estate and the impact on local amenity.

It was noted that as the development has already begun and accordingly the unauthorised development may require enforcement action to secure its removal.

In accordance with the Committee Protocol, a formal decision on the application was deferred until the May 2013 meeting of the Development and Regulation Committee. The application was subsequently refused permission in on 3 June 2013.

SITE

The site lies to the west of the Manor Trading Estate, Thundersley. Access to the site is off Fulton Road and all vehicles from the industrial estate have access to the A13 and A130. The industrial estate accommodates a variety of industrial units including waste transfer operations on adjacent sites and is adjacent to residential areas.

Tyre UK operates in a small part of Unit 2, Level D, with the remainder of the site occupied by a builders yard which is used for storage. There is established planting on the western side of the site.

The properties on Warwick Close have gardens which back onto Unit 2. There is a 30 metre strip from the residential properties on Warwick Close to the start of applicant's boundary within Unit 2.

Robert Drake County Primary School is approximately 500 metres to the south east of the site.

The site occupies an area of 0.13 hectares.

The site is surrounded by secure palisade fencing on three sides and a concrete wall on the fourth.

The site is located approximately 1.5 kilometres west of an area of Thundersley Great Common, a designated SSSI.

CURRENT POSITION

An appeal was lodged and determined by way of written representations. The Inspector who was appointed by the Secretary of State for Communities and Local Government to determine the case issued his decision on 20 November 2013 and this is attached at Appendix 1.

The Inspector in the determination of the appeal, and his subsequent report, considered that the main issue in this case was:

- The effect of the proposal on residential and local amenity.

In respect of the above the Inspector notes two key concerns of the Council in terms of its 3 June 2013 Decision Notice is the matter of smell and Fire Risk. However, the Inspector could not detect any unusual smell during his visit and further noted that the Environment Agency has not objected to the proposal. The Inspector also stated waste tyres are not known to produce odour or fumes and the baling process clearly does not change the nature of the tyres. The Council's Officers initially concluded that the scheme would not give rise to odour or fumes. The Inspector had no evidence to suggest how or when "unacceptable odours" are or would arise from this site and its operation and could possibly give rise to the allegedly detrimental impact on the residential and local amenity.

The second key concern of the Council following consideration by the Committee was one of fire risk. However, on this question of fear of fire, the Fire Service was consulted and raised no objection, neither did the Environment Agency. Again, the Inspector had no evidence of any unacceptable fire risk or how the risk such as it is would realistically represent a detrimental impact upon residential or local amenity.

CONCLUSION.

The Inspector concluded that this development would sit and operate comfortably on the site and would be compatible with surrounding environs. The scheme would not run contrary to the objectives of Policy EC3 of the Castle Point Local Plan or Policy W10E of the Essex and Southend Waste Local Plan. The Inspector stated that these policies, taken together and amongst other matters, seek to protect, the amenity of residents close to any proposed development, the well-being of other local occupiers, and a vicinity's environment generally. This scheme would represent sustainable development in the Inspector's opinion and in particular it would have environmental and economic benefits in terms of recycling and employment generation and would not be socially harmful. The Inspector further considered that there would be not be a conflict with the National Planning Policy Framework and that the appeal proposal would not have an unacceptable adverse effect on residential and local amenity and therefore accordingly the appeal was allowed.

LOCAL MEMBER NOTIFICATION

CASTLE POINT- Thundersley

Appeal Decision

Site visit made on 7 November 2013

by **D Cramond** BSc MRTPI

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

Decision date: 20 November 2013

Appeal Ref: APP/Z1585/A/13/2198242

Level D, Fulton Road, South Benfleet, SS7 4PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Tyre Reclaim Ltd against the decision of Essex County Council.
 - The application, Ref ESS/76/12/CPT, is dated 4 December 2012.
 - The development proposed is the change of use from storage land to manufacture of blocks using waste tyres as raw material, the storage and sale of waste tyre products and the use of existing offices.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from storage land to manufacture of blocks using waste tyres as raw material, the storage and sale of waste tyre products and the use of existing offices at Level D, Fulton Road, South Benfleet, SS7 4PZ in accordance with the terms of the application, Ref ESS/76/12/CPT, dated 4 December 2012, subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the terms of the Design and Access Statement and the approved plan titled 'Level D, Manor Trading Estate, Fulton Road, Benfleet'.
 2. No materials shall be stockpiled or stored at a height greater than 1.8 metres when measured from adjacent ground level and in the locations identified on the plan referred to in Condition 1 above.
 3. No fixed lighting shall be erected or installed until details have been submitted to and approved in writing by the Waste Planning Authority. The lighting shall thereafter be erected, installed and operated in accordance with the approved details.
 4. The use hereby approved and any lighting approved by reason of Condition 3 above (other than security lighting activated by unauthorised persons or vehicles) shall not take place or be in use other than between the hours of 08:00 to 18:00 Mondays – Fridays (inclusive).
The use hereby permitted shall not take place at any time on Saturdays, Sundays, Bank or National Holidays.

Procedural Matters

2. I use the Council's description of development which is more extensive than the application form and was agreed by the appellant.

3. I cite the date of application as the declaration date on the application form; there are other dates within the paperwork.
4. The use is in operation; this does not alter my approach to determining the appeal.
5. I am dealing with the case as one of 'non-determination' although there is some debate about whether an extension of time had been granted to the Council. No-one, including third parties, is prejudiced by this because, in any event, from relevant Committee papers and the 'Decision Notice' dated 3 June 2013 included within the Council's documents the nature of the specific concerns of the Council is made clear, and these lie behind my selected main issue.

Main Issue

6. The main issue is the effect of the proposal on residential and local amenity.

Reasons

7. The appeal site lies within a large industrial estate which accommodates a range of uses including waste transfer operations. The site itself is formed from part of Unit 2 Level D with the remainder of this unit area used for builder's yard storage. About 30 metres from the appeal site there is established planting along a western edge and beyond that lies residential property in Warwick Close and Woodside Avenue. The operation on the site would primarily involve used tyres coming in by large van or lorry, unloaded, at times 'cut' once by a hydraulic blade to prevent re-use, and compressed by hydraulic means to create 1 tonne blocks which are effectively wire bound bales. These are stacked up and then transported off-site normally by container and used for a variety of means in this country and beyond. There are two baler machines and cutters and a crushing machine which enables the removal of tyres from steel rims. In the relatively small number of cases where the tyres are with rims the steel is taken and put in a skip for off-site recycling. A small number of tyres are found to be suitable for re-use and these are stacked up un-baled and sold on to the tyre and motor industry.
8. I observed all the machinery running at full capacity. I found the noise emissions to be modest. This is not a particularly quiet locality because of widespread industrial activity and the degree of coming and going and HGV movement and in isolation, but particularly in this context, the noise struck me as intermittent, unremarkable and not jarring. It diminished considerably as one got the edge of the site, by the western boundary it was greatly reduced and beyond that, where ground levels in part drop away, I would expect there to be no undue impact upon residential amenity during a working weekday.
9. One of two key concerns of the Council in terms of its 3 June 2013 Decision Notice is the matter of smell. However, I could not detect any unusual smell during my visit. The Environment Agency has not objected to the proposal. Waste tyres are not known to produce odour or fumes and the baling process clearly does not change the nature of the tyres. The Council's Officers initially concluded that the scheme would not give rise to odour or fumes. I simply have no evidence to suggest how or when "unacceptable odours" are or would arise from this site and its operation and could possibly give rise to the allegedly detrimental impact on the residential and local amenity.

10. The second key concern of the Council following consideration by its Committee was one of fire risk. However, on this question of fear of fire, the Fire Service was consulted and raised no objection, neither did the Environment Agency. The appeal papers explain how tyres do not spontaneously combust, how unauthorised access is restricted, that tests have been undertaken on blocks and they have been limited in their flammability, and how the fire brigade is content it would have time to attend any fire from any initial event. The appellant is noted to have followed Fire Officer advice in terms installation of equipment and storage regimes. The Council Officers initially concluded that the applicant had taken reasonable steps to reduce and mitigate the fire hazards on site. The point made by the appellant about the prevailing wind being away from homes is a valid addition. Again, I simply have no evidence of any unacceptable fire risk or how the risk such as it is would realistically represent a detrimental impact upon residential or local amenity.
11. I should add that I have very carefully considered the points raised by proximate and further afield neighbours and I do sympathise with the fears they have expressed. A number of issues raised mirror matters dealt with above. I am not persuaded that a rat problems stems from the use of this site given its nature, and pest control locally is dealt with under other non-planning legislation. The disturbance on the Industrial Estate from youngsters is also not something I am able to address and wider flooding issues from drains malfunctioning within the Industrial Estate is not directly related to the scheme before me. I am satisfied that any increase in traffic can be satisfactorily absorbed within the existing road system as in the wider context this relatively small site is not going to be a large generator of vehicles. Visually, the site and storage looks unremarkable on this industrial estate and would not in my opinion be harmful to the residential neighbours given landscape, distance, levels and wider context provided that the storage height is restricted.
12. I conclude that the development sought would sit and operate comfortably on the site and would be compatible with surrounding environs. The scheme would not run contrary to the objectives of Policy EC3 of the Castle Point Local Plan or Policy W10E of the Essex and Southend Waste Local Plan. These policies, taken together and amongst other matters, seek to protect, the amenity of residents close to any proposed development, the well-being of other local occupiers, and a vicinity's environment generally. This scheme would represent sustainable development in my opinion and in particular it would have environmental and economic benefits in terms of recycling and employment generation and would not be socially harmful. There would be no conflict with the National Planning Policy Framework.

Conditions

13. I agree with the Council that there should be a condition that the operation should be carried out in accordance with appellant's plan and stated intentions; for the avoidance of doubt and in the interests of proper planning. I also agree that storage heights and lighting should be controlled in the interests of amenity. I would see it as reasonable in the interests of amenity to control the operating hours; this is anticipated by both principal parties and I would align with the times set out on the original application form.
14. In respect of the above, to assist with conciseness and precision, and bearing in mind advice in Circular 11/95, I shall not in all cases use the same wording as put forward by the Council.

Overall conclusion

15. For the reasons given above I conclude that the appeal proposal would not have an unacceptable adverse effect on residential and local amenity. Accordingly the appeal is allowed.

D Cramond

INSPECTOR