

# Development and Regulation Committee

<b>10:30</b>	<b>Friday, 13 December 2013</b>	<b>Committee Room 1, County Hall, Chelmsford, Essex</b>
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**Quorum: 3**

**Membership:**

Councillor R Boyce	Chairman
Councillor J Abbott	
Councillor K Bobbin	
Councillor A Brown	
Councillor P Channer	
Councillor M Ellis	
Councillor C Guglielmi	
Councillor J Lodge	
Councillor M Mackrory	
Councillor Lady P Newton	
Councillor J Reeves	
Councillor S Walsh	

**For information about the meeting please ask for:**

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Essex County Council

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## **Part 1**

(During consideration of these items the meeting is likely to be open to the press and public)

		<b>Pages</b>
<b>1</b>	<b>Apologies and Substitution Notices</b> The Committee Officer to report receipt (if any)	
<b>2</b>	<b>Declarations of Interest</b> To note any declarations of interest to be made by Members	
<b>3</b>	<b>Minutes</b> To approve the minutes of the meeting held on 22 November 2013.	<b>7 - 20</b>
<b>4</b>	<b>Identification of Items Involving Public Speaking</b> To note where members of the public are speaking on an agenda item. These items may be brought forward on the agenda.	
<b>5</b>	<b>Minerals and Waste</b>	
<b>5a</b>	<b>Batemans Farm</b> The continued use of the existing site for the importation, treatment, storing, processing of inert waste materials and secondary aggregates with the addition of the importation, treatment, storing, processing of 6000 tonnes per annum of hazardous and non-inert waste and four sealed storage containers.  Location: Batemans Farm, Great Leighs, Chelmsford, CM3 1PU.  Ref: ESS/50/13/BTE <b>DR/60/13</b>	<b>21 - 42</b>
<b>6</b>	<b>Appeals Update</b>	

<b>6a</b>	<b>Codham Hall Farm</b>	<b>43 - 52</b>
	Retrospective application for the use of the site as a material storage, recycling and distribution facility – The imposition of condition 7 (Bridleway improvement works)	
	Location: Codham Hall Farm, Codham Hall Lane, Great Warley, Brentwood, Essex.	
	ECC Reference: ESS/40/12/BRW Planning Inspectorate Reference: APP/Z1585/A/13/2193642 <b>DR/61/13</b>	
<b>6b</b>	<b>Tyre UK</b>	<b>53 - 62</b>
	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 <b>DR/62/13</b>	
<b>7</b>	<b>Information Item</b>	
<b>7a</b>	<b>Applications, Enforcement and Appeals Statistics</b>	<b>63 - 66</b>
	To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee. <b>DR/63/13</b>	
<b>8</b>	<b>Date of Next Meeting</b>	
	To note that the next meeting will be held on Friday 24 January 2014.	
<b>9</b>	<b>Urgent Business</b>	
	To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.	

## **Exempt Items**

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

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### **Urgent Exempt Business**

To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.

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All letters of representation referred to in the reports attached to this agenda are available for inspection. Anyone wishing to see these documents should contact the Officer identified on the front page of the report prior to the date of the meeting.

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**MINUTES OF A MEETING OF THE DEVELOPMENT AND REGULATION  
COMMITTEE HELD AT COUNTY HALL, CHELMSFORD ON 22 NOVEMBER  
2013**

**Present**

Cllr R Boyce (Chairman)  
Cllr J Abbott  
Cllr K Bobbin  
Cllr A Brown  
Cllr P Channer  
Cllr C Guglielmi

Cllr J Lodge  
Cllr M Mackrory  
Cllr Lady P Newton  
Cllr J Reeves  
Cllr S Walsh

**1. Apologies and Substitution Notices**

Apologies were received from Cllr M Ellis.

**2. Declarations of Interest**

There were no declarations of interest.

**3. Minutes**

The Minutes and Addendum of the Committee held on 25 October 2013 were agreed and signed by the Chairman.

**4. Identification of Items Involving Public Speaking**

There were none identified.

**Minerals and Waste**

**5. Birch Airfield, Colchester**

The Committee considered report DR/51/13 by the Director for Operations, Environment and Economy.

The Committee was advised that the proposal seeks to increase the number of daily vehicular movements entering and leaving the site.

Policies relevant to the application were detailed in the report.

Details of Consultation and Representations received were set out in the report.

The Committee noted the key issues that were:

- Need and Principle of Development
- Impact on Amenity
- Human Rights.

In response to questions and concerns raised, Members were informed that:

- The figures given for vehicular movements in line 4 of the final paragraph of page 30 of the document as published should read “12 in and 12 out”
- Some vehicles have had to be turned away from the site, because of the restrictions on numbers; these would then have to travel to stations at Epping and Basildon. There were no statistics available on the actual numbers of these, as only vehicles accepted onto the site were registered.
- There would be no increase in overall tonnage permitted
- A permanent condition was recommended under the extant permanent permission.

The resolution was moved, seconded and following a vote of nine in favour and none against, with Councillors Abbott and Lady Newton abstaining, it was

**Resolved**

That:

i) Planning permission be granted subject to the amended wording of Condition 22 (of permission ESS/07/09/COL) to state:

“The total number of heavy goods vehicles (HGV) movements associated with the development hereby permitted shall not exceed the following limits:

44 movements (22 in and 22 out) per day (Monday to Friday)  
14 movements (7 in and 7 out) per day (Saturdays, Sundays and Public Holidays).

and:

ii) All other conditions of planning permission ESS/07/09/COL be re-imposed and updated as appropriate.

## **6. Mid Essex Gravel Pit, Little Waltham**

The Committee considered report DR/52/13 by the Director for Operations, Environment and Economy.

The Members of the Committee noted the contents of the Addendum attached to these minutes.

The Committee was advised that the proposal was a variation and proposed removal of condition application, seeking the continuation of waste transfer and recycling operations without compliance with certain conditions.

Policies relevant to the application were detailed in the report.

Details of Consultation and Representations received were set out in the report.

The Committee noted the key issues that were:



- Planning History & Need
- Proposed Operations
- Impact on Amenity, Landscape & the NCAAP

In response to questions and concerns raised, Members were informed that:

- The references to emails under Conditions 1 and 15 were necessary for completeness
- Although there were some historical issues relating to non-compliance, officers would seek to ensure that the area was cleared by the end of 2014; and the Committee would receive an update at the end of 2014.

The resolution was moved, seconded and unanimously agreed and it was

**Resolved:**

That planning permission be granted subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the details of the application (ESS/03/08/CHL) received on 21 January 2008 together with Noise Survey undertaken by Bickerdike Allen Partners dated 8 May 2008, Noise Assessment by AERC Ltd dated June 2006, Safer Places Statement dated 30 April 2008, Flood Risk Assessment received 21 January 2008, Visual Impact Assessment received 21 January 2008, Environmental, Remedial and Geotechnical Options Appraisal received 21 January 2008, Planning Statement received 21 January 2008, Design and Access Statement received 21 January 2008, Transport Statement received 21 January 2008, Emails from Sarah Stevens dated 3 & 17 March 2008 and 13 May 2008, Letter from ETC dated 31 March 2008, Letter from Turley Associates dated 17 January 2008, 11 March 2008 & 3 April 2008, Drawing Numbers 1991-SK-CA-3-Redline Rev D (Site Plan – Red Line) dated 16 January 2008, 1991-SK-CA-0-003 (Existing Site Plan), 1991-SK-CA-003-3 Rev D (Site Plan), 1991-SK-CA-3-000 Rev H (Plan detailed), 1991-SK-CA-3-002 Rev D (Sections), 1991-SK-CA-3-003 Rev E (Elevations), 1991-SK-CA-3-004 Rev F (Workshop elevations & office buildings plan & elevations), L07/04/02 (indicative landscape & strategy plan), Illustrative Drawings 1991-SK-CA-0-000 Rev C (General Layout ‘master plan’), 1991-SK-CA-3-005 (Workshop plan), 1991-SK-CA-3-006 (Plan and elevation of workshop equipment) dated 4 February 2008, details of the application (ESS/49/09/CHL) dated 3 November 2009 together with Drawing Number 98066/PA/01 (Site Location Plan) dated November 2009, Drawing Number 98066/PA/02 (Red Line Application Boundary) dated November 2009, email from John Wilson, AMEC Earth & Environmental dated 13 November 2009, email from Jane Moseley, AMEC Earth & Environmental dated 26 November 2009, details of the application (ESS/12/11/CHL) dated 7 February 2011 together with Drawing Number 7888010081/PA/03 (Red Line Application Boundary) dated February 2011 and Planning Statement (reference: 7888010054), dated 7 February 2011; as amended by the details of application ref ESS/02/12/CHL dated 20 December 2011 together with document titled ‘Validation Form 1’ received on 29 December 2011, drawing number 1991-SK-CA-3-Redline Rev D received on 29 December 2011 and drawing number AQA1AR-SK408 Rev P1 dated Dec 2011; and the details of application ref ESS/42/13/CHL dated 17 July 2013 together document

titled 'Planning Application for Variation of Conditions' dated July 2013 (excluding all references to the storage and processing of waste wood), additional statement titled 'Ref: Planning Variation ESS/42/13/CHL' dated 20 October 2013 and diagram titled 'Inert/Recyclables Storage Area' which highlights in green the area for outside working, and in accordance with any non-material amendment(s) as may be subsequently approve in writing by the Waste Planning Authority, except as varied by the following conditions:

2. The throughput of waste at the site shall not exceed 150,000 tonnes per annum. The operators shall maintain records of their monthly and annual throughput which shall be made available to the Waste Planning Authority within 14 days of a written request.
3. The handling, deposit, processing or transfer of waste outside the confines of the building approved as part of this permission shall only be permitted until 31 December 2014 after which time no handling, deposit, processing or transfer of waste shall take place on site outside the confines of the building approved for this purpose..
4. Machinery to be used and storage bays shall be in accordance with diagram titled 'Inert/Recyclables Storage Area', submitted as part of application ref ESS/42/13/CHL and for phase two letters dated 10 & 17 June 2009 and Drawing Number AQA1A-SK404 Revision P1 (Location of External Equipment Phase 2) dated June 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme(s).
5. The access and outside areas used in connection with the development hereby permitted shall be sprayed with water during dry weather conditions to prevent dust nuisance.
6. The outside stockpiles used in connection with the development hereby permitted shall be dampened in dry weather conditions to prevent dust nuisance.
7. No loaded vehicles shall leave the site un-sheeted.
8. No material (including waste) and/or skips shall be stockpiled or deposited to a height exceeding 3 metres from ground level.
9. All plant and machinery shall be silenced at all times in accordance with manufacturer's recommendations.
10. Parking layout and turning tables for vehicle manoeuvring shall be in accordance with letter dated 28 May and Drawing Numbers AQA1A-201 Revision T1 (Tracking in and out on weighbridges) dated March 2009, AQA1A-202 Revision T1 (Tracking in and out from building) dated March 2009, AQA1A0293 Revision T1 (Tracking through weighbridge and reverse into building) dated March 2009, AQA1-106 Revision P1 (Swept path layout) dated August 2008 and

AQA1-100 Revision T2 (Site layout) approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

11. Boundary fences and walls shall be in accordance with letters dated 28 May and 30 July 2009 and Drawing Number AQA1A-SK405 Revision P1 (Location of boundary fences Phase 1 and 2) dated July 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

12. Landscaping of the site shall be in accordance with the letter dated 17 June 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be in accordance with the approved landscaping scheme.

13. Any tree or shrub forming part of the approved landscaping scheme as set out in the letter from Clark Smith Partnership dated 17 June 2009 and approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL that dies, is damaged, diseased or removed within the period of 5 years after the completion of operations shall be replaced in the next available planting season (October to March inclusive) with a tree or shrub to be agreed in writing with the Waste Planning Authority.

14. Existing and finished site levels, finished floor and ridge levels of the buildings and finished external surface levels shall be in accordance with the letters dated 28 May 2009 and 30 July 2009 and Drawing Number AQA1A-SK406 Revision P1 (Elevation and section of proposed building) dated July 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

15. External lighting and security measures shall be implemented and maintained in accordance with emails from David Clark received 16/10/2010, 21/10/2010 and 26/04/2010 and email from Faircloth, dated 07/05/2010.

16. Surface water drainage shall be in accordance with the letter dated 28 May 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be in accordance with the approved scheme.

17. The development shall be carried out in accordance with the scheme submitted in relation to contamination of the site, received 29/05/2009 titled 'Summary Report on site investigation on Plot 3, Regiment Business Park, Chelmsford, Essex' (Report No: P5206/U11), dated 13th February 2009 and prepared by Geotechnical Developments (UK) Ltd. During the construction phase of the development if any contamination not previously identified is found to be present on site then the construction phase of the development shall cease (unless otherwise agreed by the Waste Planning Authority in writing) until the

written approval of the Waste Planning Authority has been obtained for a method statement detailing how the suspected contamination shall be dealt with.

18. Provision and implementation of foul water drainage shall be in accordance with letters dated 28 May 2009 and 30 July 2009 and Drawing Number FAR140-103 Revision C6 (Drainage layout) dated 23 May 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

19. Foul water drainage shall be maintained in accordance with the letter dated 28 May 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

20. Facing materials shall be in accordance with the letter dated 28 May 2009 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

21. During operational phases, wherever practicable any doors (including shutters doors) and windows should be kept closed. Noisy activities that occur externally within the site boundary should not occur before 7am. The free-field Equivalent Continuous Noise Level (rating level  $L_{Aeq,T}/L_{Aeq,1}$  hour as defined in BS 4142) at noise sensitive premises near the site, due to permitted operations on site, shall not exceed the limit of Background Level ( $L_{a90}$ ) without the permitted operations +5dB.

22. Noise levels shall be monitored by the operating company at six monthly intervals at the above locations. The monitoring survey shall be for a minimum of two separate 15 minute periods at each location used within the Bickerdiike Allen Partners Background Noise Survey dated 8 May 2008 during all permitted operations and should avoid meal breaks and periods of plant breakdown. The frequency and duration of such monitoring may be modified at the discretion of the Waste Planning Authority. The monitoring may be required more frequently where it becomes necessary to demonstrate continuing compliance with the limiting noise levels specified above, or less frequently where the need does not arise. Monitoring should only be undertaken in calm weather conditions or at receptors with a component of wind blowing from the site. Monitoring should generally be avoided in conditions of wind speeds greater than 5m/sec average; rain; low temperatures (<3 degrees C). All noise measurements taken shall have regard to the effects of extraneous noise and shall be corrected for any such effects. The monitoring shall include the  $L_{Aeq}$ , 1 hour dB noise levels both with and without the permitted operations, the prevailing weather conditions, details of the measurement equipment used and its calibration and comments on the sources of noise which control the noise climate. The results shall be kept by the operating company during the life of the permitted operations and a copy shall be supplied to the Waste Planning Authority.

23. The development hereby permitted shall only be carried out during the following times:

06:00 – 18:00	Monday to Friday
06:00 – 13:00	Saturday

And at no other time on Sundays, Bank or Public Holidays unless otherwise agreed in writing with the Waste Planning Authority.

24. The surfaced section of the access road from the junction with Essex Regiment Way (A130) shall be kept free of mud, dust and detritus to ensure that such material is not carried onto the public highway.

25. There shall be no more than 400 heavy goods vehicle movements (200 in and 200 out) at the site in any one working day Monday to Friday and no more than 300 heavy goods vehicle movements (150 in and 150 out) on Saturdays. No vehicle movements shall take place outside the hours of operation authorised in Condition 23 of this permission.

26. Details and elevations of the weighbridge and fuelling point shall be in accordance with the letter dated 28 May 2009 and Drawing Number AQA1-105 Revision T1 (Weighbridge setting out) dated October 2008 and AQA1-107 Revision T1 (Weighbridge foundation arrangement) dated November 2008 approved by the Waste Planning Authority on 17 August 2009 under planning permission reference ESS/03/08/CHL. The development hereby permitted shall be implemented in accordance with the approved scheme.

27. No development permitted under planning permission ref ESS/02/12/CHL shall take place until details of the management of the potential migration of odours and dust escaping the waste transfer building have been submitted to, and approved in writing by the Waste Planning Authority.

#### INFORMATIVE

1. Consideration should be given for the provision of a further suitable water supply to be made available closer to the site.

## **7. Land at Park Farm, Chelmsford**

The Committee considered report DR/53/13 by the Director for Operations, Environment and Economy.

The Committee was advised that the proposal related to the previous decision to grant planning permission in respect of the winning and working of sand and gravel and associated dry screen processing plant, temporary storage of minerals and soils and associated infrastructure.

It was noted that with respect to policies relevant to the sterilisation of minerals the policies within the Replacement Structure Plan and Regional Spatial Strategy

no longer formed part of the Development Plan, but the principle was now supported within the NPPF and by emerging policy S8 of the Replacement Minerals Local Plan. Other than this change there were no other material considerations affecting the original resolution.

The resolution was moved, seconded and unanimously agreed and it was:

**Resolved:**

That:

- 1 The Committee re-endorse the previous decision to grant planning permission subject to the head of terms of the legal agreement and planning conditions as set out below, and;
- 2 A further report be submitted to the Committee should negotiations not proceed towards signing the necessary legal agreement by the end of May 2014 to allow Members to review progress.

Heads of terms of the legal agreement(s)

The prior completion, within 6 months, of Legal Agreements under the Planning Acts to secure obligations or such alternative forms as may be agreed by the Director for Operations, Environment and Economy and the County Council's Legal Officer, following further discussions with the applicant to cover the following matters:

- The scheme of obligations relating to the application site as currently set out within the existing s52 legal agreement associated with planning permissions CHL/1890/87 and CHL/1019/87 will require to be altered and/or restructured or a new legal agreement agreed to take account of the proposals.
- Not to commence implementation of the mineral/backfill development until lawful commencement of GBP development (CCC application ref: 09/01314/EIA).
- Prior to commencement of the mineral/backfill development to obtain approval from ECC of the habitat management plan as required by CCC application reference ref: 09/01314/EIA, subject to Chelmsford City Council confirming they intend to approve the same habitat management plan.
- Prior to commencement of the mineral development to obtain approval from ECC of the construction and environmental management plan as required by CCC application ref: 09/01314/EIA, subject to Chelmsford City Council being in a position confirming they intend to approve the same construction and environmental management plan.
- Prior to commencement of dewatering of the application site to obtain approval from ECC of the drainage management system (in particular with respect to the settlement pond and discharge of water resulting from

dewatering and surface water from the application site) as required by CCC application Ref. 09/01314/EIA, subject to Chelmsford City Council confirming they intend to approve the same drainage management system.

- Groundwater monitoring outside the application site as described within the application and Environmental Statement
- Scheme of mitigation to be submitted should the water level in ponds outside the site drop significantly due to activities associated with the mineral/backfill development.
- Requirement for applicant to serve Unilateral Undertakings (UU) (the wording of which to be agreed in advance with MPA) on licensed abstractors. The UUs obligating to put licensed abstractors on mains water supply should there be significant detrimental impact upon water abstractions resulting from the mineral/backfill development.
- Early implementation of planting on the north and west boundary of New Hall School, as proposed by planning application CCC Ref: 09/01314/EIA.
- Access/egress to and from the public highway for vehicles associated with the mineral/backfill development only at locations as approved under planning application CCC Ref: 09/01314/EIA

Planning permission be granted subject to the conditions

Conditions relating to the following matters:

- COMM1 Commencement within 5 years
- COM3 Compliance with Submitted Details
- PROD 1 Export restriction - no greater rate than 325,000 tonnes per annum
- CESS5 Cessation of Mineral Development within 4 years, cessation of landfilling and restoration within 8 years except for restoration of boundary with Bulls Lodge Quarry extraction
- CESS3 Removal of Ancillary Development
- CESS7 Revised Restoration in Event of Suspension of Operations
- HOUR2 Hours of working (Mineral Specific)  
07:00 to 18:30 hours Monday to Friday  
07:00 to 13:00 hours Saturdays  
and at no other times or on Sundays, Bank or Public Holidays.
- The schedule of work and timescales shall be carried out to accommodate the infrastructure delivery plan set out in the proposal of application ref. 09/01314/EIA
- South and east facing slopes of stores of overburden and subsoil shall be no greater than 1:3 and shall be topsoiled and seeded in first available planting season and subject to a programme of maintenance
- LGHT1 Fixed Lighting Restriction
- ECO3 Protection of Breeding Birds
- Submission of method statement with respect to removal of hedgerow
- Scheme of mitigation should ponds within the site dry due to mineral operations

- 10m standoff to all retained hedgerow and hedgerow trees
- NSE1 Noise Limits
- NSE2 Temporary Noisy Operations
- NSE3 Monitoring Noise Levels
- NSE5 White Noise Alarms
- NSE6 Silencing of Plant and Machinery
- HIGH3 Surfacing/Maintenance of Haul Road
- HIGH2 Vehicular Access
- DUST1 Dust Suppression Scheme – including source of water for dust suppression
- POLL6 Groundwater Monitoring
- Flood risk mitigation in accordance with FRA Dec 2011
- Details of method of soil stripping and placement
- LS4 Stripping of Top and Subsoil
- LS5 Maintenance of Bunds
- LS8 Soil Handled in a Dry and Friable Condition
- LS10 Notification of Commencement of Soil Stripping
- LS12 Topsoil and Subsoil Storage
- ARC1 Advance Archaeological Investigation
- No material other than overburden, subsoils and excavation waste (except topsoils) shall be disposed in the void
- POLL 4 Fuel/Chemical Storage
- POLL 8 Prevention of Plant and Machinery Pollution
- Scheme for removal of suspended solids from surface water run-off
- RES4 Final Landform
- Interim restoration scheme to rough grassland for phases where infilling complete, but redevelopment under GBP development not planned within 6 months
- Submission of restoration details for northern boundary area as indicated hatched on ES4.16 ensuring levels tie in with those permitted as part of CHL/1890/87 or any subsequent amendment
- Nature and use of infilling materials in accordance with report by URS Mineral Extraction and Backfill dated May 2012 and ensure the made up ground over which the Radial Distributor Road associated with application Ref 09/01314/EIA being dealt with by CCC is backfilled with appropriate material and compacted to finished levels to support the new RDR design requirements.
- MIN1 No Importation
- WAST6 No Crushing of Stone
- GPDO2 Removal of PD Rights
- Scheme of mitigation should ponds inside the site dry due to mineral operations
- No extraction or infilling at the site 4 years after commencement until the submission and approval of a reassessment of the impact of the proposals on ecology and the water environment.
- Submission of details of use of surplus topsoils.

## **Enforcement Update**



**8. Land at Dairy House Farm, Great Holland**

The Committee considered report DR/54/13 by the Director for Operations, Environment and Economy.

The Committee was advised that the proposal related to an enforcement order ceasing the unauthorised extraction and exportation of sand and gravel from the land and the importation and deposition of waste materials and consequential raising of the land levels, as reported to the Committee on 25 October 2013.

Members noted that no further mineral extraction or exportation has taken place and the land has been restored to its former agricultural use and the field has been returned to an acceptable condition.

**9. Land at Allens Farm, Elmstead**

The Committee considered report DR/55/13 by the Director for Operations, Environment and Economy.

The Committee was advised that the proposal related to an enforcement order ceasing the unauthorised extraction and exportation of sand and gravel from the land and the importation and deposition of waste materials on to the land for refilling.

Members noted that all activities have ceased on the land.

The resolution was moved, seconded and unanimously agreed and it was:

**Resolved:**

That:

Subject to no further extraction and exportation of mineral taking place, no further action is taken, provided the land is restored to an acceptable standard.

**10. Dannatts Quarry, Hatfield Peverel**

The Committee considered report DR/56/13 by the Director for Operations, Environment and Economy.

The Committee NOTED the report and the resolution was moved, seconded and unanimously agreed and it was:

**Resolved:**

That a further report be presented at the January 2014 meeting.

*Councillor Channer left the meeting at 11.35 am, returning at 11.39 am.*

## Appeal Decision

### 11. Mackers Metals Ltd, Laindon

The Committee considered report DR/57/13 by the Director for Operations, Environment and Economy.

Members were informed that the appeal had been dismissed by the Inspector.

The Committee **NOTED** the report.

### 12. Public Speaking at Committee

The Committee considered report DR/58/13, which looked at whether changes should be made to the existing arrangements for public speakers at meetings of the Committee.

Several points were raised by Members:

- There were restrictions on filming and recording of meetings – were these necessary - or even enforceable with modern equipment? It was pointed out that the Chairman was able to exercise his discretion in this, and so gave an element of control over the meeting. He generally had no problems with it, but he did suggest that perhaps not every individual who wished to speak at meetings would be happy being recorded. Meetings had been webcast in the past
- The protocol adopted by the Committee seems outdated and over-complicated; it should be simplified, allowing a certain time for registered individuals to speak. The Chairman responded that generally, the restrictions are generally in line with other councils in Essex.
- It was pointed out that the Corporate Scrutiny Committee was trying to set up a Task & Finish Group to consider the issue of public speaking at meetings. D&R meetings may not quite fall into the same category as others, such as Cabinet and Scrutiny, but the Group's findings may be of interest to the Committee.
- Clarification was sought on the relationship between speakers from district and parish councils, in view of the reference made in the paper. It was suggested that the intention was not to disenfranchise the parishes in any way; parish councillors did not require approval from the district to speak, but on an occasion that both had expressed the wish to speak and their views concurred, then the district would prevail in that instance.
- One Member proposed that a decision on whether to make any changes to the existing arrangements should not be taken at this meeting but deferred. This was seconded and, with 9 voting for the amended proposal,

It was **AGREED** to defer the decision until the findings of the Task & Finish Group were known.

### 13. Statistics

The Committee considered report DR/59/13, Applications, Enforcement and Appeals Statistics, as at end of the previous month, by the Head of Planning, Environment and Economic Growth.

The Committee **NOTED** the report.

**14. Date and Time of Next Meeting**

The Committee noted that the next meeting will be held on Friday 13 December 2013 at 10.30am in Committee Room 1.

There being no further business the meeting closed at 12.02pm.

Chairman



**DR/60/13**

committee DEVELOPMENT & REGULATION

date 13 December 2013

## MINERALS AND WASTE DEVELOPMENT

**Proposal: The continued use of the existing site for the importation, treatment, storing, processing of inert waste materials and secondary aggregates with the addition of the importation, treatment, storing, processing of 6000 tonnes per annum of hazardous and non-inert waste and four sealed storage containers**

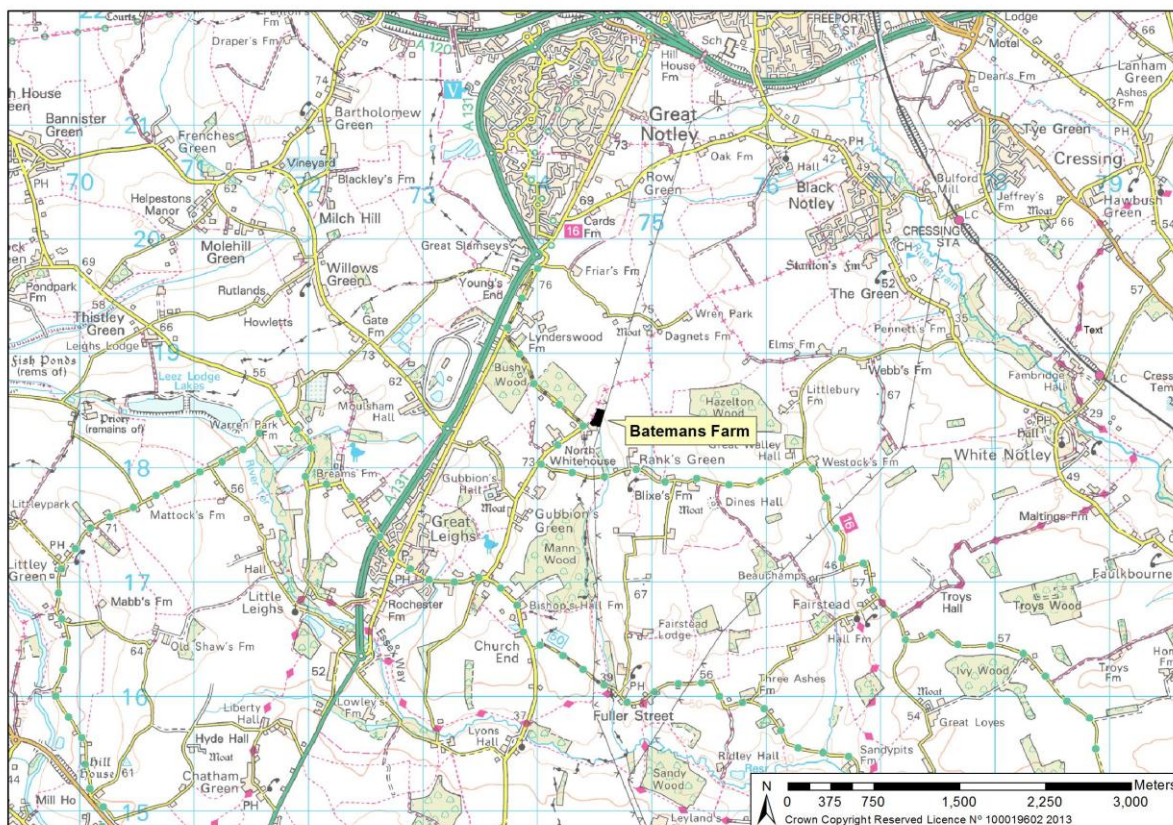
**Location: Batemans Farm, Great Leighs, Chelmsford, CM3 1PU**

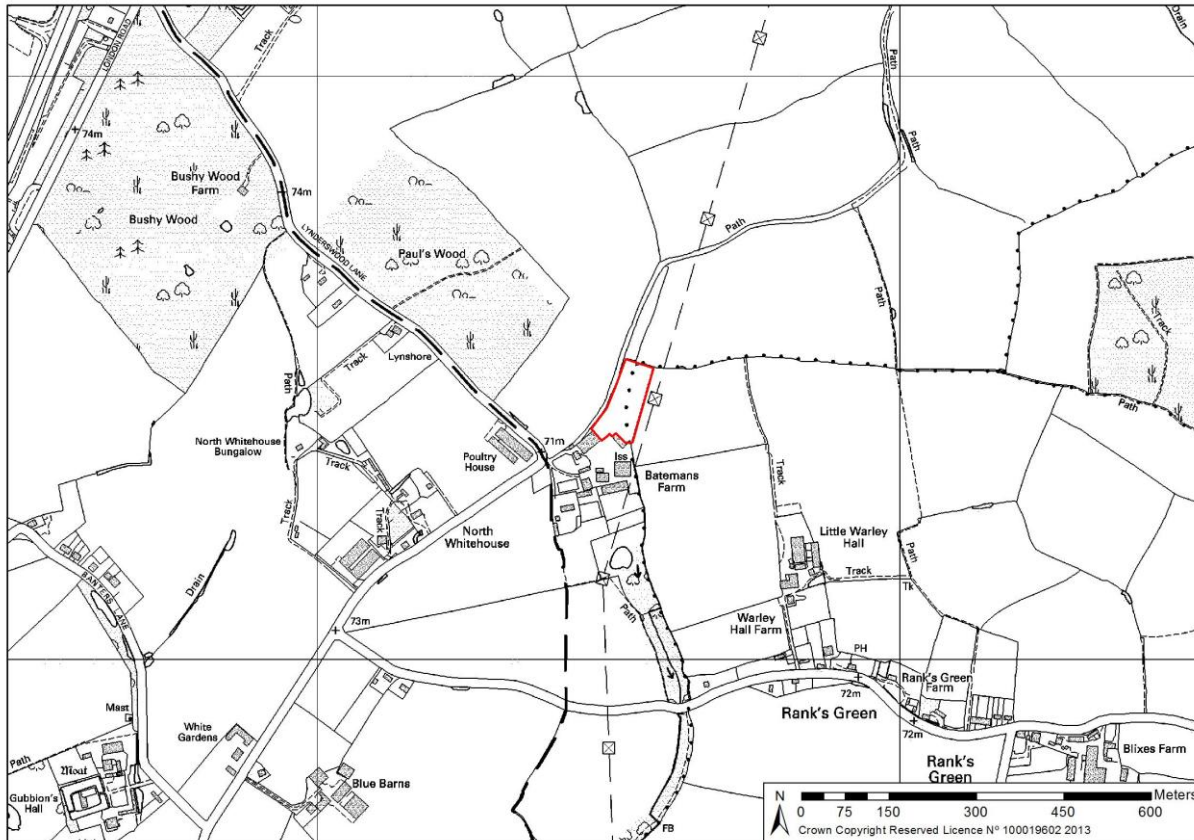
**Ref: ESS/50/13/BTE**

**Applicant: G&B Finch Ltd**

Report by Director of Operations, Environment and Economy

Enquiries to: Paul Calder Tel: 01245 437585





## 1. BACKGROUND

On the 28th April 2000 a Certificate of Lawful Use (CLUED) was granted by Braintree District Council (BDC) for inter alia the crushing or grading of concrete, hardcore, used aggregates and soil together with ancillary storage of such materials.

Following the grant of planning permission by BDC the applicant submitted an application (ref: ESS/58/11/BTE) to the Waste Planning Authority (WPA) for the continued use of the site for importation, treatment, storing, processing and sorting of inert waste materials and secondary aggregates with retrospective permission being sought for an extension of the existing site by 0.34ha, construction of eastern boundary wall, recycling plant and concrete base, including the retention of existing plant and machinery (part retrospective). The application was approved under officer delegated powers on the 8<sup>th</sup> March 2012.

## 2. SITE

Batemans Farm is located on Mill Lane in the south of the District of Braintree. Great Leighs is located 1.2 miles to the south of Batemans Farm and vehicular access is gained via Mill Lane to the south of the site. The closest residential property to the site is located 40 metres to the south and comprises of a residential building at Batemans Farm. The closest residential property outside the Batemans Farm complex is located around 290 metres to the south however, it should be noted that poultry houses located 107 metres to the south would screen the site from the residential property.

Open agricultural fields are located to the north, east and west of the site and mature vegetation can be found along the north and western boundaries with new planting along the eastern boundary.

### 3. PROPOSAL

The proposal seeks to continue using the existing site for the importation, washing and recycling of non-inert waste (gully waste) so that a secondary aggregate can be separated from the degradable material. The secondary aggregate would be incorporated into the existing stockpiles onsite and the separated degradable non-inert waste would be channelled into sealed storage containers for removal to a licensed operator for final disposal.

The approximate volume of non-inert waste would be 3000 tonnes per annum. The proposal would process the non-inert material in one operational day to avoid contamination with inert material currently processed onsite.

The proposal also seeks to import hazardous building and construction material from the local area which would be placed into a sealed container and removed to a licenced operator for disposal. The approximate volume per annum of hazardous building and construction material would be approximately 3000 tonnes with no more than 20 tonnes stored onsite at any one time.

It is not proposed that there would not be an increase in vehicle movements, hours of operation as a result of this proposal.

### 4. POLICIES

The following policies of the Essex and Southend Waste Local Plan 2001 (WLP), Minerals Local Plan (MLP) adopted March 1997, The Replacement Minerals Local Plan (RMLP) Pre-Submission draft (January 2013), Braintree District Council Local Development Framework Core Strategy 2011 (BCS) and Braintree District Local Plan Review 2005 (BLP) provide the development framework for this application. The following policies are of relevance to this application:

	WLP	MLP	RMLP	BCS	BLP
Sustainable Development, National	W3A				
Waste Hierarchy & Proximity Principle					
Groundwater Contamination	W4B				
Highways	W4C				
Special Waste	W5A				
Alternate Sites	W8B				
Planning Conditions and Obligations	W10A				
Material Considerations: Policy	W10E				
Compliance and Effects of the Development					
Aggregate Recycling Facilities		MLP5	S5		
The Countryside				CS5	
Promoting Accessibility for All				CS7	



Town Development Boundaries	RLP2
Transport Assessments	RLP52
Development Likely to Give Rise to Pollution or the Risk of Pollution	RLP62
Air Quality	RLP63
Waste Reprocessing Facilities	RLP75

The National Planning Policy Framework (the Framework) was published on 27 March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. The Framework highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that there are three dimensions to sustainable development: economic, social and environmental. The Framework places a presumption in favour of sustainable development. However, Paragraph 11 states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

For decision-taking the Framework states that this means; approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

The BCS was adopted post 2004, however the grace period offered to such plans (in applying full weight to policies) in accordance with Paragraph 214 of the Framework past 12 months after adoption of the Framework. As such it is now considered that the BCS together with the BLP and WLP (both adopted pre 2004 and/or not under the Planning and Compulsory Purchase Act 2004) fall within the remit of consideration according to Paragraph 215. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The level of consistency of the policies contained within the WLP is detailed in Appendix 1. The level of consistency of the policies contained within the BCS and BLP is considered further in this report, as appropriate.

With regard to updates/replacements or additions to the above, the Waste Development Document: Preferred Approach 2011 (now known as the Replacement Waste Local Plan (RWLP)) should be given little weight having not been 'published' for the purposes of the Framework. The Framework states (Annex 1):

From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);



- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given), and;
- The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The RWLP has yet to reach 'submission stage' and as such it is too early in the development of the RWLP for it to hold any significant weight in decision making.

However, in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the RMLP along with summarised comments, a range of evidence bases and supporting documents were sent to the Planning Inspectorate in July 2013 prior to Public Examination (PE). Therefore, weight should be applied to the RMLP due to its stage in preparation which is in accordance with annex 1 of the Framework.

BDC has produced a Site Allocations and Development Management Plan (SADMP) which together with the BCS will allocate development sites and protect other areas in the District from development over the next fifteen years. The SADMP has been endorsed by Members with a further round of public consultation on soundness occurring early next year. In light of this, it is considered that little weight can be applied especially as objections are outstanding from consultation.

As a note to the above the Framework does not contain specific waste policies, since national waste planning policy will be published as part of the National Waste Management Plan for England. Until such a time the Waste Planning Policy Statement (PPS 10) remains the most up-to-date source of Government guidance for determining waste applications and as such reference to this Statement, in addition to the Framework, will also be provided, as relevant in the body of this report/appraisal.

## **5. CONSULTATIONS**

BRAINTREE DISTRICT COUNCIL – No objection subject to a condition controlling hours of operation.

ENVIRONMENT AGENCY – No objection.

HIGHWAY AUTHORITY – No objection.

WASTE DISPOSAL AUTHORITY – Comments as follows:

- The joint Municipal Waste Management Strategy (JMWMS) for Essex states an aspiration to achieve 60% recycling of household waste by 2020. This will be achieved through the separation of dry materials from the kerbside, separation and treatment of food (Kitchen) waste generated by Essex households and composting of garden waste;
- The WDA works closely with the Waste Collection Authorities to manage the collection, sorting and treatment of waste streams in a manner which

- reduces environmental impacts;
- Although the proposal would be handling waste out of the scope of household waste the availability of local waste transfer stations to handle, sort and bulk any recyclable or recoverable materials will provide more opportunities for the WDA and businesses to reduce the environmental impact of transporting such waste, and;
- The WDA supports the application.

PLACE SERVICES (Landscape) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection.

BLACK NOTLEY PARISH COUNCIL – Objects, in summary, for the following reasons;

- Unhappy with the operating history of the company to which rules have been flouted in the past and the proposal does not rectify this;
- Having historically applied for a CLUED to BDC and then a part retrospective application to the WPA (ref: ESS/58/11/BTE) it appears the applicant has history of not complying with regulations;
- Asbestos is a dangerous product and should not be operated near residential properties. Asbestos is a serious known health hazard with many deaths a year attributed to it and has an incubation period of 15 – 60 years which would blight the area;
- Concerns whether company would comply with regulations for storage of asbestos;
- Original application was for storage and removal of sealed asbestos waste but this wording has changed to Transfer to which there are already several in the area;
- Neighbours objected to the application on the existing practice of fierce fires burning toxic materials and are concerned that the applicant would not operate to acceptable environmental standards where the asbestos is concerned;
- Needs assurances that site would be operated to highest environmental standards;
- Although invited by applicant for a site inspection the Parish Council during submission of the original application undertook a thorough inspection of the site and discussed issues with the company from which they understood the situation to which the objection letter was written therefore, it was felt no further visits were necessary;
- When visiting site aggregate stockpiles high and affecting visual amenity of public bridleway, and;
- The visual impact of the operation in the countryside is a blot on the landscape. Restrictive conditions should be imposed for the importation of hazardous materials.

TERLING AND FAIRSTEAD PARISH COUNCIL – Any comments received will be reported

GREAT AND LITTLE LEIGHS PARISH COUNCIL – Any comments received will be reported

LOCAL MEMBER – CHELMSFORD – Broomfield and Writtle – Any comments received will be reported

LOCAL MEMBER – BRAINTREE– Witham – Requested the application comes before members of the Development and Regulation Committee as constitutes a controversial proposal of significant local interest.

## **6. REPRESENTATIONS**

6 properties were directly notified of the application. No letters of representation have been received.

## **7. APPRAISAL**

The key issues for consideration are:

- A Need and Principal of Development;
- B Hazardous Waste, and;
- C Impact upon Amenity.

### **A NEED AND PRINCIPAL OF DEVELOPMENT**

As noted earlier the within this report, the Framework does not contain specific waste policies, since national waste planning policy will be published as part of the National Waste Management Plan for England. Until then, PPS10 remains in place. However, local authorities taking decisions on waste applications should have regard to policies in the Framework so far as relevant.

The Framework highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that there are three dimensions to sustainable development: economic, social and environmental.

Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) states that ‘ the overall objective of Government policy on waste, as set out in the strategy for sustainable development, is to protect human health and the environment by producing less waste and by using it as a resource wherever possible. By more sustainable waste management, moving the management of waste up the ‘waste hierarchy’ of prevention, preparing for reuse, recycling, other recovery, and disposing only as a last resort, the Government aims to break the link between economic growth and the environmental impact of waste.’

There is a demand for the safe and effective removal of asbestos from buildings and other construction projects. Publicity campaigns, in recent years, have increased awareness of the potential risks from exposure to asbestos and therefore, the handling and disposal of such material is becoming increasing specialised. This is also the case for recycling of gully waste which is classified as non-inert because it contains an degradable element. The non-inert “gully waste” would be processed through the existing washing plant thus separating inert waste from the degradable waste material. This separation creates a secondary

aggregate (an inert waste which the site is permitted to handle) which may be sold and re-used in other developments.

As noted earlier within this report, planning permission was granted on the 8<sup>th</sup> March 2012 for, in summary, the regularisation to an extension of the site and to bring the CLEUD area under one planning consent (Ref: ESS/58/11/BTE).

The need and principle was found acceptable, in summary, for the following reasons;

- The principle of inert waste recycling to generate secondary aggregates is supported by policies MLP5 and W7D as it reduces the need for primary aggregates, reduces the amount of inert waste which requires landfilling and would comply with the mineral supply hierarchy set out in Mineral Planning Statement 1;
- Although the development would represent 0.35ha loss of countryside it is considered that the additional landscaping coupled with the screening and boundary walling would provide an enhancement to area as it would create a soft landscaped barrier between the existing industrial nature of the already permitted site and the open countryside to the east. Therefore, the proposal is in compliance with Policy CS5, and;
- Having regard to the planning history of the site and the surrounding uses it is considered that the proposal is consistent with the aims of BDLP, MLP and WLP Policies as although the extended site would not strictly be within an industrial location, it is located adjacent to an existing inert waste recycling facility with onsite infrastructure and representing only a small extension to the already established use by 0.34ha.

Therefore, the need and principle of the site being used for a waste and mineral related development was discussed and found acceptable in relation to the WLP and MLP Policies.

With respect to Planning Permission ESS/58/11/BTE, the Framework had not been published during the consideration of that proposal therefore, the 3 roles of Sustainable Development as referenced within the Framework had not been directly taken into consideration. However, with regard to the economic role of the development would, create local employment onsite (25 in total). In addition the RMLP at paragraph 3.48 states, in summary, that the sustainable re-use and recycling of inert wastes (such as gully waste) makes an important contribution to the Essex economy, ensures a balanced supply of aggregates for the County and helps reduce the amount of re-usable 'materials' being wasted and disposed to landfill. The proposal though the separation/screening of inert waste/secondary aggregates from the degradable materials element of the gully waste would contribute to the economy role of sustainable development for the reasons noted above and the fact that the recycled materials could be turned into bricks and cement.

RMLP Policy S5 states inter-alia that the increased production and supply of recycled/secondary aggregates in the County is supported provided the site is located within a permanent waste management site.

It should be noted that the nature and location of the development (site size, hours of operation, vehicular movements etc.) are not proposed to change with the current submission. The issue for consideration through this application is the acceptability of the site accepting non-inert and hazardous waste.

The justification put forward by the applicant is that the handling of non-inert waste material relates to the washing, screening and recycling of gully waste. This material would be processed through the existing permitted washing plant which as noted above would separate out an inert aggregate from a degradable material. The secondary aggregate is a saleable commodity that would form part of the existing company stock pile of secondary aggregate. The separated degradable non-inert waste would be channelled directly into sealed containers for removal to a licensed operator for disposal.

Currently the applicant's customers may place asbestos waste within one of their skips or try to take the hazardous waste directly to the applicant's site. The current practice should this occur is that the waste is taken directly from source to a licensed operator for storage or disposal. However, this practice is creating extra transport miles and is resulting in the need to increase HGV movements in and out of the site. The proposal therefore, would prevent the middle journey for the operator, from the job location to the landfill site, as the material would be taken straight to the site and stored in the proposed container. This in turn would lead to environmental benefits through the reduction in CO2 emissions.

The applicant has highlighted within their application package that a separate container away from the general area of working would be located within the confines of the existing site for collection of small amounts of asbestos from existing customers.

The asbestos would be double bagged on receipt and then placed in the segregated container. The container would be marked 'Asbestos Only' and would be loaded onto HGV's, sealed and taken to a licensed operator for final disposal.

It should be noted that no processing, sorting or treatment of the asbestos is proposed merely the storage of asbestos for a temporary period within sealed containers before its final disposal at a licensed site.

The environmental and social roles of the proposal will be considered further in the report.

## B HAZARDOUS WASTE

The framework states, in summary, that the social role of sustainable development should support strong, vibrant and healthy communities, by providing creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

Concerns have been raised, in summary, on whether the applicant would adhere

to regulations controlling the storage and handling of asbestos, should not be located close to residents, residents health if the asbestos is handled incorrect and the asbestos fibres travel in the air and should be no mixing of hazardous (the asbestos) and non-hazardous waste.

Policy W5A of the WLP relates to hazardous waste management and highlights the importance of judging each application for facilities to manage difficult and special wastes on their merits against the criteria and policies stated in the development plan. It is considered that this proposal would offer a more sustainable waste management system than is currently used by this company for asbestos waste. The proposal would not increase or decrease the amount of asbestos waste which the companies customers currently deliver however, it would effectively reduce the amount of journeys carried out per operation (as noted above).

Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) acknowledges that well run and regulated waste management facilities operated in line with pollution control techniques and standards pose little risk to human health.

The site would be registered with the Environment Agency under the Hazardous Waste Regulations and would require a permit from the Environment Agency to operate. The site would be supervised by competent staff and run in accordance with the Hazardous Waste Regulations.

As noted earlier within this report the asbestos waste would only be accepted onsite if already bagged and sealed. In addition to this the operator would also double bag the waste and place within a segregated container on a concrete hardstanding. WLP policy W4B states that waste management will only be permitted where there would not be an unacceptable risk to the quality of surface and ground waters or of impediment to groundwater flow. Through the Environment Agency permitting the site following grant of planning permission ESS/58/11/BTE the operator was required to control surface water through the installation of a separate drainage system around the site, which has been installed. This includes surface gulley drains which lead to an underground tank with sump pump. The runoff would then be pumped to a ground level collection drum/butt. The levels within the gulley and underground tank are inspected and monitored and if contaminate found to be present, the area would be cleaned and the water/slurry processed as hazardous waste. The Environment Agency has not raised any concerns that the activities may cause pollution or an environmental health risk and therefore it is considered that this proposal is in compliance with policy W4B.

It is therefore considered that this proposal would not pose an increased risk to health and that it is line with the aims and objectives of PPS10 and WLP Policy W5A.

## C IMPACT UPON AMENITY

WLP policy W10E states that, inter-alia, developments will only be permitted

where satisfactory provision is made in respect of the amenity of neighbouring occupiers, particularly from noise, smell and dust. Similarly BLP policy RLP 36 details that planning permission will not be granted for new development, extensions and changes of use, which would have an unacceptable impact on the surrounding area as a result of noise, smell, dust, health and safety, visual impact, traffic generation, contamination to air, land or water, nature conservation or light pollution.

BLP policy RLP 62 furthermore states that planning permission will not be granted for development which could give rise to polluting emissions to land, air and water, or harm to nearby residents including noise, smell, fumes, vibration or other similar consequences unless adequate preventative measures have been taken to ensure there would be no harm caused to land use. Specifically in relation to waste reprocessing facilities BLP policy RLP 75 goes on detailing that proposals involving waste recovery will be permitted in employment areas, subject to:

- there being no unacceptable adverse impact on adjoining uses by reason of noise, smell, dust or other airborne pollutants; and
- there being no adverse impact on the surrounding road network either in terms of road safety or capacity.

Concerns have been raised that the acceptance of non-inert (gully waste) and hazardous waste (asbestos) would have a negative impact upon the amenity of residents through odour, noise, dust, highways and landscape. The following section seeks to assess these potential impacts as part of the Frameworks environmental role of sustainable development.

#### Noise, Dust and Odour Emissions

With regard to noise, dust and odour, the applicant holds an Environmental Permit which requires these aspects to be strictly controlled through the permitting regime. The applicant when seeking to gain a permit provided a Noise and Air Quality Assessment along with an odour management statement to the Environment Agency. The Environment Agency is responsible for undertaking monitoring of the site in relation to these aspects. As part of this application the Environment Agency has raised no objection and should planning permission be granted the conditions attached to planning permission ESS/58/11/BTE could re-imposed.

Again it is important to note the BDC Environmental Health Team raised no objection to the proposal on noise, dust or odour grounds.

#### Traffic Impact

WLP policy W4C details that access for waste management sites will normally be by short length of existing road to the main highway network. Where access to the main highway network is not feasible, access onto another road before gaining access onto the network may be accepted if, in the opinion of the WPA having regard to the scale of the development, the capacity of the road is adequate and there would be no undue impact on road safety or the environment.

BCS policy CS7 aims to promote accessibility for all and details an intention to work with partners to improve accessibility, to reduce congestion and reduce the impact of development upon climate change. Furthermore BLP policy RLP 54, replicated in the Framework at Paragraph 32, requires all proposals for major new development to be accompanied by a Transport Assessment in order to determine the effect of the proposal on traffic congestion, public transport, cycling and walking.

Objections have been raised that the proposal would have a negative impact upon the surrounding highway network. It should be noted that the current application (ref: ESS/50/13/BTE) does not propose to amend the highway movements, access arrangements nor the type of vehicles entering or leaving the site approved under planning permission ESS/58/11/BTE. It is also important to note that the Highway Authority has raised no objection to the proposal on highway safety or capacity grounds.

Therefore, in consideration of the consultation responses received, the site history (CLEUD) and the fall-back planning position (the scheme already permitted under ESS/58/11/BTE) it is considered that the proposal would not have an undue impact of highway safety or efficiency. Accordingly it is deemed that the proposal complies with WLP policy W4C, BLP policy RLP 54 and BCS policy CS7.

#### Amenity Conclusion

Therefore, the proposal would not have any additional impact on the air quality, dust, noise, odour or traffic than that previously assessed and found acceptable. Furthermore, the proposal would not involve any alteration to the hours of operation, or the number of vehicles trips to the site, which would all have a greater environmental impact, particularly on the neighbouring properties. As such the proposal is considered to comply with WLP policy W10E, BLP policies RLP 54, BLP 62 and RLP 63 and BCS Policy CS7.

## **8. CONCLUSION**

In conclusion, the principle and need for this development being located at Batemans Farm has been accepted through the grant of planning permission ESS/58/11/BTE. Nevertheless, it is still important to assess whether or not the proposed acceptance of non-inert and hazardous waste at the site would be acceptable.

It is considered that the proposed acceptance of non-inert waste and hazardous waste would not have a detrimental impact upon the amenity of the area. The proposals have been sought due to the applicant seeking year round operational efficiency of delivery of hazardous waste to the site, which in turn aids the applicant in reducing HGV miles travelled. Furthermore, the acceptance and processing of non-inert waste, which in this instance is gully waste would enable the separation of a secondary aggregate from a degradable material thus reducing the amount of material sent to landfill in accordance with PPS10 and the movement of waste up the hierarchy.



The economic, social and environmental strands of the Framework are considered to have been achieved equally and the waste stream amendments would be considered to constitute 'sustainable development' in accordance with the Framework.

Furthermore, the WLP, BLP and BCS policies relied upon in this report are considered to be consistent with the Framework and therefore the proposal is considered acceptable subject to the imposition of appropriate conditions.

## **9. RECOMMENDED**

That planning permission be **granted** subject to conditions covering the following matters:

1. COM2 Commencement;
2. COM3 Compliance with submitted details;
3. HOUR1 Hours of Working;
4. HIGH4 Prevention of Mud and Debris on Highway;
5. HIGH5 Vehicle Movements Limits;
6. HIGH6 Lorry Sheeting;
7. VIS2 Stockpile Heights;
8. VIS3 Machinery Operating at Ground Level;
9. LGHT1 Fixed Lighting Restrictions;
10. LAND1 Landscape Scheme submitted within 3 months;
11. LAND2 Replacement Landscaping;
12. WAST1 Waste Type Restriction;
13. WAST4 Waste Handled in Designated Areas

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## **BACKGROUND PAPERS**

Consultation replies

Representations

Ref: P/DM/Paul Calder/ESS/58/11/BTE

Ref: P/DM/Paul Calder/ESS/50/13/BTE

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## **THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010**

The proposed development would not be located to a European site.

Therefore, it is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required.

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**EQUALITIES IMPACT ASSESSMENT:** The report only concerns the determination of an application for planning permission and takes into account any equalities implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

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## **STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER**

In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the Framework, as set out in the Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012.

### **LOCAL MEMBER NOTIFICATION**

BRAINTREE– Witham

CHELMSFORD – Broomfield and Writtle

## Appendix 1

POLICY	POLICY WORDING	CONFORMITY WITH THE FRAMEWORK
<b>Essex and Southend Waste Local Plan 2001</b>		
W3A	<p>The WPA will:</p> <ol style="list-style-type: none"> <li>1. In determining planning applications and in all consideration of waste management, proposals have regard to the following principles: <ul style="list-style-type: none"> <li>• Consistency with the goals and principles of sustainable development;</li> <li>• Whether the proposal represents the best practicable environmental option for the particular waste stream and at that location;</li> <li>• Whether the proposal would conflict with other options further up the waste hierarchy;</li> <li>• Conformity with the proximity principle.</li> </ul> </li> <li>2. In considering proposals for managing waste and in working with the WDAs, WCAs and industrial and commercial organisations, promote waste reduction, re-use of waste, waste recycling/composting, energy recovery from waste and waste disposal in that order of priority.</li> <li>3. Identify specific locations and areas of search for waste management facilities, planning criteria for the location of additional facilities, and existing and potential landfill sites, which together enable adequate provision to be made for Essex, Southend and regional waste management needs as defined in policies W3B and W3C.</li> </ol>	<p>Paragraph 6 of the Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development.</p> <p>PPS 10 supersedes 'BPEO'.</p> <p>PPS 10 advocates the movement of the management of waste up the waste hierarchy in order to break the link between economic growth and the environmental impact of waste.</p> <p>One of the key planning objectives is also to help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations.</p> <p>See reasoning for Policy W8A.</p> <p>Therefore, Policy W3A is considered to be consistent with the Framework and PPS 10</p>
W3C	<p>Subject to policy W3B, in the case of landfill and to policy W5A in the case of special wastes, significant waste management developments (with a capacity over 25,000 tonnes per annum) will only be permitted when a need for the facility (in accordance with</p>	<p>Paragraph 3 of PPS 10 highlights the key planning objectives for all waste planning authorities (WPA). WPA's should, to the extent appropriate to their responsibilities, prepare and deliver planning strategies one of which is to help implement the</p>

	<p>the principles established in policy W3A) has been demonstrated for waste arising in Essex and Southend. In the case of non-landfill proposals with an annual capacity over 50,000 tonnes per annum, restrictions will be imposed, as part of any planning permission granted, to restrict the source of waste to that arising in the Plan area. Exceptions may be made in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the proposal would achieve other benefits that would outweigh any harm caused;</li> <li>• Where meeting a cross-boundary need would satisfy the proximity principle and be mutually acceptable to both WPA5;</li> <li>• In the case of landfill, where it is shown to be necessary to achieve satisfactory restoration.</li> </ul>	<p>national waste strategy, and supporting targets, are consistent with obligations required under European legislation and support and complement other guidance and legal controls such as those set out in the Waste Management Licensing Regulations 1994.</p> <p>The concept of the proximity principle has been superseded by the objective of PPS 10 to enable waste to be disposed of in one of the nearest appropriate installations.</p> <p>Therefore, as Policy W3C is concerned with identifying the amount of waste treated and it's source the policy is considered consistent with the requirements of PPS 10</p>
W4A	<p>Waste management development will only be permitted where:</p> <ul style="list-style-type: none"> <li>• There would not be an unacceptable risk of flooding on site or elsewhere as a result of impediment to the flow or storage of surface water;</li> <li>• There would not be an adverse effect on the water environment as a result of surface water run-off;</li> <li>• Existing and proposed flood defences are protected and there is no interference with the ability of responsible bodies to carry out flood defence works and maintenance.</li> </ul>	<p>Paragraph 99 of the Framework states that 'Local Plans should take account of climate change over the longer term, including factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure'. In addition Annex E of PPS 10 highlights at section a. protection of water resources that 'Considerations will include the proximity of vulnerable surface and groundwater. For landfill or land-raising, geological conditions and the behaviour of surface water and groundwater should be assessed both for the site under consideration and the surrounding area. The suitability of locations subject to flooding will also need particular care'.</p>

		Therefore, as policy W4A seeks to only permit development that would not have an adverse impact upon the local environment through flooding and seeks developments to make adequate provision for surface water run-off the policy is in conformity with PPS 10 and the Framework.
W4B	Waste management development will only be permitted where there would not be an unacceptable risk to the quality of surface and groundwaters or of impediment to groundwater flow.	See above.
W4C	<ol style="list-style-type: none"> <li>1. Access for waste management sites will normally be by a short length of existing road to the main highway network consisting of regional routes and county/urban distributors identified in the Structure Plan, via a suitable existing junction, improved if required, to the satisfaction of the highway authority.</li> <li>2. Exceptionally, proposals for new access direct to the main highway network may be accepted where no opportunity exists for using a suitable existing access or junction, and where it can be constructed in accordance with the County Council's highway standards.</li> <li>3. Where access to the main highway network is not feasible, access onto another road before gaining access onto the network may be accepted if, in the opinion of the WPA having regard to the scale of development, the capacity of the road is adequate and there would be no undue impact on road safety or the environment.</li> <li>4. Proposals for rail or water transport of waste will be encouraged, subject to compliance with other policies of this plan.</li> </ol>	<p>Paragraph 21 (i) of PPS 10 highlights that when assessing the suitability of development the capacity of existing and potential transport infrastructure to support the sustainable movement of waste, and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport.</p> <p>Furthermore, Paragraph 34 of the Framework states that 'Decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised'.</p> <p>Policy W4C is in conformity with Paragraph 34 in that it seeks to locate development within areas that can accommodate the level of traffic proposed. In addition the policy seeks to assess the existing road networks therefore, being in accordance with the Framework and PPS 10.</p>
W6A	The WPAs will seek to work with WDAS/WCAS to support and promote public, private and voluntary sector initiatives to reduce, re-use and recycle	PPS 10 at Paragraph 3 highlights the key planning objectives for waste management development. Two of the objectives are as follows;

	<p>waste arising's in an environmentally acceptable manner in accordance with the policies within this Plan.</p>	<ul style="list-style-type: none"> <li>• Help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for;</li> <li>• Provide a Framework in which communities take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities.</li> </ul> <p>Therefore, policy W6A is in conformity with the requirements of PPS 10.</p>
W7E	<p>To facilitate the efficient collection and recovery of materials from the waste stream, in accordance with policy W3A, the WPAs will seek to work with the WDAs/WCAs to facilitate the provision of:</p> <ul style="list-style-type: none"> <li>• Development associated with the source separation of wastes;</li> <li>• Material recovery facilities (MRF's);</li> <li>• Waste recycling centres;</li> <li>• Civic amenity sites;</li> <li>• Bulking-up facilities and waste transfer stations.</li> </ul> <p>Proposals for such development will be supported at the following locations:</p> <ul style="list-style-type: none"> <li>• The waste management locations identified in Schedule 1 (subject to policy W8A);</li> <li>• Other locations (subject to policies W8B and W8C);</li> <li>• In association with other waste management development;</li> <li>• Small scale facilities may be permitted at current landfill sites, provided the development does not unduly prejudice the agreed restoration timescale for the site and the use ceases prior to the permitted completion date of the site (unless an extension of time to retain such facilities is permitted).</li> </ul> <p>Provided the development complies</p>	<p>See explanation notes for Policy W3C, W8A and W8B as these are relevant and demonstrate conformity with the Framework and PPS 10.</p>

	with other relevant policies of this plan.	
W8A	<p>Waste management facilities will be permitted at the locations shown in Schedule 1 provided all of the following criteria, where relevant, are complied with:</p> <ul style="list-style-type: none"> <li>• There is a need for the facility to manage waste arising in Essex and Southend (subject to policy W3C);</li> <li>• The proposal represents the Best Practicable Environmental Option (BPEO) for the particular waste stream, having regard to any alternative options further up the waste hierarchy;</li> <li>• The development complies with other relevant policies of this Plan, including the policy/ies in Chapter 7 for the type(s) of facility proposed;</li> <li>• Adequate road access is provided in accordance with policy W4C. Access by rail or water will be supported if practicable;</li> <li>• Buildings and structures are of a high standard of design, with landscaping and screening provided as necessary; and</li> <li>• Integrated schemes for recycling, composting, materials recovery and energy recovery from waste will be supported, where this is shown to provide benefits in the management of waste which would not otherwise be obtained.</li> </ul>	<p>PPS 10 at Paragraph 17 identifies that 'Waste planning authorities should identify in development plan documents sites and areas suitable for new or enhanced waste management facilities for the waste management needs of their areas. Waste planning authorities should in particular:</p> <ul style="list-style-type: none"> <li>– allocate sites to support the pattern of waste management facilities set out in the RSS</li> </ul> <p>in accordance with the broad locations identified in the RSS; and,</p> <ul style="list-style-type: none"> <li>– allocate sites and areas suitable for new or enhanced waste management facilities to support the apportionment set out in the RSS.</li> </ul> <p>The WPA has identified strategic sites within the Waste Local Plan under policy W8A which seek to support the pattern of waste management and that are suitable for new or enhanced strategic waste management facilities. PPS 10 requires that needs for sustainable waste management are met and those identified by the JMWMS supersede those municipal waste management needs identified in the Waste Local Plan. PPS 10 requires that sites and areas suitable for new or enhanced waste management facilities for the waste management needs of the area is assessed. In this respect more weight should be applied to PPS 10 in respect of meeting waste management needs than Policy W8A.</p> <p>See also W8B.</p>
W8B	<p>Waste management facilities (except landfill to which policies W9A and W9B apply) will be permitted at locations other than those identified in this plan, provided all of the criteria of policy W8A are complied with where relevant, at the following types of location:</p> <ul style="list-style-type: none"> <li>• Existing general industrial areas;</li> <li>• Areas allocated for general</li> </ul>	<p>Policy W8B is concerned with identifying locations for sites that have not been identified within the Plan as preferred sites of waste related developments. By setting a criteria for non-preferred sites this allows for the protection of the natural environment in conformity with the third strand of the three dimensions of sustainable</p>

	<p>industrial use in an adopted local plan;</p> <ul style="list-style-type: none"> <li>• Employment areas (existing or allocated) not falling into the above categories, or existing waste management sites, or areas of degraded, contaminated or derelict land where it is shown that the proposed facility would not be detrimental to the amenity of any nearby residential area.</li> </ul> <p>Large-scale waste management development (of the order of 50,000 tonnes per annum capacity or more, combined in the case of an integrated facility) will not be permitted at such non- identified locations unless it is shown that the locations identified in Schedule 1 are less suitable or not available for the particular waste stream(s) which the proposal would serve.</p>	<p>development. Additionally, in conformity with Paragraph 17 of the Framework, the policy contributes to the conservation and enhancement of the natural environment. The Framework goes on to state that 'Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework'. Nonetheless, Paragraph 17 of the Framework requires objectively assessed needs to be met and whilst the environmental protection approach W8B is consistent with the Framework/PPS 10, the policy also relies solely on the Schedule 1 sites identified in W8A and is therefore out of date in this respect.</p>
W10A	<p>When granting planning permission for waste management facilities, the WPA will impose conditions and/or enter into legal agreements as appropriate to ensure that the site is operated in a manner acceptable to the WPA and that the development is undertaken in accordance with the approved details.</p>	<p>PPS 10 states that 'It should not be necessary to use planning conditions to control the pollution aspects of a waste management facility where the facility requires a permit from the pollution control authority. In some cases, however, it may be appropriate to use planning conditions to control other aspects of the development. For example, planning conditions could be used in respect of transport modes, the hours of operation where these may have an impact on neighbouring land use, landscaping, plant and buildings, the timescale of the operations, and impacts such as noise, vibrations, odour, and dust from certain phases of the development such as demolition and construction'.</p> <p>Furthermore, Paragraph 203 of the Framework states that 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not</p>



		<p>possible to address unacceptable impacts through a planning condition’.</p> <p>Policy W10A inter alia only seeks to impose conditions and/or enter into legal agreements when appropriate to ensure that the site is operated in an acceptable manner. Therefore, the policy is in accordance with the requirements of the Framework and PPS 10.</p>
W10E	<p>Waste management development, including landfill, will be permitted where satisfactory provision is made in respect of the following criteria, provided the development complies with other policies of this plan:</p> <ol style="list-style-type: none"> <li>1. The effect of the development on the amenity of neighbouring occupiers, particularly from noise, smell, dust and other potential pollutants (the factors listed in Paragraph 10.12 will be taken into account);</li> <li>2. The effect of the development on the landscape and the countryside, particularly in the AONB, the community forest and areas with special landscape designations;</li> <li>3. The impact of road traffic generated by the development on the highway network (see also policy W4C);</li> <li>4. The availability of different transport modes;</li> <li>5. The loss of land of agricultural grades 1, 2 or 3a;</li> <li>6. The effect of the development on historic and archaeological sites;</li> <li>7. The availability of adequate water supplies and the effect of the development on land drainage;</li> <li>8. The effect of the development on nature conservation, particularly on or near SSSI or land with other ecological or wildlife designations; and</li> <li>9. In the Metropolitan Green Belt, the effect of the development on the purposes of the Green Belt.</li> </ol>	<p>Policy W10E is in conformity with the Framework in that the policy is concerned with the protection of the environment and plays a pivotal role for the County Council in ensuring the protection and enhancement of the natural, built and historic environment. The policy therefore, is linked to the third dimension of sustainable development in the meaning of the Framework.</p>
W10F	Where appropriate the WPA will	In addition Paragraph 123 of the

	<p>impose a condition restricting hours of operation on waste management facilities having regard to local amenity and the nature of the operation.</p>	<p>Framework states that planning decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new developments, including through the use of conditions. Furthermore, Paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.</p> <p>It is considered that as policy W10F is concerned with the protection of amenity and seeks to impose conditions to minimise this policy W10F is in conformity with the requirements of the Framework.</p> <p>Also see above regarding PPS 10 and conditions.</p>
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**DR/61/13**

Committee: DEVELOPMENT & REGULATION

Date: 13 December 2013

# **INFORMATION ITEM - APPEAL DECISION**

Proposal: **Retrospective application for the use of the site as a material storage, recycling and distribution facility – The imposition of condition 7 (Bridleway improvement works)**

Location: **Codham Hall Farm, Codham Hall Lane, Great Warley, Brentwood, Essex**

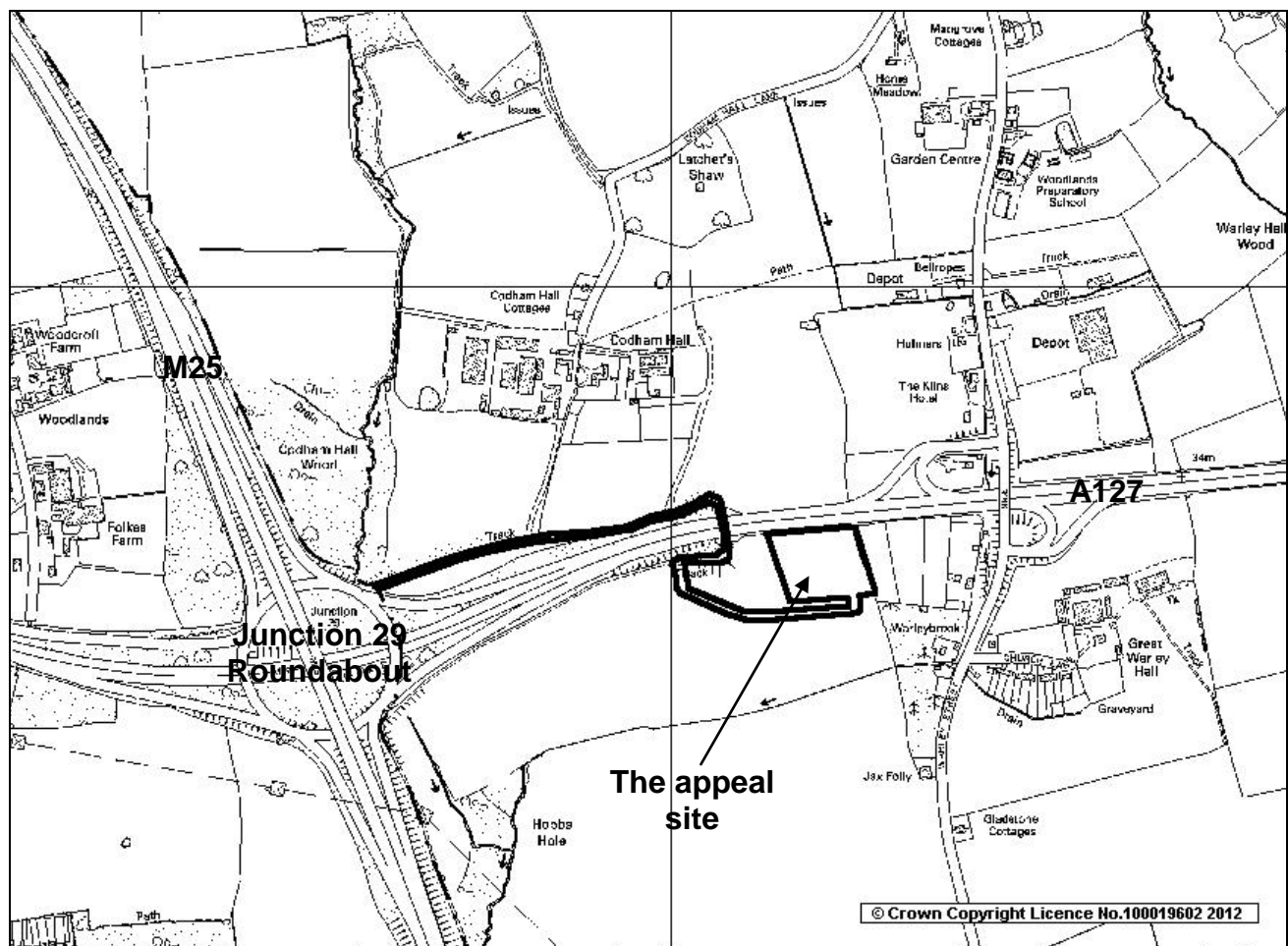
ECC Reference: **ESS/40/12/BRW**

Planning Inspectorate Reference: **APP/Z1585/A/13/2193642**

Applicant/Appellant: **Forefront Utilities Ltd.**

Report by Director for Operations, Environment and Economy

Enquiries to: Tom McCarthy Tel: 01245 437507



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## **1. BACKGROUND AND SITE**

Codham Hall Farm is accessed from a haul road (Codham Hall Lane) off the M25 / A127 Junction 29 roundabout. The site and locality is designated as Metropolitan Green Belt and part of the haul road forms Bridleway 183 (northern side of the A127 and the bridge crossing over the A127).

The appellant has a contract to replace all the gas mains in South Essex (from Southend-on-Sea to East London) and all material (excavated to expose the gas main) is taken back to the site, at Codham Hall Farm, for primary sorting and grading before, when appropriate, being re-used. The use of the site for this purpose, a material storage, recycling and distribution facility, started in 2010 with the operator believing the use was permitted under a Certificate of Lawfulness (CLEUD) which had been issued for the site. This Certificate, issued by Brentwood Borough Council, however only permitted storage and distribution (Use Class B8). The appellant considered that this did encompass the entire process the company undertook however as the excavated material (handled on site) is classed as 'waste' and the material is in-part processed on site, the company needed an Environmental Permit. The Environment Agency did not consider that this existing CLEUD covered all operations and therefore refused to issue a Permit stating that a specific waste permission was required. Duly a planning application to account for all activities undertaken on site was submitted by ECC, as the Waste Planning Authority (WPA), on 25th May 2012.

This retrospective application was granted temporary planning permission by the WPA on 30 August 2012. Eight conditions were attached to the permission including one condition, agreed to prior with the appellant, requiring improvement works to the bridge parapet in the interests of improving the Bridleway provision.

Condition 7 specifically stated:

"Within six months of the date of this consent, details of the proposed improvement works to the bridge parapet shall be submitted to and approved in writing by the Waste Planning Authority. Such details are to include scale drawing of the proposed works together with details of construction and material finishes. Within a further six months, all works permitted shall be implemented in accordance with the approved plans."

## **2. CURRENT POSITION**

An appeal was lodged by the appellant against the imposition of condition 7 as:

- a) it was considered the condition could not be enforced against a freeholder or those (as in this case) deriving title under them, and;
- b) the condition was not fair and reasonable to the development. It was considered the condition as such failed to meet the six tests and was ultra-vires to the permission.

The WPA maintained as part of the statement submitted for the appeal that it had not acted unreasonably producing evidence showing the appellant agreed (even

suggested) the condition prior to imposition. Furthermore ECC, as the WPA, maintained active discussions with the appellant, since concerns about complying with the condition were raised, actively seeking alternative solutions.

The appeal was determined by way of written representations and the Inspector who was appointed by the Secretary of State for Communities and Local Government to determine the case. His decision was issued on 13 November 2013 and this is attached at Appendix 1.

The Inspector concluded, as part of the determination, that he had not been persuaded that condition 7 was necessary or could be complied with by the appellant. Going on further the Inspector states, as detailed in Circular 11/95, that conditions must be fair, reasonable and practicable and to this end they must comply with the six tests. It is not considered that the condition, in view of the above, meets the tests - in particular being necessary (the first test) and enforceable (the fourth test) and therefore the appeal was allowed and the condition deleted.

## **LOCAL MEMBER NOTIFICATION**

BRENTWOOD – Brentwood South





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## Appeal Decision

Accompanied site visit made on 22 October 2013

by **P E Dobsen MA (Oxon) DipTP FRGS**

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

Decision date: 13 November 2013

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**Appeal Ref: APP/Z1585/A/13/2193642**

**Codham Hall Farm, Codham Hall Lane, Great Warley, Brentwood, Essex  
CM13 3JT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Forefront Utilities Ltd. against the decision of Essex County Council.
  - The application (Ref: ESS/40/12/BRW), dated 14 May 2012, was approved on 30 August 2012 and planning permission was granted subject to conditions.
  - The development permitted is "retrospective application for the use of the site as a material storage, recycling and distribution facility".
  - The condition in dispute is No. 7 which states that: "Within six months of the date of this consent, details of the proposed improvement works to the bridge parapet shall be submitted to and approved in writing by the Waste Planning Authority. Such details are to include scale drawings of the proposed works together with details of construction and material finishes. Within a further six months, all works permitted shall be implemented in accordance with the approved plans".
  - The reason given for the condition is: "In the interest of safety of all users of both the Bridleway and the site access road and to comply with WLP policies W4C and W10G and BLP policies CP1 and T4".
- 

### Decision

1. The appeal is allowed and the planning permission Ref: ESS/40/12/BRW for the use of the site as a material storage, recycling and distribution facility, at Codham Hall Farm, Codham Hall Lane, Great Warley, Brentwood, Essex CM13 3JT granted on 30 August 2012 by Essex County Council, is varied by the deletion of condition No. 7.

### Main Issue

2. The main issue is whether the disputed condition is necessary to the planning permission and to meet its own stated planning purpose, and whether it complies with all the other tests for conditions in the Annex to Circular 11/95 *The Use of Conditions in Planning Permissions*.

### Reasons

3. Condition No. 7 refers specifically to a vehicular and pedestrian/bridleway bridge over the A127 which is located about 0.5 km. to the east of that strategic road's junction<sup>1</sup> with the M25. It lies within the open countryside east of Upminster and south of the village of Great Warley.

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<sup>1</sup> Junction 29





4. The locality falls within the Metropolitan Green Belt, but it is agreed that no Green Belt planning issues arise in the appeal.
5. I understand that the bridge is regularly used by HGVs and utility vehicles associated with the materials storage, recycling and distribution facility which was granted conditional, retrospective planning permission in 2012 (as referenced above). That facility lies a short distance to the south east of the bridge, and at a lower level, and is adjoined to the south by the farmed countryside. At the time of my visit, it appeared to be fully operational, although I saw very few vehicles and no other users on the bridge itself.
6. Apart from its vehicular traffic (including that from Codham Hall Farm), the bridge can also be used by pedestrians, and by horse riders following a lengthy bridle path (No. 183) which traverses the countryside both to the north and south of the A127.
7. The bridge was built of steel and concrete at about the same time as the M25/A127 junction. Its metalled carriageway is almost flat where it crosses the A127, whose busy carriageway lies several metres below it. Its approaches slope down towards the storage (etc.) facility on the south side of the A127, and towards Codham Hall Farm (and eventually, Great Warley) on its north side. The bridge has fairly sturdy, metallic mesh parapets on both sides, about 2m. in height, through which the traffic on the A127 can be seen travelling in both easterly and westerly directions.
8. From my inspection at the site visit, the upper parts of the bridge do not appear to have been significantly modified since it was first built; thus no identifiable improvement works to its parapet(s) have been carried out. Nor, as far as I am aware have any detailed plans/specifications for such works ever been submitted by the appellant to Essex County Council (ECC) as the local planning authority. Thus, given the timings specified in condition 7, the condition is time-expired and could not now be complied with in any event.
9. The condition was imposed by ECC in order to seek compliance with general local plan<sup>2</sup> policies aimed at securing highways safety and access to the countryside<sup>3</sup>. In that, ECC was supported by the Essex Bridleways Association. But, according to the appellant there is a further, serious practical difficulty or impediment in that it is not clear from the background correspondence who (i.e. what party) owns the bridge, if not Essex County Council itself, and/or who is responsible for its maintenance in a good and safe condition, and/or for making any improvements to it. The documentation suggests that the County Council is in fact the owner of the bridge.
10. Nor is it clear to me why any such improvements to it might even be thought necessary or desirable. In addition, it is also unclear what they might entail, not merely in terms of physical works to modify or replace the bridge parapets, but also in terms of possible road closures, and temporary traffic diversions etc. during their implementation. The latter, too, would not be within the appellant's control. In all the circumstances, I am not persuaded that condition No. 7 is necessary, nor that it could be (or could have been) complied with by the appellant.

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<sup>2</sup> In the Essex and Southend Waste Local Plan 2001 (WLP) and the Brentwood Replacement Local Plan 2005 (BLP)

<sup>3</sup> Both of which are supported in general terms by the National Planning Policy Framework



11. Circular 11/95 states (in its para. 2) that conditions must be fair, reasonable and practicable. To that end, they must comply with all of the six tests for conditions set out in the annex, which include the first test, that of being necessary, and the fourth test, that of being enforceable. It seems to me that the disputed condition No. 7 does not clearly meet either test. Therefore I allow the appeal, and delete the condition.
12. I have considered all the other detailed matters mentioned in the written representations, some of them concerning the history and operations of the recycling (etc) facility, but there are none which alter or outweigh my conclusions on the main issue in the appeal.

*Paul Dobsen*

INSPECTOR



**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**

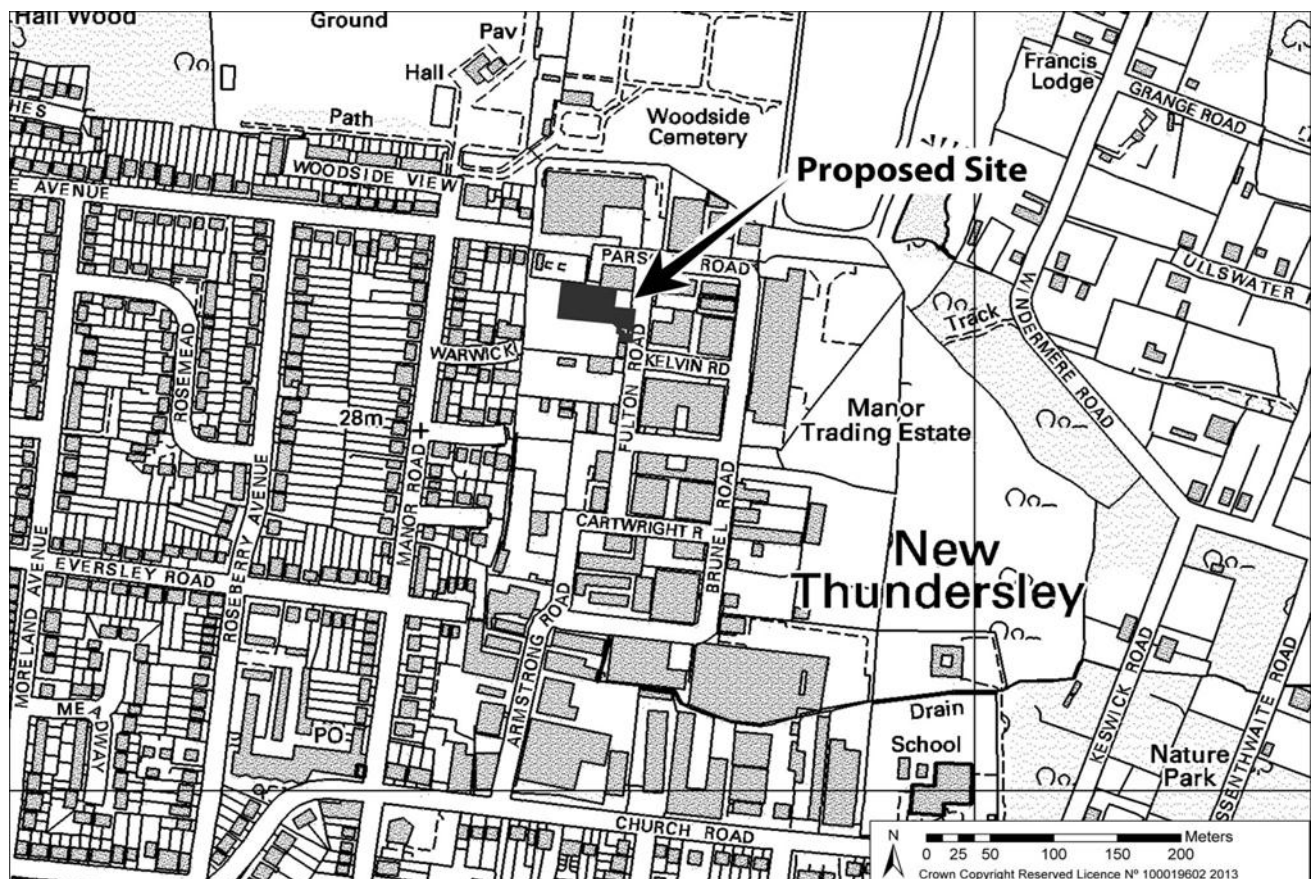
ECC Reference: **ESS/76/12/CPT**

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

Applicant/Appellant: **Tyre UK**

Report by Director for Operations, Environment and Economy

Enquiries to: Glenn Shaw 01245 437117





## **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.

### 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

**DR/63/13**

Committee DEVELOPMENT &amp; REGULATION

date 13 December 2013

**INFORMATION ITEM****Applications, Enforcement and Appeals Statistics**

Report by Head of Planning, Environment & Economic Growth  
Sustainable, Environment and Enterprise

Enquiries to Tim Simpson – tel: 01245 437031

or email: [tim.simpson2@essex.gov.uk](mailto:tim.simpson2@essex.gov.uk)

**1. PURPOSE OF THE ITEM**

To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee.

**BACKGROUND INFORMATION**

None.

Ref: P/DM/Tim Simpson/

**MEMBER NOTIFICATION**

Countywide.

**SCHEDULE****Minerals and Waste Planning Applications**

No. Pending at the end of previous month

**22**

No. Decisions issued in the month

**3**

No. Decisions issued this financial year

**31**

Overall % in 13 weeks this financial year

**68%**

% on target this financial year (CPS returns count)	52%
Nº Delegated Decisions issued in the month	1
Nº Section 106 Agreements Pending	1
<u>County Council Applications</u>	
Nº. Pending at the end of previous month	5
Nº. Decisions issued in the month	4
Nº. Decisions issued this financial year	36
Nº of Major Applications determined (13 weeks allowed)	0
Nº of Major Applications determined within the 13 weeks allowed	0
Nº Delegated Decisions issued in the month	3
% age in 8 weeks this financial year (Target 70%)	83%
<u>All Applications</u>	
Nº. Delegated Decisions issued last month	4
Nº. Committee determined applications issued last month	3
Nº. of Submission of Details dealt with this financial year	137
Nº. of Submission of Details Pending	77
Nº. of referrals to Secretary of State under delegated powers	1
<u>Appeals</u>	
Nº. of appeals outstanding at end of last month	0
<u>Enforcement</u>	
Nº. of active cases at end of last quarter	20
Nº. of cases cleared last quarter	7



Nº. of enforcement notices issued last month	0
Nº. of breach of condition notices issued last month	0
Nº. of planning contravention notices issued last month	0
Nº. of Temporary Stop Notices Issued last month	0
Nº. of Stop Notices Issued last month	0

