

DR/37/14

Committee DEVELOPMENT & REGULATION

Date 26 September 2014

MINERALS AND WASTE DEVELOPMENT

Proposal: **Change of use to waste recycling and materials recovery facility and erection of buildings, containment walls, hardstanding, roadways, fencing, parking, storage areas and ancillary development (part retrospective)**

Location: **Land to the south of Terminus Drive, Pitsea Hall Lane, Pitsea, SS16 4UH**

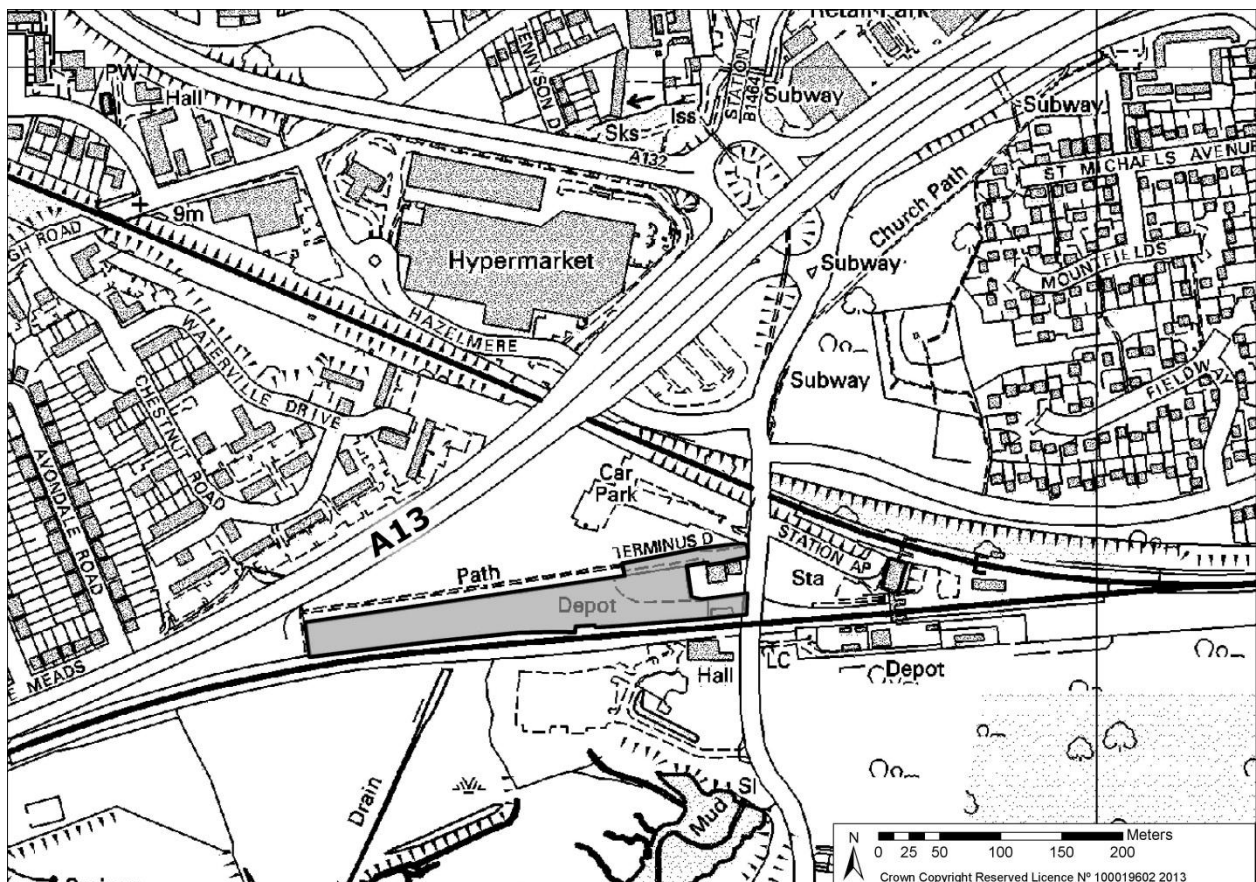
Ref: **ESS/69/12/BAS**

Applicant: **Heard Environmental**

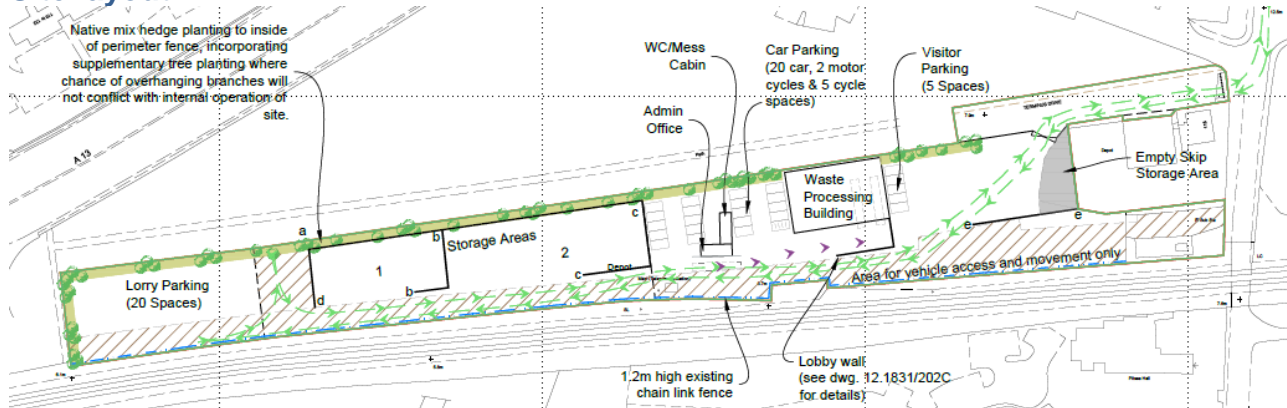
Report by Director of Operations: Environment and Economy

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The full application can be viewed at www.essex.gov.uk/viewplanning



Site layout



1. BACKGROUND TO APPLICATION

This application was previously considered by the Committee in May 2013, where it was resolved to grant planning permission subject to conditions. Planning permission was issued in June 2013, however, the decision was subject of a Judicial Review (JR) and ECC agreed to quashing of the planning permission. Details of this JR were provided to the committee in February 2014 (see Appendix A). The quashing of the decision left the WPA to re-consider the application. The applicant amended the scheme, namely proposed a lobby to the waste transfer building and provided additional information to support the application. The revised application was subject to consultation in accordance with the Council's Statement of Community Involvement and was reconsidered by the Committee in June 2014 with a resolution to grant permission subject to conditions.

Since the June resolution, a 'letter before claim' has been received from the legal representatives of the owners of Cromwell Manor, a grade II listed building to the south of the application site, signalling an intention to apply to the court for a second Judicial Review (JR) challenging the resolution of the June Committee. A formal planning permission has, to date, not been issued. Having taken external legal advice, the view was taken that the report to the June Committee did not fully assess the effects of the impact of the proposal on Cromwell Manor as a heritage asset. Accordingly, the application has been re-considered in light of recent case law in relation to the discharge of the duty in S.66(1) of the Listed Buildings and Conservation Areas Act 1990 (as amended) and this is considered further in the report. This report sets out the results of that reconsideration and supersedes the analysis in the earlier reports.

The opportunity has also been taken to review the approach taken to the other issues raised in the 'letter before claim'. This report therefore presents a fresh analysis of all relevant issues and entirely supersedes the earlier reports. The application is now being returned to Committee for redetermination. Members are advised to put the resolution of June 2014 to one side and to approach the determination of the application completely afresh, without regard to the earlier

decision. The earlier decision of May 2013 was quashed by the JR and so matters relating to that decision should not be taken into account either. Members should approach the decision now to be made in the light of the current circumstances and, if in attendance previously, should put out of their mind the discussions and debate that took place at earlier meetings.

It should be noted that in the time between the issuing of the original decision notice and the subsequent quashing of the decision, following the first JR, the applicant erected the waste transfer building, however the building has not been brought into use. In addition on the 2 September 2014 it was noted that the operator has also commenced erection of the lobby to the building and in addition located a single storey portable style building the east of the main building, the later not forming part of the application details. The office and mess modular buildings are also on site along with the weighbridge and are in use. The western end of the site has and is being used for the storage and sorting of wood waste, although this activity is not considered lawful and therefore is not material for the consideration of the application. Should permission not be granted, further consideration of the options for dealing with the building (which does not at present benefit from planning permission) would need to be considered. Members should not approach the current decision on the basis that the building will inevitably remain. Its presence, as a matter of fact, does however assist in forming judgments about the visual impact of the proposed development.

The applicant is currently operating a waste management business in Harvey Road, on the Burnt Mill Industrial Estate, Basildon, which was granted planning permission by Basildon Borough Council most recently in 1988 (BAS/1429/88). This application was for the change of use from storage yard to non-toxic waste handling facilities. The planning application proposed a throughput of 25,000 tonnes per annum. Data from the EA for the period 2009 to 2012 indicates that the throughput has been approximately 7,800 tonnes per annum. On the Burnt Mills site, the applicant imports demolition, site clearance and ground works waste, where it is sorted and exported.

2. SITE

The site is linear piece of land alongside the London Fenchurch Street to Shoeburyness railway line on southern edge of Pitsea. It is the southern edge of a triangle of urban waste land between the two branches of the railway line and the A13 Pitsea Flyover, with the eastern corner truncated by Pitsea Hall Lane located south of Pitsea. The site is accessed via Terminus Drive an unsurfaced no through road, which also gives access to an existing industrial unit. The application site itself covers an area of approximately 1.24 hectares. The two railway lines converge to the east of Pitsea Hall Lane at Pitsea station. Pitsea Hall Lane crosses the main line railway line by means of a bridge north east of the site and the other line by a level crossing south east of the site.

To the southwest, south of the railway line (approximately 10m), is the Vange Creek Marshes (County Wildlife Site) and to the south east (approximately 10m) is

Cromwell Manor (formerly Pitsea Hall), which is a Grade II Listed building used as a wedding and function venue.

To the north of the site is the A13 flyover, which is closer to the site at its western end. Residential flats (4 storeys high) lie to the north east of the site beyond the A13 flyover, the nearest of which are 60m from the north west corner of the site on Chestnut Road and the Glen (residential areas on the southern edge of Vange). St Michael's Church a grade II Listed Building is located approximately 220m to the north east on Pitsea Mount, also to the north east lie the residential properties accessed from area along Brackendale Avenue, the closest property approximately 200m.

On the north side of the site, at the eastern end, Terminus Drive abuts a car park, the remaining land to the north between the site and the main line railway line is vacant. Beyond the mainline to the north is a Tesco Superstore and associated parking.

Directly east of the site is a fencing manufacturing business, located within an industrial building and a residential property permitted for use as offices.

Pitsea Hall Lane is a no through road but gives access to Wat Tyler Country Park, Vange Creek RSPB reserve, Tuskit Works Industrial Area, an ECC Household Waste Recycling Centre and Pitsea sewage treatment works, Pitsea Landfill among others.

Footpath Vange 136 is adjacent to the northern boundary of the site and links to Pitsea Hall Lane along Terminus Drive. The path at its western end meets a path that can be used to go north to the residential area of Vange or south across the railway line to the marshes.

The site is allocated as Employment Area within the Basildon District Local Plan (adopted 1998)(BDLP) and has previously been granted planning permission for car parking associated with a market, but this permission was not implemented. The land immediately to the south is designated as Green Belt (including the railway line) and also as "Marshes Area" within the BDLP.

The Marshes Area is subject of several separate designations. The closest is Vange Creek Marshes County Wildlife Site that lies south west of the site on the south side of the railway line and Vange Creek Marsh SSSI and Pitsea Marsh SSSI which respectively lie to the south east 200m and southwest 300m.

The site was vacant prior to the applicant commencing waste storage and sorting on the site (as said, as the use is unlawful, consideration of this should be disregarded when assessing the merits of the application). The site was previously permitted as a minerals yard, such that it is likely mineral was imported by road and potentially rail, stored and then distributed from the site by road.

The southern edge of the site for its entire length is required to be kept clear of any permanent structures to allow Network Rail full access to the railway network boundary if required.

3. PROPOSAL

The application is for the change of use of land to enable the use of the site as a waste recycling and materials recovery facility. The applicant has identified this site at Terminus Drive as being suitable for its needs and if planning permission was granted, would relocate from Harvey Road site. The reason for seeking relocation stems from limitations on the existing site in terms of capacity and size, where there is no opportunity to expand within the Burnt Mills Industrial Estate.

It proposed that the annual throughput of waste handled at the site would be 49,000 tonnes. Of this total approximately 10% would be household waste, 60% commercial and industrial waste and the remaining 30% would consist of construction & demolition (C&D) waste. The onsite operations would involve the sorting and recovery of materials, which would include waste arising from ground works, demolition and site clearance. All residual waste (up to 15% of the total brought on to site) would need to be disposed of and sent to landfill.

The proposal involves the erection of a waste processing building on the northern boundary at the eastern end of the site. In addition the application includes modular style offices and mess facilities, a weighbridge and hardstandings located west of the main building.

The main building would be constructed from corrugated steel and measure 19m x 30m and 9m to eaves and 11.4m to ridge, the ridge aligned east/west. The application has been revised, since it was previously considered and now includes a lobby/screening wall to the front/south elevation of the main building. The building would be grey and would be fully enclosed on three sides; the western fifth of the front/south elevation would also be enclosed. The building would be fitted with 10 sky lights 5 on each roof side to allow natural light into the building. The building would face south, such that the unenclosed side of the building would face south towards the railway line. However, the building has been revised since its first consideration and a lobby screening wall to the front of the building has been added, the height of this lobby is 9m, the same height as the eaves of the building. Vehicles would approach from the east passing in front (to the south) of the building and lobby to the weighbridge then they would travel to the east into the building behind the lobby/screen, be unloaded and then reverse out of the building travelling west, where there would be able to turn around before leaving the site in an easterly direction passing in front the of the lobby. There would be an exit in the east elevation of the lobby, but this would be for emergency use only. Sound insulation has been proposed within the building.

The waste building would be used for the sorting of waste which would be transferred by grab onto a belt feeding a trommel and a waste picking station. Waste would either be sorted mechanically or by hand and separated into its components these chiefly being metals, brick, concrete and stone, plastics, paper,

cardboard, green waste, wood and associated materials. Once separated the materials would be stored on site for distribution to materials recovery facilities with wood and inert rubble placed outside, the rest remaining in the building. The residue would be taken to landfill (e.g. Pitsea Landfill).

An area for skip storage is located south of the access into the site at the east end of the site and would be screened on its south edge by a 3m high sleeper wall.

The WC/mess cabin, administration and weighbridge offices would consist of two modular style offices and would be located west of the waste processing building. Included in the proposals is the installation of a new weighbridge and 20 car parking spaces, 2 motorcycle spaces and 5 bicycle spaces, also located west of the building.

The applicant has confirmed there would be no use of 360 degree tracked vehicle in the area east of the main building, except for maintenance and construction.

The area west of the offices would be for open storage area. Bays would be created with sleepers and RSJ's. The bay wall on the northern boundary with the public footpath would be 3m high. Two bays would be created with 3 further sleeper walls. The highest bay wall to the east would be 4.8m high with a return to create a reversed "L" shape in plan view; the next wall would be similar in shape being 4.2m high and the most westerly wall 3m high. These bays would be used mainly for storage of wood waste and hardcore which would be sorted outside.

The application has proposed not to carry out all noise generating operational activities at once namely use of the crusher, shredder and trommel at one time.

At the extreme west of the site would be 20 lorry parking spaces for storing vehicles while not in use and a lorry turning area.

A hedge is proposed along the western boundary and along the northern, in parts this would be between the existing palisade fence and the sleeper wall.

The access would consist of the existing access on to Pitsea Hall Lane, utilising Terminus Drive. The access from Pitsea Hall Lane is currently unconsolidated hardcore, but it is proposed to surface the access with a bonded material. It is proposed that there would be 100 HGV movements (50 in and 50 out) Monday to Friday and 50 HGV movements (25 in and 25 out) on Saturday. These movements would consist of skip lorries, tipper and roll on/off HGVs and some articulated HGVs. There would be a number of employee cars and vans. The southern edge of the site is required to be kept clear and would be utilised for access through the site by HGV the vehicles.

Hours of operation stated within the application would be 07:00 to 17:30 (Monday to Friday), 07:00 to 13:00 (Saturdays) with no work taking place on Sundays and/or Bank Holidays.

A lighting scheme has been proposed for the site to light the car parking areas east and west of the main building, the weighbridge area and gateway to the site. Two lights would be mounted on the main building at 5m high, the remaining on 5m high columns except one to the rear of the offices at 3m high. The lighting scheme has been designed taking account of the railway line and Cromwell Manor the two closest sensitive receptors and has been designed to result in minimal light spill outside the site.

A dust suppression scheme has been proposed, including a misting system within the building and the use of bowers and hoses to suppress dust in vehicle circulation areas and in outside storage areas.

The application was supported by a Heritage Statement with respect to Cromwell Manor, a Transport Statement, a noise assessment, vibration assessment, visual and landscape assessment and a lighting assessment and a reptile survey.

4. POLICY

The following policies of the Essex & Southend-on-Sea Waste Local Plan (2001) (WLP) and Basildon District Local Plan Save Policies (1996) (BDLP) provides the development plan framework for this application. The following policies are of relevance to this application

<u>Policy</u>	<u>BDLP</u>	<u>WLP</u>
Proposed Employment Area	BAS E2	
Untidy Industry	BAS E6	
General Employment Policy	BAS E10	
The Marshes Area	BAS C7	
Waste Strategy		W3A
Need for Waste Development		W3C
Flooding		W4A
Surface & Groundwater		W4B
Access		W4C
Inert waste recycling facilities		W7D
Materials Recovery Facilities		W7E
Non Preferred Locations		W8B
Development Management		W10E
Hours of Operation		W10F
Public Rights of Way		W10G

The National Planning Policy Framework (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.

In respect of the above, paragraph 215 of the Framework, which it is considered is applicable to the WLP and BLP, 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). A conformity/compliance appraisal with respect to the Waste Local Plan policies is provided at Appendix A. Basildon Borough Council have produced its own conformity/compliance checklist with the Framework and this is provided at Appendix B.

With regard to updates/replacements or additions to the above, the Framework (Annex 1, paragraph 216) states: 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 Waste Development Document: Preferred Approach 2011 (now known as the Replacement Waste Local Plan (RWLP) has yet to reach 'submission stage' and as such is too early in its development to hold any significant weight in decision making.

In June 2006 Basildon Borough Council resolved to withdraw the draft Replacement Local Plan and proceed with a Local Development Framework. In relation to this a Core Strategy Preferred Options Report was published in February 2012. A new Preferred Options Report was issued for consultation in 2014 (consultation ended 01 April 2014). As the replacement Local Plan (now titled Basildon 2031 Local Plan) is still however in its formation it is considered, in context of paragraph 216 of the Framework, that little weight can be applied to applicable policies, especially as objections may be outstanding from consultation.

With regard to waste policy and guidance, the National Planning Policy Framework (the Framework) does not contain specific waste policies. The National Waste

Management Plan for England was adopted in December 2013 and sets out where we are now in terms of the waste we generate in England and how we manage those materials. It sets out the policies we currently have in place to help move us toward this vision (prevent and manage waste to support the growth of our economy and to continue to protect our environment). An update to the national waste planning policy: Planning for sustainable waste management (PPS10) was consulted on by the Department for Environment Food & Rural Affairs and the Department for Communities and Local Government in autumn 2013, and supports the aspirations of the NWMP. The objective of the consultation document appears grounded in the promotion of economic growth. The consultation, however, emphasises the Government's approach to boosting economic growth via an efficient planning regime to ensure that resulting expansion is sustainable. The consultation document seeks to maintain the Government's drive for an increased level of recycling and preventative waste management, focusing on the use of waste as a resource; however this has yet to be adopted. Until formal adoption Waste Planning Policy Statement (PPS 10) remains the most up-to-date adopted source of Government guidance for determining waste applications.

CONSULTATIONS

The application has been subject to two periods of full consultation, initially on submission of the application in November 2012 and then as revised following quashing of the original decision in February 2014, the comments below are a summary of all comments relevant to the revised application.

English Heritage (EH) was not consulted until August 2014 as under the Direction included in Circular 01/01 (outside of Greater London) there is no need to consult EH on planning applications affecting the setting of a listed building unless the building is Grade I or II*. However, since the publication of National Planning Practice Guidance¹ (NPPG) it is unclear whether the Government has intended to change the position previously set out in the Direction included in Circular 01/01. Table 1 of the NPPG (at para ID18a-057) now suggests that for planning applications the position is governed by Regulation 5A(3) of the Planning (Listed Buildings & Conservation Areas) Regulations 1990, rather than by Circular 01/01.

If it is an intentional change, whilst it could be argued that that it should not be retrospective and would not apply to applications received and consulted on before 6 March 2014 (when the NPPG was issued), English Heritage has accordingly been consulted and the reply is as set out below.

BASILDON BOROUGH COUNCIL - Object on the following grounds:

- Contrary to Policy BAS E6 which seeks to located untidy uses in the Harvey Road and Archers Field area of Burnt Mills Industrial Estate. Locations

¹ <http://planningguidance.planningportal.gov.uk/>

outside of these areas will be assessed on their impact on nearby uses. Outside of industrial areas untidy uses will not be allowed. The proposed use is considered an untidy use and the adverse impact of the use on the character and amenities of the locality could not be satisfactorily mitigated, in particular, the use of the site does not provide for extensive landscape to mitigate against the visual impact on the locality and therefore should not be permitted outside any area specifically designated for untidy uses.

- Contrary to Policy BAS E2, not within use class B1 and B2 and considered the proposals would lead to congestion of Pitsea Hall Lane, in that the existing railway bridge is inadequate to accommodate additional heavy goods vehicle traffic.

CROSSRAIL LTD - No objection

ENVIRONMENT AGENCY – No objection, subject to the imposition of a condition with respect to surface water management.

NATURAL ENGLAND: No objection, while close to 4 sites designated as SSSIs it is considered if operated as proposed there be would no adverse effects from the proposals.

HIGHWAYS AGENCY – No objection, but requested that the applicant aims to minimise HGV movements at peak times to reduce severe congestion experienced at M25/A13 junction.

NETWORK RAIL - No objection. The developer/applicant must ensure that their proposal, both during construction and after completion of works on site, does not:

- encroach onto Network Rail land
- affect the safety, operation or integrity of the company's railway and its infrastructure
- undermine its support zone
- damage the company's infrastructure
- place additional load on cuttings
- adversely affect any railway land or structure
- over-sail or encroach upon the air-space of any Network Rail land
- cause to obstruct or interfere with any works or proposed works or Network Rail development both now and in the future

In addition conditions to be attached, with respect to use of plant, scaffolding and cranes, excavation of footings and drainage to ensure protection of the railway

ENGLISH HERITAGE: No comments to make, Grade II buildings lie beyond EH's usual remit. The Council should determine the application in the light of its own specialist conservation advice

HIGHWAY AUTHORITY – No objection, subject to conditions to ensure:

- Development is operated operating in accordance with the submitted details

- *No unbound material would be used surface treatment of the vehicular access from the bellmouth junction of Terminus Drive on to Pitsea Hall Lane for a distance of 12 metres;*
- *Gated access to the site would be inward opening only and set back 6 metres from the adopted carriageway (Terminus Drive);*
- *Parking spaces size to be 2.9m x 5.5m;*
- *Cycle and motor cycle parking provision;*
- *Vehicle movement restrictions;*
- *Surfacing, line marking and provision of a 2m wide footway along the northern edge has been provided on Terminus Drive.*

HIGHWAY AUTHORITY - Public Rights of Way - No objection

COUNTY COUNCIL'S NOISE CONSULTANT – No objection. Satisfied with the approach and conclusions of the assessment. The applicant has proposed that only one element of noisy plant namely the crusher, shredder and trommel would operate at one time and should be condition as such and require details of management scheme to achieve this.

COUNTY COUNCIL'S AIR QUALITY CONSULTANT – No objection. Basildon Borough Council does not have any Air Quality Management Areas and does not monitor particles. Nitrogen Oxide levels are monitored on Meads Road adjacent to the A13 and are below air quality objectives. The proposed traffic movements are unlikely to result in detriment. The application proposes various methods of dust suppression, it is considered these measures would adequately address both construction and operational phases of the development and would suitably mitigate any impact on sensitive receptors including the ecologically designated sites to the south and Cromwell Manor.

COUNTY COUNCIL'S VIBRATION CONSULTANT – No objection. A vibration survey was undertaken, considering two factors, damage to property and disturbance to occupiers. Vibration likely to result in damage to buildings is caused at 15mm/s, but a lower level is probably appropriate for historical buildings. The applicant's vibration survey concluded that traffic movements to the site would not result in structural damage to the historical building and this is not disputed. In addition tracked excavator activity on the site resulted in less vibration than vehicle movements.

COUNTY COUNCIL'S LIGHTING CONSULTANT – No objection. The proposed lighting scheme would not give rise to adverse impact both in terms of its impact upon the railway or the nearest residential/sensitive neighbour Cromwell. It is noted that the proposed lighting levels fall below those suggested by the British standards, but these are only guidance.

PLACE SERVICES (Ecology) – No objection. The site was cleared of vegetation prior to submission of the application, preventing any meaningful ecological survey of the site. However, it is understood that this was not in the applicant's control, when this took place. However, it is likely the site supported reptiles. It is

therefore required that any landscaping should seek to encourage biodiversity and as such a condition requiring details of the hedgerow mix, to include 40% flowering shrubs to support bumble bees is required and implementation of a condition to require implementation of the submitted Reptile Mitigation Strategy.

PLACE SERVICES (Urban Design) – No objection, while the colour of the constructed grey building is not from the colour range previously suggested, the colour is accepted, the proposed olive grey for the lobby is considered acceptable.

PLACE SERVICES (Landscape) – No objection, subject to approval of planting details and protection of planting and requirement for a landscape management plan to ensure its successful establishment. The lack of planting proposed along the southern boundary would result in impact in views from PRoW and properties to the south. The landscape to the south is an environmentally sensitive area, subject of statutory designations.

PLACE SERVICES (Historic Buildings) – The main conservation issue is the effect of the development on the setting of the grade II Listed Building, Cromwell Manor and to a lesser extent that of St Michael's church and the impact of the proposals on the ongoing conservation of Cromwell Manor by the effect of the proximity of the use on the economic viability of the wedding and conference venue business.

Object on the following grounds:

- While it is acknowledged that the setting of Cromwell Manor has been seriously compromised by the development of the railway, roads and industrial buildings to the north. Views from the north would be dominated by the new building, but it is agreed that these views can be disregarded as have little bearing on the significance of the building. The building is experienced in the context of the garden setting from the south, albeit with some aspects of the existing industry and development backdrop. The building is considered a mass of extremely large scale that intrudes into the skyline of views of the Listed Building and is disruptive to the setting of the listed building in these views both in its own right and cumulatively with the modern development surrounding the building.
- The western most part of the proposed building would be screened by vegetation within Cromwell Manor grounds. Some of the bulk of the proposed building would be screened by the marquee, so that only part of the building would be seen. However, it does not disguise the scale and bulk of the building. Whilst the marquee itself has a harmful impact on the appearance and setting of the listed building in these views in its own right and cumulatively with the modern development surrounding the proposed buildings, without it the impact of the proposed building on views of the principal elevation of Cromwell Manor would increase.
- The addition of the lobby on the south elevation would not improve its appearance and would increase its bulk and its design would make it appear tacked on.
- Based on the assessments with respect to noise and dust which indicate that the levels are acceptable it is difficult to be conclusive as to whether the venue

business would be harmed by actual or perceived harm by customers, such that the ongoing conservation of the building might be affected.

- The visual and non-visual harm to the setting of the heritage asset would be less than substantial mostly due to the harm already done to the setting by the surrounding modern development. However there would be cumulative harm to the significance of the Listed Building due to the impact of the development on its setting as outlined. The proposed building also intrudes into longer views of the St Michael's church tower from the footpath leading from the marshes to the west and contributes to the harm caused to this listed building caused by the surrounding modern development.

NPPF para 134 requires the LPA to weigh up any less than substantial harm against the public benefits of the proposal.

PLACE SERVICES (Urban Design) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection. It is disappointing that the building has been constructed grey in colour which is industrial in nature when other more recessive colours were suggested. Reluctantly the grey is accepted for the building. The lobby is proposed an olive/grey which is acceptable.

PLACE SERVICES (Archaeology) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS: No objection, no known features north of the railway line requiring exploration.

BOWERS GIFFORD & NORTH BENFLEET PARISH COUNCIL: Concerned at the height of wood stockpiles.

PITSEA MOUNT RESIDENTS ASSOCIATION: Object on the following grounds:

Noise- outside plant noise appears to be underestimated.

Dust- within the building there has been addressed, but dust from outside activities particularly crushing, seems inadequate and prevailing winds would carry dust to residential areas.

Odour – potential for odour depending on nature of waste.

Traffic – is already a problem in the area, with restricted access across the weak railway bridge and narrow pedestrian path on this bridge. Traffic waiting for the level crossing can back up and blocks access to Brackendale Avenue and Station Approach. The proposals with additional HGV movements would worsen this situation. The additional HGV traffic is causing deterioration of the road surface and road signage on Pitsea Hall Lane.

Location – Pitsea Hall Lane provides access to Wat Tyler Country Park. The area would improve upon closure of Pitsea Landfill, siting a waste facility here will not improve the appearance of the area.

Visual – the use is not appropriate on the approach road to a country park, the building is not aesthetically pleasing and the waste stockpiles are visible from Pitsea Hall Lane.

LOCAL MEMBERS – BASILDON – Pitsea - Any comments received will be reported

5. REPRESENTATIONS

362 properties were directly notified of the original application. 13 letters of representation were received with respect to the original application, where the comments related to matters that have not been amended as part of the revision application the comments are included below. The same 362 properties were notified of the revised application. A further 18 representations have been received, including 5 representations from the owner and planning agent for Cromwell Manor, which have been supported by a Heritage Asset Statement, noise assessment reviewing that submitted by the applicant and statements from the occupiers/operators of Cromwell Manor and have included video footage seeking to show dust arising in the open storage areas and plant at the site causing vibration in the listed building. The representations raise planning issues relating to the following matters:

<u>Observation</u>	<u>Comment</u>
<u>Highways issues:</u>	
Highway infrastructure insufficient – particularly, Pitsea Hall Lane and restricted railway bridge	See appraisal – Section B
Increase in HGVs	See appraisal – Section B
Access/egress will further complicate junctions	See appraisal – Section B
Debris will be dropped on Highway, as well as vehicle oils	All vehicles would be required to be sheeted. See appraisal – Section B
Increased congestion due to the proximity of Tesco supermarket, railway and level crossing	See appraisal – Section B
Access to Pitsea Mount is restricted due to congestion	See appraisal – Section B
Loss of the Public Right of Way	See appraisal – Section C
Terminus Drive is a PRow and inappropriate to be shared with HGV traffic	See appraisal – Section C
Cause problems for commuters going to Pitsea Railway station.	See appraisal – Section B
Congestion would back up causing	See appraisal – Section B

congestion at the A13 roundabout interchange

Local amenity

Noise and dust impact on users of PRow

See appraisal – Section F

Don't consider that the submitted noise assessment adequately predicts the likely noise levels.

See appraisal – Section F

Concern there will be noise impact upon properties in Chestnut Road

See appraisal – Section F

Dust from operation affecting surrounding residential properties

See appraisal – Section F

Inadequate dust mitigation is proposed.

See appraisal – Section F

Recent improvements to Wat Tyler Country Park will be in vain, as people will not visit due to a hazardous journey

See appraisal – Section A

Odour pollution

See appraisal – Section F

Light pollution especially in winter and in the evenings

See appraisal – Section F

Noise, pollution, light and disruption will arise

See appraisal – Section F

Consider the noise assessment is flawed and does not apply the appropriate standards.

See appraisal – Section F

Hours of operation

See appraisal – Section F

The building is visible from Pitsea Hall Lane when heading north away from Wat Tyler Country Park

See appraisal – Section F

Adverse impact on health and quality of life

See appraisal – Section F

Increase in vermin

See appraisal – Section F

Local property values will be adversely affected

Not a planning issue

Inappropriate to have a recycling yard in the midst of modern development	See appraisal – Section A
Will result in substantial harm to the Heritage asset contrary to NPPF	See appraisal – Section G
There is no overriding public benefit that warrants the harm to the heritage asset	See appraisal – Section G
Affect viability of local business at Cromwell Manor	See appraisal – Section G
<u>Location & Policy</u>	
Site not identified in the adopted or emerging Waste Local Plan	See appraisal – Section A
Does not accord with the existing or emerging Local plans. Also premature to the emerging Waste Local Plan.	See appraisal – Section A
Cause substantial harm to the heritage asset, by affecting the setting of the Grade II Listed Cromwell Manor	See appraisal – Section G
Effects on the Greenbelt, national and internationally designated ecology sites in the vicinity	Site is not within the greenbelt. See appraisal – Section A
No consideration of reducing CO ₂ emissions or adaption to climate change	See appraisal – Section F
Proximity to Pitsea Landfill and the Recycling Centre for Household Waste	See appraisal – Section A
There is too much waste development in the Basildon area.	See appraisal – Section A
Ensure access to the currently vacant Homes and Community Agency land is continued	There would be no disruption to the access to the existing car park and undeveloped land.
Inadequate screening for EIA purposes	See appraisal – Section K
Failure to consult English Heritage	See appraisal – Section K

6. APPRAISAL

The key issues for consideration are:

A – NEED, PRINCIPLE AND LOCATION
B – HIGHWAY IMPACTS
C – IMPACTS ON PUBLIC RIGHTS OF WAY
D – DESIGN, LANDSCAPE AND VISUAL IMPACTS
E - IMPACTS ON ECOLOGY
F - IMPACTS ON LOCAL AND RESIDENTIAL AMENITY
G – IMPACTS ON THE HISTORIC ENVIRONMENT AND VIABILITY OF CROMWELL MANOR
H - IMPACTS ON HYDROLOGY
J – ECONOMIC BENEFITS
K - PROCEDURAL MATTERS

A. NEED, PRINCIPLE AND LOCATION

WLP policies W3A and W3C seek to ensure proposals are consistent with the goals and principles of sustainable development; that the proposal inter-alia supports the waste hierarchy; and that there is a need for the facility in respect of waste arising from Essex and Southend. PPS 10 however states that when determining planning applications waste planning authorities should not require applications for new or enhanced waste management facilities to demonstrate a quantitative or market need for their proposal.

PPS 10 encourages waste to be managed as per the principles set out in the waste hierarchy. The waste hierarchy promotes, in this order; prevention of waste; re-use of waste; recycling of waste and then any other recovery. It states that the disposal of waste is the least desirable solution and only suitable when none of the above is appropriate. At paragraph 24, in relation to un-allocated sites, details new or enhanced waste management facilities should be considered favourably when consistent with (inter-alia):

- i. the policies contained within PPS 10; and
- ii. the WPA's core strategy.
- iii. encouraging waste management facilities to be on previously developed land

Further discussion with regard to the suitability of the site in context of the locational criteria of Annex E of PPS 10 and relevant policies within the WLP is explored later in this report.

WLP policy W3A (Waste Strategy) identifies the need for proposals to be consistent with the goals and principles of sustainable development and the proximity principle. It also requires proposals to consider whether it represents the best practicable environmental option (BPEO) for the particular waste stream and at that location or whether the proposal would conflict with other options further up the waste hierarchy. However, the need to consider BPEO has been superseded by PPS10, which no longer requires the consideration of BPEO. In addition, WLP policy W7E (Materials Recovery Facilities) aims to facilitate the efficient collection and recovery of materials from the waste stream by providing materials recovery facilities and supported in appropriate location subject to compliance with other

relevant development plan policies. WLP policy W7D supports inert recycling reducing landfill and the demand for primary aggregates, but similar to W7E in appropriate locations and subject to no adverse environmental impacts.

Given that the proposal is a recycling operation moving away from the disposal of waste, it is considered that the proposal is in compliance with the objectives of PPS10 and WLP policies W3A, W7E and W7D.

WLP policy W3C (Need for Waste Development), requires significant waste management facilities (with a capacity of over 25,000tpa) to demonstrate a need for the development, however as explained above PPS10 does not require the market need for the development to be demonstrated. Representations have been made that there is no need for the development and the fact that Basildon Borough seems to have a disproportionate number of waste facilities (namely Pitsea landfill, the Pitsea Recycling Centre for Household Waste and Courtauld Road Integrated Waste Management Facility among others). The Waste Capacity Gap Report 2013² notes that even if all strategic facilities were delivered there would remain a need for a further 170ktpa non-hazardous treatment capacity until 2031³. With respect to the number of waste management facilities with Basildon it has been noted in the proposal that the types of waste, which would be handled, are materially different to those handled in the permitted but currently non-operational Courtauld Road facility (notably construction and demolition waste). It is the case, however, that many of the waste developments are located in the Untidy Industry areas and that despite the number of waste permissions within the Basildon Borough it is the case that PPS10 requires waste facilities to be located close to areas where waste is produced.

The applicant's existing business is long established at Harvey Road, and focuses on its centre of operations in the Basildon area, but has the ability to serve the south of Essex due to the transport links. The applicant has identified a need to find new premises as the existing site is now constrained, creating difficulties with day-to-day operations. The existing site is approximately 0.11ha and is constrained on all boundaries and there are currently no vacant larger units within the Burnt Mills Industrial estate. The applicant considers there is no means of expanding the premises and has identified the Terminus Drive site as suitable for the business's needs as it provides a more functional site, with a greater site area and improved accessibility to the route hierarchy.

In particular, the applicant has stated that the larger site area and capacity would enable new demolition contracts to be established within Essex. With the proposed site being more than 10 times the site of the existing facility at Burnt Mills, the proposed site and building would provide greater inside and outside processing and storage capacity for recovery of recyclable materials.

² As the Waste Capacity Gap, as an evidence base to the emerging Waste Local Plan, has yet to be tested it is considered, at the current time, only limited weight can be given to the conclusions within this.

³ For the purposes of the Capacity Gap Report (2013), the recycling of non-organic waste falls in to the treatment category, to which this application relates.

With regard to this application, the Terminus Drive site is a brownfield site (formerly used as a minerals yard) and therefore development here is preferable to the development of previously undeveloped land (WLP Policy W8B).

Terminus Drive site is subject to the Basildon District Local Plan (BLP) policy BAS E2, which states

3.5 hectares (8.6 acres) of land is allocated for employment purposes in Terminus Drive, Pitsea, subject to the following criteria:-

- i. The proposal must be subject to a Traffic Impact Assessment. Any improvement to the local highway network required to enable the development to take place, will be expected to be provided by the developer; and*
- ii. The site shall provide for B1 [Business] and B2 [General Industrial] uses.*

Further to this, BLP policy BAS E10 (General Employment Policy) states

Proposals for industrial, business and office development (Use Classes B1 to B8) will be considered with regard to the following criteria:-

- i. the surrounding roads must be adequate to accommodate the increase in vehicle traffic generated. A Traffic Impact Assessment may be required;*
- ii. Developments should relate to the primary road network without using residential estate roads;*
- iii. Adequate car parking should be provided in accordance with the Council's Car Parking Standards in Appendix Three;*
- iv. Adequate servicing and turning areas should be provided on the site in accordance with the Council's Highway Standards;*
- v. Provision for the landscaping and screening of buildings and storage areas with a landscaping strip abutting all highways will normally have a minimum width of 5 metres to be retained at all times;*
- vi. The design, form, scale, and materials of the development will be expected to be appropriate and sympathetic to neighbouring developments, particularly adjacent to residential areas; and*
- vii. Adequate controls should be installed to limit the emission of noise, pollutants, discharge and smells which could be associated with the proposed use.*

These criteria will be explored further in this report.

It is considered that this proposal is in accordance with PPS10, which requires sufficient and timely provision of waste management facilities to cater for local communities. PPS10 does not require waste management facilities to demonstrate a quantitative or market need for their proposal and therefore the submission complies with these requirements in trying to further address local policy. A need for further waste recycling capacity within Essex has been suitably

demonstrated. Even though the proposal could be classed as a sui-generis⁴ use, the proposed use is akin to a general industrial, B2 use and such uses are generally supported on allocated industrial land, as advocated by Policy W8B of the WLP. It is therefore considered that it has been demonstrated that this site in principle is suitable for this use as it is a brownfield site, allocated for B1 and B2 by policy BAS E2 of the BLP.

The Framework supports the effective use of land by reusing land that has previously been developed, provided that it is not of high environmental value. Furthermore, WLP policy W8B (Non Preferred Locations) states inter alia that waste management facilities will be permitted at locations other than those identified in the Waste Local Plan, where they fall in to the following criteria (among others):

- *Existing general industrial areas;*
- *Employment areas (existing or allocated);*
- *Areas of degraded, contaminated or derelict land.*

However such locations are only acceptable where the proposals meet the requirement to all other relevant policies and in particular do not give rise to adverse environmental effects (these will be explored later in the report). In addition, it notes that proposals in the order of 50,000 tonnes per annum will not be permitted unless it is shown that the preferred locations within the plan are unavailable or unsuitable for the type of development proposed.

Representations previously raised concern that the application did not contain evidence that the Schedule 1 sites (set out within the Waste Local Plan) are not suitable or not available for this proposal), as required by WLP Policy W8B for proposals in the order of 50,000tpa. Subsequently, the applicant provided reasons as to why the Scheduled site were not available or not suitable as set out below:

- *Rivenhall (WM1), Warren Lane (WM2), Courtauld Road (WM5), and Sandon (WM6) are unavailable as these have existing permissions and/or are already operational;*
- *The operator is locally based, so relocating to either Whitehall Road (WM3) or North Weald Airfield (WM4) are simply and logistically not feasible. This would involve moving an established company, which has significant links to the area, would prejudice job retention and move away from the established waste streams that my client collects. Moving the business to outside the Basildon area would not be a practical or economic option;*
- *The Schedule 1 sites are for larger scale and integrated schemes, which are materially different scale and purpose from than that proposed by the application.*

⁴ In a use class of its own

It is considered that the applicant has satisfactorily demonstrated that the Schedule 1 sites are either not unavailable or inappropriately located for the proposed development.

Similar to W8B WLP policy W7D (inert waste recycling facilities) and W7E (Materials Recycling Facilities) seek to locate facilities of the scale proposed on industrial land, with the caveat that they do not give rise to unacceptable adverse environmental impact.

Policy BAS E6 (Untidy Industry) of the Basildon Local Plan states:

The development or expansion of untidy industry sites will be permitted in the Harvey Road and Archers Field area of the Burnt Mills Industrial estate, as identified on the Proposals Map. Untidy industry proposals in other locations within the existing industrial areas will be assessed on the basis of their likely effects on nearby uses. Outside of industrial areas untidy industry will not be allowed.

It is acknowledged that waste proposals, involving recycling, outside storage and the parking of heavy vehicles, are akin to “untidy” activities and the applicant’s existing business is located within the Burnt Mills industrial estate, but for reasons set out earlier, there is no opportunity to expand or relocate to larger premises within the industrial estate. The applicant has therefore, identified this employment area identified for industrial use (as designated by policy BAS E2) as their preferred option. Thus in principle the site is a suitable location, subject to its likely effect on nearby uses being mitigated.

Basildon Borough Council has objected on the grounds that such an “untidy” activity should remain within the Burnt Mills Estate, but as explained above no suitable site is available within the preferred industrial estate. In addition Basildon has objected to location on this allocated employment land on the basis it does not consider these effects can be adequately mitigated these will be discussed later in the report.

It is considered however that in principle the proposed location meets the locational criteria of PSS10, W8B and BAS E2, subject to there being no adverse environmental effects.

The Framework (paragraph 216) states that decision takers may give weight to relevant policies in emerging plans. As such, the Basildon emerging core strategy carried out its revised preferred options consultation in April 2014 and replacement waste local plan at preferred approach stage was consulted upon in November 2011.

However it is acknowledged that within Basildon’s core strategy there are key areas noted for Primary Areas for Development and Change (PADC). In all three the Spatial Growth Options scenarios, the Terminus Drive area is located within the urban PADC, while the Policy PADC13 relates to the South Essex Marshes seeks to improve and transform the Marshes into a publicly accessible Thameside wilderness, connected to nature reserves in neighbouring districts and

boroughs. The policies in combination aim to regenerate and improve the amenity and enjoyment of Pitsea and its surrounding areas, with this area providing a 'Gateway' to Pitsea and the rural environment to the south. Representations have raised concerns that efforts to improve Wat Tyler Country Park would be undermined by placing a waste recycling facility on the gateway to the Marshes area. It must be remembered that the site has been designated for B1 and B2 such that urban development was likely in this area in any event and there are other existing industrial activities along Pitsea Hall Lane within the Marshes area itself which would remain.

With regard to the Waste Development Document: Preferred Approach it should be noted that the Terminus Drive site was not submitted as part of the original call for sites.

In view of the early stage in the preparation of these plans very little weight can be given to these plans.

In conclusion, it is considered that the proposals in terms of moving waste up the hierarchy and its location meet the goals and objectives of the Framework, PPS10 and WLP W3A, W7D and W7E , which requires waste to be moved up the hierarchy. It is considered that it has been suitably demonstrated that there is a need to relocate from the existing premises on Burnt Mills Industrial Estate and that further capacity is required for the treatment of non-organic waste (Capacity Gap Report, 2013). As such, the proposal is also in conformity with W8B, as it has been suitably demonstrated that the schedule 1 sites are not available or feasible.

The proposal is located on a proposed employment area (BAS E2) and an area of degraded, contaminated or derelict land. It therefore complies with the locational criteria as set out in W8B, W7D and W7E. Although, policy BAS E6 directs untidy industry to the Burnt Mills Industrial Estate, it has been satisfactorily evidenced that there is no opportunity to expand or relocate to larger premises within the industrial estate. Furthermore, it is considered that Policy BAS E6 is complied with in terms of untidy industry proposals in other locations are permitted, however, this is subject to their likely effects on nearby uses, which are considered later within the report.

Thus having concluded that there is in principle a need for the facility and the location in principle is acceptable it is appropriate to consider the environmental impacts of the proposal.

B. HIGHWAY IMPACTS

The Framework states, at paragraph 29, that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Continuing at paragraph 32 it is suggested all decisions should take account of whether: the opportunities for sustainable transport modes have been explored; safe and suitable access can be achieved for all; and if improvements can be undertaken within the transport network to limit any significant impacts of the development. Development should only be

prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

WLP policy W4C (Access) details that access for waste management sites will normally be by short length of existing road to the main highway network, consisting of regional routes, and county/urban distributor, via a suitable existing junction, improved if required to the satisfaction of the Highway Authority.

In addition, BLP policy BAS E2 (Proposed Employment Area), requires any proposal for Terminus Drive to be subject to a Traffic Impact Assessment. Any improvement to the local highway network required to enable the development to take place, will be expected to be provided by the developer. Policy BAS E10 (General Employment Policy) specifically considers proposals against the following highway criteria:

- *The surrounding roads must be adequate to accommodate the increase in vehicle traffic generated;*
- *Developments should relate to the primary road network without using residential estate roads;*
- *Adequate car parking should be provided in accordance with the Council's Car Parking Standards;*
- *Adequate servicing and turning areas should be provided on the site in accordance with the Council's Highway Standards;*
- *Provision for the landscaping and screening of buildings and storage areas with a landscaping strip abutting all highways will normally have a minimum width of 5 metres to be retained at all times.*

The access would consist of the existing access on to Pitsea Hall Lane, which is currently used by the occupier of the industrial premises to the east of the proposed site and would be shared with the proposed development. Pitsea Hall Lane links to a grade separate roundabout junction with the A13 and therefore the access is considered to conform with WLP policy W4C.

There have been a number of objections made with regard to the traffic and highways implications of this proposal. The objections specifically relate to the following:

- *Does not comply with Policy BAS E2 due to infrastructure requirements and that the site is inappropriate due to the large number of HGVs;*
- *Local Infrastructure is insufficient (particularly the railway bridge) for any increase in HGVs given Pitsea Hall Lane is the sole access to (and the close proximity of) the landfill and Recycling Centre for Household waste;*
- *Increased congestion through increased HGV movements in proximity to the level crossing, would result in congestion on the A13 junction, the junction to Tesco, and access points to Pitsea Mount residential area and the station and station car parks, including from vehicles queuing for the level crossing;*
- *Access is unsuitable as it is narrow, of temporary configuration and used as a Public Right of Way (see below for further consideration in to the PRoW);*

- *Increased mud and debris on the Highway due to the nature of the site and that the access is not metalled;*
- *Highways safety concerns, due to the increased number of HGVs, congestion and access arrangements;*
- *There has been no consideration of reducing CO₂ emissions or adaption to climate change in relation to this application;*
- *Access needs to be retained to the currently vacant land to the north of Terminus Drive, to allow access for the maintenance of the A13 flyover and the north of Terminus Drive itself;*

Basildon Borough Council has objected partly on the grounds that Pitsea Hall Lane is inadequate to accommodate the additional HGV traffic.

A transport statement was submitted as required in Policy BAS E2 and has been subject of consultation with the Highway Authority and Highway Agency. The Highway Authority notes that the access to the site serving a storage and distribution use does not conflict with the Highway Authority's Policies DM1 or DM4 and that there is good accident record in the immediate vicinity. It also notes that there would be a comparatively low increase in HGV movements (100 HGV movements a day) over the railway bridge and no overall increase of HGVs using the level crossing; as there would be no greater residual waste being transported to Pitsea Landfill.

The transport statement notes that the installation of a pedestrian bridge over the railway is provided for as part of a legal obligation associated with last planning permission for Pitsea Landfill to improve pedestrian access as the current footpath is very narrow. However the WPA is aware that provision of this bridge has been delayed, due to the technical approvals required associated with crossing the railway line. The Highway Authority has not objected on either highway safety or capacity grounds, but does require a number of conditions, including, surfacing of the haul road, parking etc., to minimise any potential impacts.

The proposed vehicular and cycle parking provision meets the requirements of the parking standards.

In view of the considerable local concern and to further ensure that the scale of operations is controlled, so that there is not detrimental impact on the efficiency of the highway network, a condition restricting the number of vehicle movements associated with the use could be imposed, if planning permission was approved, in the interests of limiting the HGV movements and ensuring compliance with WLP policy W4C and BLP policy BE10 and such a condition is supported by the Highways Authority.

With respect to the comments regarding reducing CO₂ emissions or adaption to climate change in relation to this application, the waste is collected from demolition sites and customer across south Essex, such that use of rail is impractical, HGV being the only realistic option. The County's air quality consultant has advised that the additional HGV would not result in a significant detrimental impact on air quality. It is also noted in the transport statement that due to the proposed location

staff will be encouraged to use sustainable forms of transport, such as cycling or by public transport. With regards to waste vehicles, it is noted that the relocation of this operation from Burnt Mills Industrial Estate would result in a shorter distance (and therefore a reduction in emissions) for any residual waste being sent to Pitsea landfill.

Within the transport statement it is noted that currently, there is a vehicular and pedestrian gate and concrete blocks impeding vehicular access to the vacant land to the north of Terminus Drive and indeed for maintenance of the A13. These obstructions appear to have been erected to restrict unauthorised access on to the vacant land at the end of Terminus Drive. The applicant proposes surfacing the access route to Pitsea Hall Lane and marking with lineage the route of the Public Right of Way. Previously a gate across Terminus Drive was suggested, but this would conflict with the PRow and is on land outside the applicant's control.

The Highways Agency has no objection to the proposal, but requested that the applicant aims to minimise HGV movements at peak times to reduce severe congestion experienced on the A13. It is not considered that a condition could reasonably be imposed to control movements at busy times, but the operator could be advised of this preference.

Network Rail has no objection to the proposals with regard to the impacts on the level crossing. If permission is granted this would be subject to compliance with the submitted details that access would be as indicated on the plans (in the north east). Network Rail has also indicated that the applicant should get in contact with their asset protection team to discuss the scope of entering an asset protection agreement and this information has been passed to the applicant.

It is considered that subject to the conditions required by the Highway Authority and Network Rail and attaching appropriate informatives, as requested by the Highways Agency, that the proposal is in accordance with the NPPF, WLP policy W4C and Basildon policies BAS E2 and BAS E10. This is because there would be a comparatively low increase in HGV movements over the railway bridge and no net increase movements over the level crossing.

C. IMPACTS ON PUBLIC RIGHTS OF WAY

The Framework requires decision takers to protect and enhance Public Rights of Way (PRowS) and access, by seeking opportunities to provide better facilities. PPS10 remains silent on waste facility impacts on PRowS.

WLP Policy W10G (Public Rights of Way) states that applications should include measures to safeguard and where practicable improve the Public Rights of Way (PRow) network. Any works to improve/safeguard the PRow shall be implemented prior to any development commencing.

Adjacent to the northern and western boundary of the proposed site is PRow Vange 136. This public footpath follows the line of Terminus Drive, linking Pitsea Hall Lane and the wider Vange Marshes Area. The application details that the

PRoW would be retained, but the access to the site would share Terminus Drive with footpath at its eastern, where it joins Pitsea Hall Lane.

During pre-application discussions, it appears there is no definitive map of the footpath location, so the applicant proposes that the footpath would remain in its current position and a 2 metre wide area will be delineated by lining on the ground.

Representations have been made which raise concern that footpath might be lost or obstructed and safety concerns of using the current access from this PRoW on to Pitsea Hall Lane, as this area would be used for large vehicles accessing the site. It is acknowledged the proposals would increase the intensity of vehicular use of this part of Terminus Drive, thus potentially affecting the PRoW. The applicant does not intend to obstruct the PRoW, in fact the improved surfacing of the access and delineation of the PRoW are likely to be an improvement on the current arrangement. The adjacent existing industrial development to the east of the application site (and incorporating Primrose Villa - 93/00004/FUL) currently uses part of Terminus Drive for parking and storage of materials (currently subject of investigation by BDC) and the provision of linage would hopefully discourage parking/storage along the PRoW route. Concern has been raised that use of the path to the Marshes and Wat Tyler Country Park would be less appealing due to the waste transfer station, but it must be remembered that the land is designated for B1 and B8 use, such the commercial activity was always likely in the vicinity of the path.

Essex Highways (Public Rights of Way) does not object to the proposal as the PRoW Vange 136 would be retained, but would like to state that although only a 2 metre wide area is to be delineated as the PRoW public access rights to Footpath status will still subsist across the full width of the original path. It is considered that to ensure this delineation is undertaken a condition is attached (if permission is granted) to ensure appropriate signage and linage is carried out and maintained throughout the life of the development.

It is considered that subject to the surfacing, linage and signage of PRoW, there would not be significant harm to the existing right of way and that proposal is consistent with WLP Policy W10G, as it safeguards the existing PRoW. It would also comply with the Framework as there would be no net loss of PRoWs and would improve the eastern end of PRoW Vange 136 (as it merges with Pitsea Hall Lane).

D. DESIGN, LANDSCAPE AND VISUAL IMPACTS

The Framework emphasises the importance of good design within proposals, at paragraph 56, that good design is a key aspect of sustainable development; it is indivisible from good planning and should contribute positively to making places better for people while considering the functionality of the proposals. Whilst planning policies and decisions should not attempt to impose architectural styles or particular tastes, stifle innovation, originality or initiative it is proper to reinforce local distinctiveness. Paragraph 61 of the Framework goes on to detail that although visual appearance and architecture of buildings are very important

factors, securing high quality and inclusive design goes beyond aesthetic considerations. The Framework also requires the planning system to “contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes...”. BLP policy BAS E10 states that proposals for industrial, business and office development – note the consideration of a waste sui-generis use being considered akin to this – should be of a design, form, scale and materials appropriate and sympathetic to neighbouring developments, particularly adjacent to residential areas.

WLP policy W8A which sets out the criteria for consideration of waste management facilities by way of Policy W8B requires inter alia buildings and structures are of a high standard of design, with landscaping and screening provided as necessary.

WLP policy W10E (Development Management) states that waste management development will be permitted where satisfactory provision is made in respect of the effect of the development on the landscape and the countryside. The supporting text to WLP policy W10E (paragraph 10.12) of the policy specifically notes that landscaping and design (including siting, design and colour treatment of the elevations) can ameliorate impact, and requires a high standard of design and landscaping to minimise visual impact. It also notes that consideration will need to be taken to the metropolitan Green Belt.

Policy BAS E10 (General Employment Policy) specifically considers proposals against the following criteria:

- *Provision for the landscaping and screening of buildings and storage areas with a landscaping strip abutting all highways will normally have a minimum width of 5 metres to be retained at all times;*
- *The design, form, scale, and materials of the development will be expected to be appropriate and sympathetic to neighbouring developments, particularly adjacent to residential areas.*

With respect to design the main building is industrial and functional in appearance, the lobby has been added to screen views and minimise noise and dust escaping from the building. The main building is proposed to be goosewing grey, with the lobby olive grey, both functional in design. The lobby, while screening views into the building would in part add to the bulk of the building. Should members consider that a darker colour would be more recessive, then this could be secured through the imposition of an appropriate condition. West of the main building would be the two modular buildings in dark blue as offices/mess facilities, equally functional in nature. However it has to be remembered that this area is designated for B1 and B2 use and industrial buildings of this nature were always likely to be required. There is already an industrial building east of the site (grey with red trim), but it is acknowledged that the proposed building would be larger than the existing building.

Places Services (Urban Design) has commented that the grey colour of the building and grey/olive of the lobby are acceptable, but a more recessive colour for

the whole building would have been preferred and the building is functional in nature.

In landscape terms the building is the element of the proposal that would be visible within the landscape. The applicant's landscape assessment notes that the outlying marshland landscape is not directly affected by the proposals, but there would be an indirect affect as the new building is seen from some locations within the Marshland to the south and west. The effect of this would be to extend and intensify the appearance of industrial built form in the edge of Pitsea beneath Church Hill. The Marshland is not subject of any statutory designation with respect to landscape, but is identified as the Marshes Area within the Basildon Local Plan. The Marshes Area policy seeks to prevent development with the Marshes that would "...cause harm to the landscape, the open and rural character..." It is noted by the applicant's consultant that there is an interesting view from the Marshes and would be considered to represent a secondary element in the characteristics of the marshland in this area. It is noted that the development might marginally degrade this view, but overall the impact on landscape character is considered low significance and it is therefore conclude in the assessment there would be no significant landscape effects.

In terms of visual effects the applicant's visual assessment identifies 7 potential receptors:

- Residents within Chestnut Road flats
- Visitors to Cromwell Manor
- Walkers on the footpath along the northern edge of the site
- Walkers exploring the marshes to the south-west
- People moving about in the urban area along Pitsea Hall Lane and around Pitsea Station
- People travelling on the A13 Pitsea flyover
- Train travellers on the southern railway line

The top section of main building and its lobby and tops of large vehicles would be seen behind and to the side of Cromwell Manor; the building is within the main view on entering through the gated entrance to the Manor, but not directly in the scene when properly within the grounds of Cromwell Manor. It may draw the eye, but already there are gantry lines for the railway line. The applicant's visual assessment notes that the overall sensitivity of Cromwell Manor is high due to the nature of the property and wedding venue use it currently has. However, views from the Manor are generally orientated south away from the development and it is primarily views from the open frontage looking back at the property that are likely to be affected. The addition of the lobby means there would no direct views into the building and the recycling activities inside but only the lobby side, reducing the visual impact. Nonetheless the effect on this view is considered quite high significance, but due to the existing backdrop of railway gantry and lines the impact is assessed by the applicant's assessor as moderate. The building has been located as far west as is possible within the constraints of the narrow site (moved 5m west during consideration of the original application). Ideally additional

fencing and planting would be provided on the southern boundary of the site but the maintenance strip for Network Rail prevents this. The applicant's assessment notes that there are trees and vegetation on the northern boundary of the Cromwell Manor site and their continued growth would screen the building further. There is also a brick wall west Cromwell Manor, which screens views of the ground within the application site and lower half of the building and vehicles as they circulate within the site. In the past a marquee has been located adjacent to and on the west side of Cromwell Manor. Planning permission for the marquee was refused by Basildon Borough Council, due to its location within the Green Belt and was temporarily removed in late June 2014 but has subsequently been reconstructed. When in place the marquee obscures the view of a larger proportion of the proposed building and lobby. The retention of the marquee is matter for Basildon BC and would be dependent on the outcome of any enforcement action and/or appeals. It is therefore appropriate to consider the impact of the development without the marquee.

Considerable concern has been raised by the owners and operators of Cromwell Manor on the visual impact of the building and the waste facility in general, due to the dirty and untidy nature, which it is considered by the objector will have both a direct visual impact on visitors as they arrive at the Manor and indirect impact through the perception of visitors as to the desirability of the venue for their wedding or event located near a waste transfer/recycling facility. Concern has been raised not only with respect to the buildings impact, which is acknowledged and discussed above, but also concern has been raised as to the visual impact of the outside storage and storing of waste to be located to the west of the building. The area west of the building is not visible from the frontage of the Cromwell Manor only from the car park located to the west of the manor and the car park is not visible from the frontage due to existing planting. Users of the car park would only be in the car park for limited periods. The stockpiles are visible from the upstairs rear window of the residential flat within Manor, but only if looking west, but more prominent in this view is the railway line and all its associated cables, gantry etc. The view directly north from the window is more that of the existing industrial buildings associated with the fencing business and the area for parking and circulation of vehicles and skip storage to be screened on its south by a 3m high railway sleeper fence.. It is considered the views from the Manor car park and the rear of the Manor flat are not very sensitive receptors and as such there is no significant adverse visual impact on these views from the proposals.

The applicant's assessor notes walkers along the northern edge of the site would experience the development as a prominent and extended industrial edge. While walkers previously have crossed undeveloped brownfield land, this will not be the case in any event when the either side were developed for employment use. The views are only transient and thus it is considered the visual affect would be moderate.

The proposals include a hedge and hedgerow trees (subject to not restricting the operation of plant) to be planted along the northern and western boundary of the site and this would soften the visual impact on path users. The hedge would in places need to be located between the proposed sleeper walls and palisade

fencing and it would be necessary to ensure the ground conditions were made suitable for planting, which could be secured by condition, if planning permission were approved.

The view from the flats on Chestnut Road would be through the pillars of the A13 and planting around the car parks, such that views would be limited and the intervening land, as mentioned above is designated for B1 and B2 use which may be developed in the future. The proposed sleeper walls and planting (once matured) would restrict views of the outside storage areas.

Views from people moving about in Pitsea Hall Lane would be limited. The main building is partly screened by the existing other industrial building, while the modular building and outside storage areas would be screened by the main building and proposed walling and planting (once matured). Users of the A13 and passengers on trains are not considered sensitive receptors as the views are transient and are expected in an urban setting.

Basildon Borough Council object to the proposals on the basis that the proposals are an untidy use in area not designated for untidy uses and the adverse impact of the use on the character and amenities of the locality could not be mitigated, particularly that the proposals do not provide landscaping to mitigate against the visual impact and therefore contrary to BAS E10. However, as discussed above in terms of landscape and visual impact it is not considered there would be significant adverse impact, other impacts on the locality will be discussed further in the report.

Place Services (Landscape) note that if the Waste Planning Authority is mindful to grant planning permission, then a condition should require a detailed landscaping scheme for the proposed hedge and hedgerow trees, including locations and species mix to be submitted.

On balance, it is considered that although the proposal does result in some landscape and visual impact, which cannot be fully mitigated due to the constraints on the southern boundary of the site, the site is within a designated proposed employment area (policy BAS E2). Furthermore, because these policies are contained within out-of-date local plans, the policy drivers within the Framework must take precedence. In light of this, it is considered that the proposal (subject to appropriate conditions regarding hedge/tree planting and colour of the building) would have minimal impact on the landscape character of the area and would not result in significant adverse visual impact to warrant the refusal of planning permission.

E. GREEN BELT

The NPPF seeks to protect the Green Belt and enhance its use including for recreation and amenity. There has been a specific objection noting the proposal could adversely affect the visual amenities of the Green Belt (containing the Pitsea Marshes). However, this site is within a designated employment site (Policy BAS E2) and is not located within the Green Belt. The railway line defines the

boundary of the Green Belt (the railway line being in the Green Belt) between the rural marshes to the south and the urban setting with built development to the north. It is acknowledged that the upper sections of the stockpiles and building would be visible from the Marshes, but in the context of the existing urban development including the A13 it is not considered there would be a loss of amenity to users of the footpath within the Green Belt and it must be remembered the area north of the railway line is designated for B1 and B2 use. It is also considered for the same reasons the proposals would not have a significant impact on the openness of the Green Belt and therefore the proposals are in accordance with the NPPF in this respect complies with the NPPF WLP policy W10E.

F. IMPACTS ON ECOLOGY

One of the three main strands of sustainability (according to the Framework) is environmental sustainability, which considers that the planning system should contribute to and enhance the natural and local environment. As part of this, decision takers must protect and enhance the natural and local environment by recognising the wider benefits of ecosystem services; minimising impacts on biodiversity and providing net gains in biodiversity. The Framework also supports the effective use of land by reusing land that has previously been developed, provided that it is not of high environmental value.

Basildon Local Plan is silent in this case, as it contains no saved policies other than those of national importance. Similarly, WLP policy W10E only considers ecologically designated sites, thus the NPPF is the most up to date guidance.

The proposal contained an extended phase 1 habitat survey and a Reptile Survey. In summary, both noted the site consisted of an expanse of bare/disturbed ground bordered by banks of tall grass and ruderal vegetation. The survey was undertaken after the site had been cleared but the clearance work was not undertaken by the applicant, but unfortunately some biodiversity interest may have been lost. The survey identified two SSSIs, Wat Tyler Country Park and five Local Wildlife Sites (LoWS) within 500m of the site boundary of the site. It did not identify any areas of importance for protected/notable species or habitats. There was found to be a low population of slowworm and common lizard on the railway embankment due to the proximity of Vange Creek Marshes LoWS 20m to the south of the site. A translocation program was not considered necessary as this area is not proposed for development but did suggest that a temporary (Heras fencing) barrier is installed along the length of the bank on the south of the site to prevent vehicle movements in areas of favourable reptile habitat and prior to operation installing reflective bollards.

Place Services (Ecology) has reviewed the submitted information and does not object subject to the imposition of a condition to ensure that the reptile mitigation plan is implemented and a condition to ensure the proposed hedge along the northern boundary would be composed of species identified in the ECC Tree Planting Palette. Due to the value of the surrounding land for 'Priority' bumblebee

species, the hedge-mix should include a high percentage (over 40%) of 'flowering shrubs' such as common hawthorn, common cherry and/or blackthorn.

It is therefore, considered that subject to the imposition of the suggested conditions, that the development is not contrary to the Framework and commensurate with the scale of the proposal and in accordance with WLP policy W10E.

G. IMPACTS ON LOCAL AND RESIDENTIAL AMENITY

The Framework aims to prevent unacceptable risks from pollution and decisions should ensure that new development is appropriate for its location, in so doing consider whether the development would be an acceptable use of land. It does qualify this by stating that local authorities should consider that pollution regime control regimes will operate effectively. Planning considerations nonetheless need to consider impacts such as noise, dust, light pollution and other adverse impacts on health and the quality of life, while recognising that development will often create some noise and impacts, which should not be unreasonably restricted.

Whilst the proposal may in principle comply with WLP policies W8B, W7D and W7D, in terms of location and land use, all these policies are caveated by "provided the development complies with all other relevant policies of this plan; and does not cause unacceptable harm to the environment or residential amenity by virtue of noise, dust or heavy traffic". A position supported in policy terms by WLP policy W10E which, inter-alia, states developments will only be permitted where satisfactory provision is made in respect of the amenity of neighbouring occupiers, particularly from noise, smell and dust.

The locational criteria of PPS 10, in respect of the above, furthermore includes; air emissions, including dust; odours; vermin and birds; noise and vibration.

Policy W10F (Hours of Operation) within the WLP states that where appropriate the Waste Planning Authority will impose a condition restricting the hours of operation, as appropriate with regard to local amenity and the nature of the operation.

The proposal suggests that the hours of operation would be 07:00 to 17:30 (Monday to Friday), 07:00 to 13:00 (Saturdays) with no work taking place on Sundays and/or Bank Holidays. While within industrial areas hours of operation restrictions would not normally be imposed, conditions could be applied if the proposal is granted to restrict working hours. Such conditions could also restrict the use of especially noisy plant and equipment to only operate after 8:00am Monday to Friday and not at all on Saturdays, to minimise the impact on local amenity and the wedding venue use at Cromwell Manor. Should permission be granted such conditions could be imposed.

During the consideration of this application, as said, the applicants have occupied the site, and carried out outside storage and sorting of wood waste and have

utilised the modular offices and weighbridge, although the unlawful use of the site should not have any bearing on consideration of the application.

During the course of the determination of this application there have been a number of complaints with regard to, dust, noise, vibration and unsightliness of the site, including photographic and video evidence. Activity at the site has especially been the cause of dust complaints that have been substantiated as arising from the current activities at the site. The operator has implemented a temporary dust suppression measures, namely wetting of stockpiles and hauls roads to minimise dust. The proposal includes a dust suppression scheme and the applicant indicated a willingness to install a permanent spray system around outside stockpiles which could be required by condition if planning permission was granted.

It is considered that, should permission be granted, once the building is in use for sorting, the retaining walls for outside storage fully erected and the dust suppression scheme fully implemented, dust emissions could be managed.

Noise

The application was supported by a noise assessment. The revised proposals include additional sleeper walls in the open storage area between 3 and 4.8m high, a 3m high wall south of the skip storage area and the inclusion of the lobby on the main building and sound reduction insulation within the building. ECC's noise consultant has no objection and considers that the predicted noise levels, subject to construction of the proposed noise attenuation measures would not give rise to significant increase in noise levels above permitted guidelines.

Representations have raised concerns with respect to noise and the noise assessment has been independently reviewed by a noise consultant acting on behalf of the owners of Cromwell Manor. Concern has been raised that the predicted noise levels utilised with respect to the plant to be operated at the site are based on the lower levels of noise than such plant could generate and if less cautious values were used, then acceptable maximum noise levels would be exceeded. All of these comments have been subject to review by the County's noise consultant and they remain satisfied that the appropriate standards and prediction methods have been used. In addition concern has been raised that the noise attenuation materials to be used inside the building are likely to deteriorate or be damaged by activities in the building, such that their attenuation value would reduce. If approved, conditions could be imposed to ensure all noise attenuation measures are maintained throughout the life of the development.

Subject, to the condition suggested above and the requirement for regular noise monitoring to show compliance with the maximum noise levels, it is considered that planning permission could not be refused on grounds of noise and therefore the proposals accord with the NPPF, PPS10 and WLP policy.

Dust/Air Quality

The applicant has submitted a dust assessment. The assessment details that: all wastes would arrive at the site in sheeted containers; dust on the access road could be managed by regular mechanical sweeping of the access road or spraying the access road with water, thus preventing dust leaving the site. This water would be collected by way of an onsite drainage system to prevent risk of pollution. All waste would be deposited in to the waste collection building, which would be fitted with a mist spray dust suppression system and if required this system could be extended to the outside stockpile areas, and would be mounted on the sleeper walls. Any material contained within the storage area outside the building would be dampened down prior to movement in dry conditions.

Basildon Borough Council and other representations have objected due to harm to residential amenity by reason of dust and complaints in relation to current activities at the site have been made by Cromwell Manor, the car park business to the north and local residents. Some of the wood sorting currently taking place outside would if planning permission were approved been undertaken within the building, such that dust from these outside areas would only likely to occur during deposition and removal of the stockpiles and are proposed to be managed by bowser and hose, although a sprinkler system, as mentioned above has been offered attached to the outside storage bay walls.

With respect to potential pollution from the additional traffic, the County's Air Quality Consultant has advised that local levels of Nitrogen Oxide are within acceptable limits and the limited additional traffic is unlikely to result in a significant detriment to these levels.

It is considered subject to conditions requiring installation and maintenance of the proposed dust suppression, with a requirement to extend the dust sprinkler suppression system to outside storage areas, there are no grounds to withhold planning permission due to the adverse impacts of dust.

Vibration

Objection has been raised by Cromwell Manor with respect to the impacts of vibration on both the structural condition of the Listed Building and the impact on residential amenity and the wedding venue business. The application was accompanied by a vibration survey which has assessed the vibration impact of the HGV traffic associated with the business. The County's vibration consultant has confirmed that the HGV traffic associated with the development and the sample operation of the tracked vehicle indicate that the development would not give rise to vibration that is likely to cause structural damage to the building or adversely affect the residents and or users of the wedding venue. The assessment did not include an assessment of use of plant, namely the tracked 360° machine, in the area east of the proposed main building. The reason for this omission is the applicant has confirmed that, while the tracked plant had previously been used in this area, apart from construction and maintenance the area east of the building would no longer be regularly used by the tracked vehicle. The areas east of the building (and closest to Cromwell Manor) are proposed for a combination of parking, storage of skips and circulation area for vehicles arriving and leaving the

site. The vibration assessment has shown that the levels are well below those that would give rise to structural damage to the listed building and would be unlikely to be detected within the residential/wedding venue. A condition, if approved, could be imposed to ensure the tracked vehicle is not used in the area east of the building (except for construction and maintenance) and the applicant has indicated a willingness for such a condition. In addition vibration monitoring would be required, if planning permission were approved, to confirm that vibration levels are within acceptable limits.

Lighting

The proposals include a lighting scheme for outside areas namely in areas to be used for circulation of vehicles and staff parking. The application has been submitted with a lighting assessment and has demonstrated there would no adverse impact from the proposed lighting on surrounding uses including the railway line and Cromwell Manor. Concern has been raised that the lighting scheme proposes inadequate lighting and does not meet BS guidance for lighting and thus additional lighting is likely to be required. The County's lighting consultant has reviewed the lighting scheme and considers the assessment has been carried out appropriately and as proposed would not result in adverse light pollution. It is noted that the proposed light levels are low, but the BS levels are only guidance and it is the responsibility of the operator to ensure the safety of his staff.

Conditions could be imposed to require approval of any further additional lighting (which could be refused if found to give rise to adverse impacts) and require monitoring of light levels to show compliance with the submitted scheme.

Vermin and Odour

There have been representations noting that there would be an adverse impact on health and quality of life and an increase in vermin. The nature of the waste, namely construction and demolition is unlikely to be attractive to vermin or give rise to odour and the operation would also be subject to an Environmental Permit.

It is considered that in accordance with the Framework, planning permission should not be refused, subject to the imposition of appropriate conditions to ensure noise, dust, vibration and lighting can be effectively mitigated and controlled to ensure compliance with policy W10E and BAS E10. In addition, conditions restricting the hours of operation will further protect amenity and in so doing comply with policy W10F and the Framework, which supports sustainable development where the adverse impacts do not significantly and demonstrably outweigh the benefits of proposals.

H. IMPACT ON THE HISTORIC ENVIRONMENT & VIABILITY OF CROMWELL MANOR

Impact on the Historic Environment

Section 66 (1) of the Listed Buildings and Conservation Areas Act 1990 (LBA) states, inter-alia that; *in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*

The Framework states in paragraphs 128 to 134 that heritage assets are an irreplaceable (and therefore finite) resource and should be conserved in a manner appropriate to their significance and notes that any harm or loss should require clear and convincing justification. It requires applicants to describe the significance of heritage assets including any contribution made by their setting.

The Framework defines the “Setting of a heritage asset” as “The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

The Framework defines “Significance (for heritage policy)” as “The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting.”

The planning authority in accordance with the NPPF guidance is required to:

Para 129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset)...

Para 132 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional...

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss...

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Recent case law⁵ has clarified how development affecting the setting of a listed building should be considered. The Courts have confirmed that, even where the harm to significance is found to be less than substantial, a decision maker who follows the balancing approach recommended in para 134 of the NPPF must, when performing that balance, give “*considerable importance and weight*” to any harm to the setting of a listed building and to the desirability of preserving that setting without harm and start with a “*strong presumption*” that harm to the setting of a listed building should lead to a refusal of planning permission.. Whilst the Courts will look at the substance of what is decided, rather than require the decision maker to recite a particular form of words to show he has met his statutory obligations, the Courts will look critically at decisions which seem to show no signs of reflecting the statutory requirement in S.66(1) LBA 1990.

The Basildon Local Plan is silent on this issue, as it contains no saved policies in respect of Heritage Assets. Similarly, WLP policy W10E states that development would be permitted where satisfactory provision is made in respect of the resultant effects on the historic environment but does not explain what this will entail.

It is important therefore to set out the starting point when considering the impact of the development upon the setting of Cromwell Manor, a grade II listed building. As determined by the courts, S66(1) of the LBA is more than a material consideration. When it is considered that a proposed development would harm the setting of a listed building, that harm must be given *considerable importance and weight*⁶.

Recent case law⁷ has stated that, if the proposed development would cause harm to the setting of a listed building, there is a strong presumption against planning permission being granted. The presumption is a statutory one as set out in the LBA. The presumption to refuse permission can nonetheless be outweighed by material considerations, provided those considerations are powerful enough to do so.

The revised application has been supported by a Heritage Statement. The Heritage Statement notes that as the seat of the medieval manor, Cromwell Manor (historically Pitsea Hall) is a site of historic importance, second only in Pitsea to the ruins of St Michael’s church. The building is a good example of a gentry house of the early 16th Century, however, it has largely ceased to have a recognisable identity, its name has been changed and its footprint has been doubled by a modern extension. Surrounded by the railway, fencing and trees it is now barely visible from the road, though its entrance is well signposted. Only the front retains a relationship with the flat marshland landscape from which its medieval wealth derived.

⁵ Most notably East Northamptonshire DC v SSCLG [2014] EWCA Civ 137 (Barnwell Manor wind turbine case) as further explained by the High Court in R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin) (Penshurst Place affordable housing case)

⁶ Glidewell L.J.’s judgment The Bath Society v. Secretary of State for the Environment [1991] 1 W.L.R. 1303

⁷ Lindblom J in R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)

The applicant's assessment is that the development is distant from Cromwell Manor and has no direct effect on its historic fabric or immediate environs. It does have the capacity to affect its setting. To the south of Cromwell Manor, there survives to a large degree the landscape with which it has historically been associated. This relationship would not be affected by the development. To the north the assessment states the setting has already been seriously compromised by the railway, industrial development and roads and concludes the development could be regarded as having an incremental impact, but it would not give rise to substantial harm to the heritage asset.

Place Services (Historic Environment) have commented on the proposals and set out that the main conservation issue is the effect of the development on the setting of the grade II Listed buildings, Cromwell Manor and to a lesser extent that of St Michael's church. Also the potential of both visual impact and non-visual impacts of the development on the use of Cromwell Manor and thus the ongoing conservation of Cromwell Manor by the effect of the proximity of the proposed use on the economic viability of the wedding venue business.

The County adviser does not disagree with the content of the heritage statement submitted by the applicant, that the setting of the Listed Building from the north is degraded due to the railway, roads and existing industrial buildings, such that the proposal have little bearing on the significance of the listed building from the north. From the south the building is viewed in the context of the garden albeit with a backdrop of industrial and urban development. However, the proposed building and its lobby are considered extremely large scale and intrude into the skyline and are disruptive to the setting of the listed building both in its own right and cumulatively with the modern development and infrastructure surrounding the building. The western most part of the building is screened by vegetation within Cromwell Manor, but the bulk of the waste building and its lobby would appear in the principal elevation of Cromwell Manor.

The County's Historic building adviser has commented that it is difficult to assess if the operations would harm the environmental conditions around the listed building to the extent that it would affect the economic viability of the wedding venue. Assessments indicate noise and dust would be within limits. Perception by potential customers of the venue due to the proximity of the waste use could be as damaging as any actual harm. The adviser concludes that the visual and non-visual harm to the setting of the asset would be less than substantial, mostly due to the harm already done to the setting by the surrounding modern development; however there would be cumulative harm to the significance of the listed building due to the impact of the development on the setting. The proposed building also intrudes into longer views of St Michael church tower and when viewed from the marshes contributes to the harm to the setting of this building caused by modern development. The adviser cannot support the application and advises the WPA would need to weigh up any less than substantial harm against the public benefits of the proposal.

Cromwell Manor's agent has also commissioned a Heritage Statement which raises similar concerns to those of the Council's historic adviser but concludes that the harm would be substantial. The historic adviser to Cromwell Manor refers to the consultation response by the County Historic Building Adviser to the original proposal, as having "a comprehensive and detrimental impact on the northern setting of the listed building". It should be noted that these comments were made prior to the building being moved 5m west and without the lobby screening views into the building and thus are considered to be superseded by the those comments in relation to the revised application which have been explained above.

English Heritage commented that they would not normally comment on an application involving Grade II listed building and the WPA should rely on local advice for this application.

The main harm to the setting of the Listed Building is the impact of the view of the western end of the proposed building and lobby, from the entrance and grounds in front of Cromwell Manor - the principal elevation - on the significance of the setting. The building and lobby would be visible above the existing brick wall to the west of the Listed Building. That is, the impact is upon the setting of the upper half of the building and the skyline to the west of Cromwell Manor. It is not considered the development has any impact on the setting from the north, this having been lost already due to the railway line, roads and existing fencing business operating from the industrial building directly to the north of the LB.

As alluded to earlier, in the context of the LBA whether the harm caused by the development to the setting of Cromwell Manor, and to some degree the church, is either substantial or not, is not determinative of the need to comply with the statutory duty in s.66 LBA 1990. Both the applicant's and the authority's historic advisers consider that the development would cause harm to the setting of Cromwell Manor and St Michael's church. It is therefore considered that there would be harm to the setting of the listed buildings and therefore the settings would not be preserved.

However, the degree of harm still has to be assessed as part of the exercise of deciding whether there are sufficient 'overriding' factors to displace that harm. While the development alone would result in harm to the setting of the LBs, there is existing harm (irrespective of the proposal) caused by past developments, including the railway and its infrastructure such as gantries and level crossing, roads including Pitsea Hall Lane and the A13 flyover and other urban development to the north.

The NPPF recognises that within the setting of a heritage asset there may be elements that make a negative contribution to its significance. In this case there is a negative contribution caused by the railway, the A13 flyover and other urban developments in the vicinity.

In the English Heritage publication "The Setting of Heritage Assets", EH advises (on p.8):

“Where the significance of a heritage asset has been compromised by in the past by unsympathetic development affecting its setting, to accord with PPS 5 policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset. Negative change could include severing the last link between an asset and its original setting; positive change could include the restoration of a building’s original designed landscape or the removal of structures impairing views of a building.”

This guidance has not been updated since the publication of the NPPF but EH still regard it as relevant.

Imposing additional harm on a setting that is already compromised could be said to have more of an impact rather than less.

It is clear, therefore, in the context of the guidance above, that the proposed would bring about a negative change to the setting of the listed building and this change would exist both cumulatively (when the impact on the setting is considered from the proposal and other built development) as well from the proposed development itself.

Nonetheless, on balance, it is considered that the assessment of the County historic buildings adviser is agreed in that the harm caused by the proposal is less than substantial harm because there is only a limited impact on a limited part of the setting of listed buildings which have already lost much of their significance due to other developments within their settings. However, as said, even less than substantial harm falls within the scope of S.66 of the LBA to be considered.

Accordingly, the starting point in considering the proposal in accordance with the LBA is that planning permission should be refused unless there are any sufficiently *significant* material considerations (when balanced against the harm caused by the development upon the setting of Cromwell Manor and St Michael’s church) to rebut that strong presumption. In other words, there is statutory presumption in favour of preserving the setting of the Listed Buildings and, notwithstanding other considerations, that presumption should be given *considerable importance and weight*.

This report goes on to consider whether there are any material considerations significant enough to override the presumption that planning permission should be refused.

As referred to above, The National Planning Policy Framework (NPPF) does set out that *heritage assets are an irreplaceable (and therefore finite) resource and should be conserved in a manner appropriate to their significance and notes that any harm or loss should require clear and convincing justification*. The NPPF further sets out that *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. (Paragraph 132)*

Further, the NPPF states *as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. (Paragraph 132)*

Substantial harm is defined with national planning practice guidance (NPPG) as

Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

The NPPF states: *Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss...*

At paragraph 134 the NPPF states that *where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.*

Taking into consideration the definition above, it is considered that the waste building would not cause substantial harm to the setting of Cromwell Manor or St Michael Church, due to the harm already done to the setting by the surrounding modern development. However there would be cumulative harm to the significance of the Listed Building due to the impact of the development on its setting as outlined by the Council's historic adviser. Nonetheless, in conflict with the LBA, the development does not preserve the setting of the listed buildings.

To further take the NPPF into account, it should be considered whether the less than substantial harm is outweighed by the public benefits of the proposal, such that it amounts to sustainable development as promoted by the NPPF. The NPPG describes public benefit as follows

Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (Paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.

The proposals would enable the movement of waste up the waste hierarchy, reducing the volume of waste disposed to landfill and associated greenhouse gases. The proposal would also allow the expansion of the existing business ensuring security of the existing employment and potentially increasing the number of jobs.

There is generally a need for waste recycling facilities of the nature proposed (as identified in the Waste Capacity Report 2013ⁱ) and this combined with the unavailability of any of the WLP Schedule 1 Preferred Sites for waste management in the area (as the applicant has confirmed) and the applicant's desire to protect existing jobs, are considered important material considerations. Nonetheless, it is not known whether the proposed site is the only site available for the applicant to relocate to.

The applicant has stated the percentage of the material handled that can be recycled would increase as a result of the relocation, as the current site is too small to allow stockpiling of material before export to reprocessing facilities. The proposed site, being located close to Pitsea Landfill, would enable unrecoverable materials to be transported a short distance to a disposal point and recovered soils and inert material could be taken to Pitsea Landfill required in the restoration of the landfill. In addition the proposal would see Terminus Drive surfaced and the PRoW delineated, providing a safer and surfaced route for users of the PRoW.

The statutory test concerning the setting of listed buildings is to have *special regard* to the desirability of preserving their settings. As planning inspectors have established, to justify a development that causes harm to the setting of a listed building is considered a *high hurdle*⁸ to overcome.

In this instance it has been established that harm to the setting of the Cromwell Manor would occur and whilst that harm may not be classed as 'substantial harm' given the existing industrial nature of the land to the north of the site and the surrounding development and infrastructure, it is an additional harm adding cumulatively to the detrimental impact on the setting of predominantly Cromwell Manor but also St Michael's Church and that harm should be given significant weight as set out in the LBA.

Whilst an argument could put forward in favour of the development, balancing the wider public benefits of the proposal (such as the need for waste recycling and the employment opportunity created), to meet the test set out in paragraph 134 of the NPPF, such a test is not set out in the LBA. As said the LBA should be the primary consideration when considering the impact of the development on the setting of the listed buildings, as it is statute.

Accordingly, when balancing the harm to the setting of the Cromwell Manor and St Michael's Church against the factors in favour of the proposed development, It is

⁸ Lindblom J: Forest of Dean District Council v. Secretary of State for Communities and Local Government [2013] EWHC 4052

considered that whilst there are material considerations in favour of the development, these considerations are not considered material considerations *powerful enough*⁹ to override the statutory presumption to preserve the setting of the listed buildings as dictated by the LBA.

Viability of Cromwell Manor

In addition to the consideration of the direct impacts of development on the historic Environment, the Framework requires local authorities to consider the potential economic impacts of development.

The owner of Cromwell Manor and Place Service (Historic Environment) objections highlight how noise, vibration, light pollution, landscaping, design and the setting would potentially impact upon the viability of the business use of Cromwell Manor now, or in the future viability, thereby threatening its on-going conservation.

It has been concluded within previous sections of this report that the environmental impacts of the proposals are largely either adequately addressed by measures forming part of the proposal or could be mitigated through conditions. It is acknowledged there would be a visual impact and impact on the setting of the Listed Building, such that there are limited direct impacts that could discourage customers from choosing the venue for their functions and equally the knowledge that there is a waste facility may give rise to the perception that the venue is not desirable as a venue for functions and weddings, although assessing the effect of such perceptions is difficult.

However, the setting of Cromwell Manor was largely despoiled upon the construction of the railway line and the subsequent urbanisation of the land to the north and this includes the existing industrial building currently utilised by a fencing business. The land to the north is allocated for commercial use. Nonetheless the waste building could have an impact upon the viability of business use of Cromwell Manor, although the impact from the development on the viability of the business at Cromwell Manor and its on-going conservation is not considered to be reason alone to warrant refusal of planning permission in the context of NPPF para 134.

I. IMPACTS ON HYDROLOGY

WLP policy W4A (Flooding) states inter alia that development would only be permitted where there would not be an unacceptable risk of flooding or has an adverse effect on the water environment. This is supported by policy W4B (Surface & Groundwater) which states that development would only be permitted where there would not be an unacceptable risk to the quality of surface and ground water, or of impediment to ground water flow.

⁹ Lindblom J in R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)

In support of the application a Flood Risk Assessment (FRA) has been prepared as the development would be on an area of greater than 1 hectare. This FRA states that the development is in flood zone 1 (the low risk zone), and states that the proposed development would be operated with minimal risk from flooding and not increase flood risk elsewhere. Surface water drainage from the building has been agreed with the local sewage authority. The Environment Agency has no objection to the proposals or conclusions stated within the FRA, but would still require the design of the final drainage for the site to be submitted and approved, which could be imposed if planning permission were granted.

It is therefore considered that subject to the imposition of an appropriate pre-commencement condition to approve in writing the final drainage scheme and hydrological/hydrogeological context that the development would comply with policies W4A, W4B and the Framework.

J. ECONOMIC BENEFITS

The Framework promotes a positive approach to consideration of economic development proposals, with significant weight being placed on the need to support economic growth through the planning system. It is noted by the applicant that the existing site on the Burnt Mills Industrial Estate employs 15 people, who would be retained, safeguarded and transferred to the Terminus Drive site, should permission be granted, with potential for increased employment. Furthermore, the proposal emphasises that there is a significant existing client base within Essex and Southend, and the provision of a larger site with increased capacity, would help the applicant more efficiently process waste and thus potentially allow greater opportunities for the applicant to bid for new demolition contracts.

In particular, the applicant has stated that the larger site area and capacity would enable new demolition contracts to be established within Essex. As a local employer (employing 15 people), it is noted within the application that the local economy would benefit if the application were granted, as these jobs could be safeguarded with the potential for further job creation.

The Framework requires significant weight to be placed on the economic benefits of proposals.

K. PROCEDURAL MATTERS

Consultation with English Heritage: Concerns have been raised regarding the failure of the Waste Planning Authority to consult English Heritage.

As stated, English Heritage (EH) was not consulted until August 2014 as under the Direction included in Circular 01/01 (outside of Greater London) there is no need to consult EH on planning applications affecting the setting of a listed building - unless the building is Grade I or II*. Cromwell Manor and St Michael's Church are Grade II listed buildings, so as directed by the Circular there is no obligation to consult EH.

Nonetheless, since the publication of National Planning Practice Guidance (NPPG) it is unclear whether the Government has intended to change the position previously set out in the Direction included in Circular 01/01. Table 1 of the NPPG (at para ID18a-057) now suggests that for planning applications the position is governed by Regulation 5A(3) of the Planning (Listed Buildings & Conservation Areas) Regulations 1990, rather than by Circular 01/01. EH has therefore been consulted and the comments received are set out earlier in the report.

Environmental Impact Assessment: Concerns have been raised in respect of the inadequacy of previous EIA screening opinions carried out by the Waste Planning Authority and in particular the failure to take account of the impact of the development upon listed buildings in the exercise.

To date three separate Screening Opinions have been carried out. The first was done in December 2012 when the original application was submitted. The second carried out in March 2014 when the revised/additional details were submitted following the quashing of the original permission. The 3rd Screening opinion was carried out on 27 June 2014 – the day of the June Development and Regulation Committee meeting. A further EIA screening opinion is likely to be carried out prior to the issue of any decision to take account of any new environmental information since the June opinion. The June 14 opinion makes reference to the changes that would result from removal of the marquee adjacent to Cromwell Manor as well as considers the cumulative impact of the proposed development. It is considered that the June 14 opinion is the most up-to-date opinion and fully considers the impact of the proposed development upon the listed building. The conclusion of that opinion is that EIA is not required and is attached at Appendix B for information.

7. CONCLUSION

The Framework states “the planning system is to contribute to sustainable development” and requires significant weight to be placed on the economic benefits of proposals, while protecting the environmental and social strands of sustainability. Without question the proposal would allow the applicant to expand his business, preserving jobs giving rise to an economic benefit.

The need and general suitability of the site (on allocated employment land Policy BAS E6) comply with the Framework, PPS10 and WLP policies W3A, W7D and W7E, which require waste to be moved up the hierarchy and located on employment land. The proposal is in conformity with W8B, through demonstration of a need to both relocate the business and, as the applicant has stated, this being the most suitable and feasible option as there is no other site available within Burnt Mills Industrial Estate (the preferred location for untidy sites as required Basildon local policy BAS E6). Additionally this site was an area of degraded and derelict land and designated as a proposed employment area policy BAS E2.

Therefore, while the principle of the site in terms of need and location are acceptable, consideration must be given to the impacts of the development on the surrounding environment.

The first of these considerations is the highway impact, which primarily focuses on local infrastructure impacts and increased HGVs worsening congestion. However, following assessment by the Highway Authority and Highways Agency, it is considered that suitable conditions and an informative could be attached if planning permission were to be granted. These could ensure the proposal would not result in a significant and demonstrably negative impact, so it is considered to be in accordance with WLP policy W4C, W8B and Basildon policies BAS E2 and BAS E10. Similarly, impacts on ecology and hydrology could also be suitably mitigated by imposing appropriate conditions to ensure the proposal would comply with WLP policies W4A, W4B, W10E and the Framework, thus would be commensurate with the scale of the proposal.

Further concerns raised relate to design, landscape impacts. The issues primarily focus on the scale and colour of the building itself. It is considered that views from the PRow and properties to the north west would be adequately screened by the proposed fencing and planting. There would be some views of the building from PRow south of the railway line on the Marshes and from Pitsea Hall Lane, but the impact would be limited. The proposal would include the construction of a large (11.4m high) building and lobby to house some of the recycling operations, the buildings are functional in design and the colour of these buildings could be required to be agreed by condition. The design is standard warehouse type not dissimilar to the existing building to the east.

Concern has been raised by local residents, users of the footpath and Cromwell Manor of the impact of noise and dust. Assessments of these were included as part of the application and subject to appropriate conditions it was concluded these environmental impacts could be adequately controlled. Impact of vibration on both the structural integrity of the Listed Building was shown through assessment would not occur and likely not to be detected by users of the wedding venue.

The proposed lighting scheme would not give rise to adverse impact on the either the railway network or adjacent properties. It is acknowledged that the lighting levels are low, but the applicant considered them to be workable and any additional lighting could be controlled by condition and refused if giving rise to adverse impact.

Nonetheless considerable concern has been raised as to the impact of the proposal on both the setting of the Listed Building and the potential detriment this would cause to the desirability of the venue for weddings, thus jeopardising the ongoing conservation of the Listed Building.

It is acknowledged that the proposals do cause harm to the setting of the listed buildings, especially Cromwell Manor as particularly the building and lobby, do not preserve the setting of this Listed Building. An argument could be put forward that the that harm is less than substantial harm and that there could be other wider

public benefits, such as the need for increased waste recycling, movement of waste management further up the waste hierarchy and job preservation, considerations that could outweigh the harm caused to the setting of the Listed Buildings. However, recent case law¹⁰ has reiterated the primary statutory consideration when determining such applications is Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. When harm to the setting of a listed building would occur, including less than substantial harm, then the courts have confirmed that the desirability of preserving the setting of a listed building should be given “*considerable importance and weight*”¹¹. Furthermore, the courts have established that any material considerations capable of overriding the presumption to refuse permission (where harm to the setting of a listed building would occur) must be “*powerful enough to do so*”¹².

Accordingly, proposed development conflicts with S66(1) of the LBA as the development does not preserve the settings of St Michael’s Church nor Cromwell Manor - both Grade II listed buildings. It is considered that significant weight should be given to the protection of heritage assets and whilst wider public benefits of the proposal may exist, including increasing recycling and protecting existing jobs, such considerations are not considered so powerful enough to override the presumption to refuse permission.

On balance, whilst it is considered that the proposal does not directly conflict with the relevant policies of the Development Plan¹³ taken as a whole, the proposal does not conform with S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and it is considered there are no other material considerations (as interpreted by the *Forge Field* court decision) that would justify overriding the presumption to refuse permission. It is therefore considered that the development does not represent sustainable development in the context of the Framework and the recent case law on the interpretation of development causing harm to the setting of listed buildings and therefore planning permission should be refused.

ENFORCEMENT

In light of the above conclusion and subject to permission being refused it is necessary to consider the way forward with respect to the unauthorised existing building.

As previously explained, the building was constructed in August 2013, prior to the discharge of a number of ‘pre-development’ conditions attached to the original planning permission (subsequently quashed by the court). Upon submission of

¹⁰ Most notably *East Northamptonshire DC v SSCLG* [2014] EWCA Civ 137 (Barnwell Manor wind turbine case) as further explained by the High Court in *R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin) (Penshurst Place affordable housing case)

¹¹ *East Northamptonshire DC v SSCLG* [2014] EWCA Civ 137

¹² *R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin)

¹³ The Basildon Local Plan is silent on consideration of the impact of the development upon the setting of Listed Buildings and the Waste Local Plan requires, inter-alia, under Policy W10E that “*satisfactory provision is made in respect of the effect of the development on historic sites*”.

the first JR and following discussions with the WPA, the applicant agreed to the quashing of the decision notice and not to bring the building into use for waste transfer and recycling, until such time as reconsideration of the planning application had been completed. Since then the building has been used for some limited storage of materials and plant but the building has not been used for waste transfer or sorting.

The modular office buildings forming part of the proposals have been in use since late 2012 and outside storage and sorting of wood and inert materials has taken place since late 2012. In addition in early September 2014 works have commenced on the construction of the proposed lobby and an additional temporary modular single storey office has been located east of the main building, albeit without permission.

The County Council's [Enforcement and Site Monitoring Plan](#) seeks to resolve breaches of planning control without the need for formal enforcement action, through discussion with the operator/landowner. This includes agreement in writing where appropriate to cease uses or remove operational development within a reasonable timescale, depending on likely effectiveness of such informal action. The operator has co-operated with the WPA in not bringing the building into use during the re-consideration of the application, nonetheless the building was constructed prematurely without compliance with the original planning permission and the lobby commenced without the benefit of planning permission. It is considered that the building, operational or not, causes harm to the setting of the Listed Building and its removal should therefore be sought. While an informal agreement, as suggested by the Enforcement Plan, might be obtained for removal of the building within a reasonable time period, should this not be adhered to, the process of formal enforcement action would have been delayed and the on-going harm to the setting of the listed building would continue. Should planning permission be refused, it is considered expedient to issue an enforcement notice seeking the removal of the building and lobby.

While the building and lobby are considered to give rise to unacceptable harm to the setting of the heritage asset, it has not been concluded that the use of the site for waste activities namely the outside storage of inert and wood waste and some outside storing would be unacceptable, although these activities are likely only to be acceptable subject to strict regulations and operational controls being in place. It is therefore, not considered expedient at this time to take enforcement action for the cessation of the use of the site for waste storage and sorting or for the removal of the modular buildings (office and weighbridge buildings); this could only be determined through consideration of a revised application, which the applicant could be invited to make.

The NPPF states with respect to enforcement

There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact

on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

The NPPF also places great weight on the economic dimension of sustainable development and the need for removal of the main waste building is likely to significantly impact upon the operation of the waste business and its viability and thus the jobs it provides. The applicant has had a prolonged period of uncertainty with respect to the application, due to the complex issues arising prior to determination of the application, resulting from two legal challenges. However, the applicant has chosen to undertake development without the benefit of planning permission, which is ultimately at his own risk.

It is also acknowledged that the ongoing presence of the waste building could have an adverse impact on the viability of the adjacent wedding and event business at Cromwell Manor. However, it should be noted that the building has substantially been in place since August 2013 and has not resulted in the closer of the adjacent wedding venue.

In view of the special circumstances described above, it is necessary to carefully consider a reasonable period for removal of the waste building and lobby. While the building remains, there continues to be adverse impact upon the heritage asset and potential resulting impact upon the desirability of Cromwell Manor as a venue for events. However, it is considered its immediate removal would place an unreasonable economic burden upon the applicant. On balance it is considered that a 6 month period to remove the waste building and lobby would enable the waste operator to make alternative arrangements with respect to those activities proposed within the building and would be unlikely to demonstrably impact upon the viability of the wedding venue during that time, with the impact on viability potentially lessened in a winter period.

8. RECOMMENDATION

That planning permission be refused for the following reason:

1. The proposed development would cause harm to the setting of a listed building as the development does not preserve the setting of Cromwell Manor, a Grade II listed building, contrary to S66 (1) of the Listed Buildings and Conservation Areas Act 1990 and it is considered that there are no significant material considerations to override the statutory presumption against granting planning permission for the development.

And that:

2. Given the on-going harm to the setting of the listed building caused by the unauthorised development, an Enforcement Notice is served requiring the removal of the unauthorised development within a reasonable timeframe – i.e. with 6 months from the date of the notice.

BACKGROUND PAPERS

Consultation replies

Representations

Ref: ESS/69/12/BAS

LOCAL MEMBER NOTIFICATION

BASILDON – Pitsea

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010:

The proposed development is not located within the vicinity of a Special Area of Conservation (SAC) or Special Protection Area (SPA) and is not directly connected with or necessary to the management of those sites. Therefore, it is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required.

EQUALITIES IMPACT ASSESSMENT: The report only concerns the determination of an application for planning permission and takes into account 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. The application has been considered in line with the Equalities Act 2010 and suitably appraised with regard to relevant equality issues, implications and/or needs.

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

In determining this planning application, the County Planning Authority has worked with the applicant in a positive and proactive manner, seeking solutions to problems arising in dealing with the application and offering advice on ways forward, as appropriate. This approach is considered 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. In this instance, following recent case law (2014) clarifying the weight to be attached to the LBA when considering such applications, whilst the Waste Planning Authority has sought to work to a positive outcome in the applicant's favour, given the overriding statutory (LBA) concerns, a positive outcome to the application was not considered possible.

CONSIDERATION OF POLICIES

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
Essex & Southend-on-Sea Waste Local Plan (2001)		
<u>W3A</u>	<p><u>Waste Strategy</u> The WPAs will:</p> <p>In determining planning applications and in all consideration of waste management, proposals have regard to the following principles:</p> <ul style="list-style-type: none"> • Consistency with the goals and principles of sustainable development; • Whether the proposal represents the best practicable environmental option for the particular waste stream and at that location; • Whether the proposal would conflict with other options further up the waste hierarchy; • Conformity with the proximity principle. <p>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.</p> <p>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 and Southend waste management needs as defined in policies W3B and W3C.</p>	<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>PPS10 supersedes 'BPEO'.</p> <p>PPS10 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>Therefore, Policy W3A is considered consistent with the Framework and PPS10.</p>
<u>W3C</u>	<p><u>Need for Waste Development</u> 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)</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,</p>

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
	<p>will only be permitted when a need for the facility (in accordance with the principles established in policy W3A) has been demonstrated for waste arising in Essex and Southend. In the case of non-landfill proposal 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"> • Where the proposal would achieve other benefits that would outweigh any harm caused; • Where meeting a cross-boundary need would satisfy the proximity principle and be mutually acceptable to both WPA5; • In the case of landfill, where it is shown to be necessary to achieve satisfactory restoration. 	<p>prepare and deliver planning strategies one of which is to help implement the 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>Therefore, as Policy W3C is concerned with identifying the amount of waste treated and its source the policy is considered consistent with the requirements of PPS10.</p>
<u>W4C</u>	<p><u>Access</u></p> <ol style="list-style-type: none"> 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. 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. 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 	<p>Paragraph 21 (i) of PPS10 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.</p>

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
	<p>on road safety or the environment.</p> <p>4. Proposals for rail or water transport of waste will be encouraged, subject to compliance with other policies of this plan.</p>	<p>In addition, the policy seeks to assess the existing road networks, therefore being in accordance with the Framework and PPS10.</p>
<u>W7D</u>	<p><u>Inert Waste Recycling Facilities</u> Proposals for inert waste recycling facilities will be supported at the following locations:</p> <ul style="list-style-type: none"> • the waste management locations identified in schedule 1 (subject to policy w8a); • industrial locations as defined in policy w8b; <p>in association with other waste management development;</p> <ul style="list-style-type: none"> • current mineral working and 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); • demolition and construction sites where the spoil is to be used in the project itself. <p>Provided the development complies with all other relevant policies of this plan; and, in particular, does not cause unacceptable harm to the environment or residential amenity by virtue of noise, dust or heavy traffic.</p>	<p>See explanation notes for Policy W3C and W8B as these are relevant and demonstrate conformity with the Framework and PPS10.</p>
<u>W7E</u>	<p><u>Materials Recovery Facilities</u> 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"> • Development associated with the source separation of wastes; • Material recovery facilities (MRF's); • Waste recycling centres; • Civic amenity sites; • Bulking-up facilities and waste transfer stations. 	<p>See explanation notes for Policy W3C and W8B as these are relevant and demonstrate conformity with the Framework and PPS10.</p>

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
	<p>Proposals for such development will be supported at the following locations:</p> <ul style="list-style-type: none"> • The waste management locations identified in Schedule 1 (subject to policy W8A); • Other locations (subject to policies W8B and W8C); • In association with other waste management development; • 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). <p>Provided the development complies with other relevant policies of this plan.</p>	
<u>W8B</u>	<p><u>Non Preferred Locations</u> 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"> • Existing general industrial areas; • Areas allocated for general industrial use in an adopted local plan; • 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. <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</p>	<p>Policy W8B is concerned with considering locations for sites that have not been identified within the Plan as preferred sites for waste related developments.</p> <p>By setting criteria for non-preferred sites, this policy allows for the protection of the natural environment in conformity with the third strand of the three dimensions of sustainable development.</p> <p>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.</p>

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
	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.	It is therefore considered that policy W8B is in conformity with the principles and requirements of the Framework.
<u>W10E</u>	<p><u>Development Management</u> 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"> 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); 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; 3. The impact of road traffic generated by the development on the highway network (see also policy W4C); 4. The availability of different transport modes; 5. The loss of land of agricultural grades 1, 2 or 3a; 6. The effect of the development on historic and archaeological sites; 7. The availability of adequate water supplies and the effect of the development on land drainage; 8. The effect of the development on nature conservation, particularly on or near SSSI or land with other ecological or wildlife designations; and 9. In the Metropolitan Green Belt, the effect of the development on the purposes of the Green Belt. 	<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.</p> <p>The policy therefore, is linked to the third dimension of sustainable development in the meaning of the Framework.</p>
<u>W10F</u>	<p><u>Hours of Operation</u> Where appropriate the WPA will impose a</p>	Paragraph 123 of the Framework

REF:	POLICY	CONSISTENCY WITH THE NPPF AND PPS10
	condition restricting hours of operation on waste management facilities having regard to local amenity and the nature of the operation.	<p>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 by 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, while seeking to impose conditions to minimise this adverse effects, policy W10F is in conformity with the requirements of the Framework.</p> <p>Also see above regarding PPS10 and conditions.</p>
<u>W10G</u>	<u>Public Rights of Way</u> Applications for waste management facilities should include measures to safeguard and where practicable to improve the rights of way network, which shall be implemented prior to any development affecting public rights of way commencing.	<p>Paragraph 75 requires planning policies to protect and enhance public rights of way and access. As such, opportunities for improvement and incorporation of better facilities for users should be sought.</p> <p>It is therefore considered that Policy W10G which seeks to safeguard and improve the Public Rights of Way network is in conformity with the requirements of the Framework.</p>

Basildon Borough Council Appraisal/Compliance of saved policies with NPPF

APPENDIX B

Review of Local Plan Saved Policies – Compliance with NPPF (March 2012)

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
BAS GB1 The Definition of the Green Belt	<u>Compliant</u>	Paragraphs 81 – 86 deal with the approach that should be taken in defining green belts. Paragraphs 83, 153 and 157 give the basis for defining them in a Local Plan.	Yes
BAS GB3 Replacement dwellings in the Green Belt	<u>Compliant</u>	Paragraphs 87.92 provide guidance relevant to these areas, supporting replacement and extensions providing it is not excessive, in addition to limited infilling or the complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt and the purpose of including land within in than the existing development. <i>Note: NPPF also supports non-residential enlargement, further reinforced by Changes to permitted development rights. It also defines certain development as not being inappropriate (subject to caveats) including mineral extraction, engineering operations, local transport infrastructure and development brought forward by a Community Right to Build Order</i>	Yes
BAS GB4 Extension to dwellings in the Green Belt	<u>Compliant</u>		Yes
BAS GB5 Definition of a Dwelling	<u>Compliant</u>		
BAS GB6 Agricultural Workers Dwellings	<u>Compliant</u>		
BAS GB7 Re-use of Buildings in the Green Belt	<u>Compliant</u>		
BAS S2 Housing Sites	<u>Generally Compliant</u>	However, of the list of identified sites, only one remains undeveloped. The NPPF supports sustainable development whilst indicating the importance of a supply of land to boost the supply of housing and meet the objectively assessed housing needs of the area. Paragraph 49 is clear that local planning policies for housing supply are not considered to be up to date if the LPA cannot demonstrate a five-year supply of deliverable housing sites.	
BAS S3 Areas of Special Reserve	<u>Generally Compliant</u>	The NPPF supports sustainable development. Paragraph 49 is clear that local planning policies for housing supply are not considered to be up to date if	

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
		<p>the LPA cannot demonstrate a five-year supply of deliverable housing sites.</p> <p>Where a 5 year land supply cannot be demonstrated Areas of Special Reserve, as part of the allocated supply of sites could be required to come forward ahead of the completion of the Local Plan review.</p>	
BAS S5 Affordable Housing (1999 Alterations)	<u>Compliant</u>	<p>Para 50 supports the inclusion of affordable housing with development in accordance with set policies. Favours on-site provision but where robustly justified, can be supported off-site or by way of a financial contribution.</p>	
BAS C1 Protected Areas – SSSI's, SNIC's & important wildlife habitats	<u>Compliant</u>	<p>Paragraph 109 provides support for protecting and enhancing the natural environment. However, in stating that major developments should be refused in National Parks, the Broads and Areas of Outstanding Natural Beauty it may be interpreted to weaken the protection of areas with a lesser designation. Nevertheless, there are other paragraphs that reinforce the need to minimise impacts on biodiversity and geodiversity and to promote preservation, restoration and re-creation of priority habitats. Mitigation is encouraged with compensation regarded as a last resort.</p>	
BAS C2 Country Parks – protects Country Parks from adverse development	<u>Compliant</u>		
BAS C5 Trees and Woodlands – Protection of Ancient Woodlands	<u>Compliant</u>		
BAS C7 The Marshes Area – protection from damaging development	<u>Compliant</u>		
BAS C13 Water Wildlife	<u>Compliant</u>		
BAS C15 Hazardous Substances – population's health and safety	<u>Compliant</u>	<p>NPPF para 172 in its guidance on plan preparation states that policies should be based on up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents.</p>	
BAS C16 Hazardous Substances – hazardous installations	<u>Compliant</u>		
BAS E1 Comprehensive Development Areas – Gardiners Lane South	<u>Generally Compliant</u>	<p>Paragraph 9 of the NPPF promotes sustainable development, which includes making it easier for jobs to be created, replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure. Para 19 stresses that significant weight should be placed on the need to support economic growth.</p>	

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
		<p>Para 21 determines that Local Plans should set criteria, or identify strategic sites for local an inward investment to meet anticipated needs over the plan period. Para 22 does stress however that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose.</p> <p>Site BAS E1 is subject to an adopted Supplementary Planning Guidance in 2003 and a hybrid outline planning permission (subject to a s.106 agreement) in 2005 for a mixed use scheme of employment, residential and recreation uses; however its delivery in this form is not viable and therefore it has not been built. Para 22 advises that in circumstances where sites allocated have no reasonable prospect of being used for that purpose, Local Planning Authorities need to consider the merits for alternative uses for land or buildings having regard to market signals and the relative need for different land uses.</p> <p>The Council resolved to grant planning permission for a 15 pitch Gypsy and Traveller site subject to certain agreements was made in December 2012 given that its development would not prejudice the wider, comprehensive development of the site.</p>	
BAS E2	<u>Proposed Employment Sites – Terminus Drive</u>	<u>Compliant</u>	
BAS E3	<u>Proposed Employment Sites – land north of Courtauld Road, opposite Repton Close.</u>	<u>Compliant</u>	
BAS E4	<u>Existing Employment Areas</u>	<u>Compliant</u>	
BAS E5	<u>Ford Research and Technology Centre -</u>	<u>Generally Compliant</u>	Paragraph 9 of the NPPF promotes sustainable development, which includes making it easier for

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
Restrictive Automotive Research and Development Uses		<p>jobs to be created, replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure.</p> <p>Para 22 stresses that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose – and that in these circumstances alternative uses for land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses.</p> <p>Planning permission was granted for residential development on the eastern part of this site, where other material considerations such as the demands for housing, the lack of a 5 year land supply and particular circumstances of the application, justified a departure from the adopted policy.</p> <p>For the remainder of the site the policy is still compliant and covers the existing Ford Technical Centre cluster of buildings, test tracks and expansion land.</p>	
BAS E6	<u>Compliant</u>	The NPPF's commitment to economic growth in order to create jobs and prosperity, (paras 18 – 22), is seen as support for the provision and protection of employment areas to meet future needs for the area. Local policy encourages good design of new development reinforced in the general approach to design and improving the environment contained within section 7. Flexibility to accommodate alternative use is encouraged, but still seen to be compatible with BAS E7.	
BAS E7	<u>Compliant</u>		
BAS E10	<u>Compliant</u>		Tested on appeal, that although allowed, gave support, just different interpretation/judgement
BAS SH1	New Retail Development – sequential test	In Section 2, ensuring the vitality of town centres, the concept of the sequential approach to sites is	
	<u>Generally Compliant</u>		

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
BAS SH3	Town Centre Retail Development Sites – land allocations <u>Generally Compliant</u>	supported with the caveat on existing plans being up-to date. The NPPF defines what is meant by the terms edge of centre, out of centre and out of town. Whilst the NPPF supports ensuring the vitality of town centres and therefore a degree of compliance with the local policy, there may be other competing land uses, such as residential development or a mixed use, that may also be supported in these locations where seen as aiding economic recovery.	
BAS SH4	Town Centre Shopping Frontages – primary shopping frontages 1999 Alterations <u>Generally Compliant</u>	Whilst the NPPF supports ensuring the vitality of town centres and therefore a degree of compliance with the local policy, some flexibility may be required and consideration given to viability issues where a change of use is restricted.	
BAS SH5	Town Centre Shopping Frontages – areas outside primary shopping frontages <u>Generally Compliant</u>		
BAS SH6	Retailing on Industrial Estates <u>Compliant</u>	This policy is consistent with the NPPF in supporting economic growth whilst protecting town centres.	
BAS SH7	Local Shopping Centres – new developments and extension to existing <u>Compliant</u>	The local policy adopts a flexible approach and applies to small scale development serving local communities that is consistent with creating sustainable neighbourhoods.	
BAS SH8	Local Shopping Centres – protection of their retail function <u>Compliant</u>	Consistent with the guidance in section 2 of the NPPF, however, consideration will need to be given to viability issues in considering changes of use.	Yes
BAS SH9	Temporary Retail Uses – boot sales Sunday markets etc. <u>Generally Compliant</u>	The NPPF is silent on this matter, however, as these often occur in the Green Belt in Basildon Borough, the NPPF Green Belt policies and those of the Local Plan Saved Policies would be material in decision making.. If they are located within town centres however, they would be seen to contribute to the vitality of the area. (par 23).	
BAS TC1	District Wide Town Centre Policy <u>Generally Compliant</u>	Aim of local policy is to protect town centre, however, greater attention may now be given to economic viability in assessing schemes with some loss of existing retail space potentially being accepted.	

Saved Policy	Conformity	Observations in relation to NPPF	Whether supported on appeal
BAS TC3 Wickford Town Centre – site allocation	<u>Compliant</u>	Policy refers to 2 sites where comprehensive development compatible with a town centre will be supported. This is seen as consistent with paragraph 23 of the NPPF that seeks to ensure the vitality of town centres.	
BAS TC4 Pitsea Town Centre – site allocation	<u>Compliant</u>	Part of this site has already been developed as a mixed use scheme, (residential and retail). However the remainder lends itself to uses appropriate to a town centre and consistent with paragraph 23 of the NPPF that seeks to ensure the vitality of town centres.	
BAS TC5 Markets – protection for Basildon, Pitsea and Wickford market sites	<u>Compliant</u>	In ensuring the vitality of town centres, (para 23), it states that local planning authorities should retain and enhance existing markets and, where appropriate, re-introduce or create new ones ensuring the markets remain attractive and competitive.	
BAS TC6 Residential Development in Town Centres – allows residential development in the town centres whilst protecting ground floor retail units from conversion to housing.	<u>Generally Compliant</u>	Section 2 of NPPF supports ensuring the vitality of town centres, the intent of the local policy. However, recent legislative changes promote a more flexible approach such that less support is given to the loss of ground floor shop units.	
BAS R1 Open Space - protection	<u>Generally Compliant</u>	Section 8 of the NPPF deals with promoting healthy communities, with high quality open space which encourage the active and continual use of public areas included as part of the criteria. This provides support for their protection, albeit this will need to be balanced with the need to accommodate more housing to meet demand.	
BAS R4 Proposed Open Space – Hannkens Farm, Billerica	<u>Generally Compliant</u>	Section 8 of the NPPF deals with promoting healthy communities, with high quality open space which encourage the active and continual use of public areas included as part of the criteria. This provides support for the provision of new open space in Billerica.	
BAS R11 Sports Facilities	<u>Limited</u>	The biodiversity qualities now present on this site	

Saved Policy		Conformity	Observations in relation to NPPF	Whether supported on appeal
	Allocation – Church Road/Basilston Road, Laidon	<u>Compliance</u>	may conflict with previous aspirations to develop the land for sporting facilities, but this would need to be assessed in accordance with detailed ecology surveys and the need to examine the potential for mitigation.	
BAS R15	Golf Courses –golf driving ranges design and siting considerations	<u>Compliant</u>	Local policy sets out need for minimising impact on visual and residential amenity which is consistent with the broader objectives of the NPPF.	
BAS R16	Noisy and Disturbing Sports - protects local amenity	<u>Compliant</u>	Whilst there appears to be no special reference to noise pollution and disturbance, design Para 17 seeks good standard of amenity for all existing and future occupants of land and buildings	
BAS T5	Public Transport – improved facilities at public transport interchanges	<u>Compliant</u>	Paras 29 – 41 focus on promoting sustainable transport which provides good support for local policy.	
BAS BE12	Development Control	<u>Compliant</u>	Section 7 of the NPPF focuses on the requirement for good design. Para 17 seeks good standard of amenity for all existing and future occupants of buildings. Paragraph 58 determines that policies and decisions should aim to ensure developments will function and will add to the overall quality of the area, establish a strong sense of place, respond to local character and history and be visually attractive as a result of good architecture and appropriate landscaping.	Support given on appeal, (including related DC guidelines)
BAS BE13	Areas of Special Development Control Policy - Ramsden Bellhouse	<u>Generally Compliant</u>	Within Section 7 relating to good design, is the recognition that development should respond to local character and history and reflect the identity of local surroundings and materials whilst not preventing or discouraging appropriate innovation. Whilst the NPPF supports the use of design codes, it insists that local policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, landscape, materials and access of new development in relation to neighbouring buildings and the local area more generally.	
BAS BE14	Areas of Special Development Control Policy – Sugden Avenue Wickford	<u>Generally Compliant</u>		Yes
BAS BE15	Areas of Special Development Control Policy – Bowers Gifford	<u>Generally Compliant</u>		

Saved Policy		Conformity	Observations in relation to NPPF	Whether supported on appeal
BAS BE17	Shop Fronts	<u>Compliant</u>	Section 7 of the NPPF focus on the requirement for good design, whilst section 2 seeks to ensure the vitality of town centres. Local policy is therefore seen to accord with these broader principles. Protection of local heritage and character is also a feature of the NPPF, (section 12), and this reinforces design control in Conservation Areas and for Listed Buildings.	Yes
BAS BE18	Advertisements – general	<u>Compliant</u>	Paragraphs 67 – 68 indicate the level of control that should apply to advertisements, in the interests of amenity and public safety. It is not specific on those located in the Green Belt, but the broader general NPPF Green Belt considerations will apply.	
BAS BE19	Advertisements – Green Belt	<u>Compliant</u>		
BAS BE20	Telecommunications	<u>Compliant</u>	Paragraphs 42 – 46 support a high quality communications infrastructure that is consistent with the criteria applied in local policy.	
BAS BE21	Healthcare Developments – new primary & community facilities	<u>Compliant</u>	Paragraph 69 provides general support for promoting healthy communities. It recognises the importance of social, recreational and cultural facilities and services the community needs, without specific reference to healthcare developments. Guidance on plan preparation, (para 171), advises working with public health leads and health organisations to understand and take account of health status and health needs of the local community.	
BAS BE22	Healthcare Developments – Extensions to Hospital facilities	<u>Compliant</u>		
BAS BE24	Crime Prevention	<u>Compliant</u>	Paragraphs 58 & 69 promote the creation of safe and accessible environments where crime and disorder and the fear of crime, do not undermine quality of life or community cohesion.	

AGENDA ITEM 5c

DR/05/14

committee DEVELOPMENT & REGULATION

date 28 February 2014

MINERALS AND WASTE DEVELOPMENT – ENFORCEMENT ITEM

Proposal: **The change of use of land and the erection of buildings, hardstanding, roadways, parking and storage areas to enable the use of the site as a waste recycling and materials recovery facility.**

Location: **Land to the south of Terminus Drive, Pitsea Hall Lane, Pitsea, SS16 4UH**

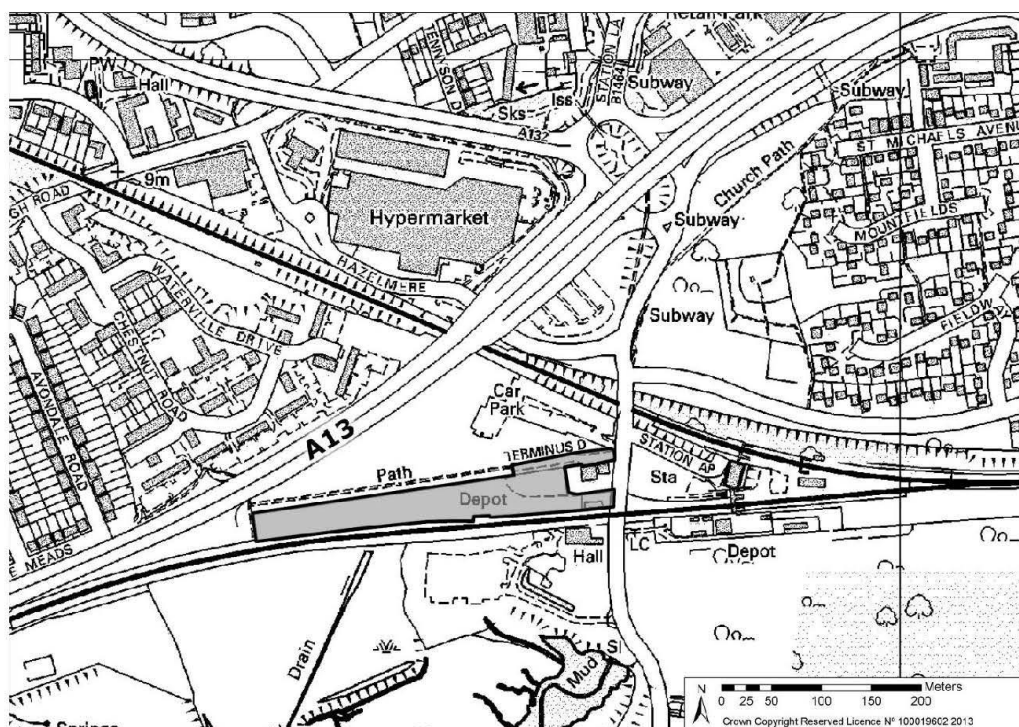
Ref: **ESS/69/12/BAS**

Applicant: **Heard Environmental**

Report by Director of Operations: Environment and Economy

Enquiries to: Claire Tomalin Tel: 03330 136821

The full application can be viewed at www.essex.gov.uk/viewplanning



1. BACKGROUND

Members will recall the application was considered May 2013. The Committee resolved to grant planning permission subject to conditions. Planning permission was subsequently issued on the 11 June 2013.

2. SITE

The site is located south of Pitsea, south of the A13 on Pitsea Hall Lane. The site is accessed via Terminus Drive a no through road. The site itself covers an area of approximately 1.24 hectares. The site is located immediately north of the London to Shoeburyness railway line (the Loop which goes via Rainham) and south east of the London to Shoeburyness main line, with the two lines converging at Pitsea station to the east.

To the southwest, beyond the Loop railway line (approximately 10m), is the Vange Creek Marshes (Local Wildlife Site) and to the south east (approximately 10m) is Cromwell Manor (formerly Pitsea Hall), which is a Grade II listed building used as a wedding and conference venue.

3. PROPOSAL SUMMARY

The application is for the change of use of land to enable the use of the site as a waste recycling and materials recovery facility for mainly commercial and industrial (C & I) waste and construction & demolition (C&D) waste.

The annual throughput of waste proposed to be handled at the site would be 49,000 tonnes per annum. Of this total approximately 10% would be household waste, 60% C & I waste and the remaining 30% would consist of C & D.

The proposal includes the erection of a building within which waste would be sorted and materials recovered, with associated offices and hardstanding.

4. UPDATE SINCE DETERMINATION OF THE APPLICATION

Judicial Review Challenge

On 31 July 2013 the authority were given prior notification by way of a letter before action of the intention of the owner, tenant and operators of Cromwell Manor (formerly known as Pitsea Hall) to submit a Judicial Review (JR) challenge to the decision of the authority to grant planning permission.

A JR is primarily concerned with whether an error has occurred in the decision making process – not necessarily what the actual decision was. The court in considering a JR will not substitute what it thinks is the 'correct' decision.

The main substance of the JR challenge related to the way in which the authority had considered the impact of the proposals on the Listed Building. The authority responded to this prior notification defending its position with respect to determination

of the application.

The formal JR challenge was received on 30 August 2013 and was subject of 5 grounds of challenge, which are set out in Appendix 1. In summary it was challenged that the authority had not properly considered the impact of the proposals on the Listed Building in accordance with planning legislation and policy and therefore the decision was unlawful.

In preparing a response to the JR challenge it came to light that there had been some confusion over the drawings forming part of the application. Some superseded versions of the drawings with respect to the main building had been presented at Committee and it was unclear whether all consultees had commented on the original or revised drawings. In addition it was noted that an error had occurred in the drafting of the decision notice such that part of a condition wording was missing.

The authority sought counsel's advice and it was recommended that, taking the matters as a whole, (those forming the JR challenge and the errors noted since the submission of the JR) the authority should agree to the quashing of the planning permission. The claimant with respect to the JR agreed to consent to the quashing of the planning permission. The planning applicant also agreed to the quashing of the planning permission.

A signed consent order to this effect dated the 17 September was sent to the court and was approved by the court on 10 January 2014.

Effect of quashing the permission: The effect of quashing the planning permission is that the application is now undetermined and the authority must reconsider the application. The applicant has provided additional information, in particular a Heritage Statement, and has revised the main building by adding a screen to the front of the main building. In addition, supporting information has been updated in light of these changes and information supplied with respect to some of the pre-commencement conditions of the now quashed planning permission.

The revised application is now the subject of full re-consultation; the 21 day period for consultation will end on the 7 March 2014.

Upon completion of the consultation and consideration of the application, the matter will be referred back to the Committee for determination.

Activity on site and enforcement: The applicant, Heard Environmental, commenced construction of the main building in August 2013, without having discharged pre-commencement conditions of the now quashed planning permission. The applicant/agent were notified of this breach of planning control and the agent submitted the outstanding details in relation to the pre-commencement conditions in September 2013. However, in light of the JR challenge the applications to discharge conditions were withdrawn. The outer shell of the building has been completed.

The operator has not brought the building into use for waste recycling. The operator has imported waste wood into the site, which has been deposited at the west end of the site. This wood has been sorted by grab and by hand and different qualities of

wood exported from the site. There has been some storage of empty skips at the east end of the site.

The site has been the subject of complaints from the occupiers of Cromwell Manor with respect to vibration. Vibrations were felt when the waste site operator was scraping and levelling the roadway of Terminus Drive, but this was a short-term temporary activity. Other periods of vibration have been reported but it has not been possible to substantiate that the vibration can be directly attributed to the operations at the waste site. The occupiers of Cromwell Manor have been asked to maintain a log of impacts should they experience disturbance in the future.

Development has therefore taken place on site, however, in view of the outstanding application (now remaining to be determined) it is considered that it would not be appropriate to take enforcement action seeking removal of the unauthorised development at the current time. Relevant government Guidance is found in the National Planning Policy Framework (NPPF) which states that; Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and the local planning authorities should act proportionately in responding to suspected breaches of planning control. In accordance with the Council's Local Enforcement and Monitoring plan negotiation should always be the first step in resolving any breach of planning control.

The operator has submitted an application and therefore prior to deciding whether or not it would be expedient to take formal enforcement action, it is considered that time should be allowed for the determination of the application and for consideration of the impacts of the proposals. In the event that planning permission is granted this would regularise the building and the use of the site as a waste recycling site. In the event that planning permission is refused then the need for formal enforcement action would need to be reconsidered at that time, should it be considered expedient.

In the interim it is considered appropriate to continue to monitor activities and review the need for enforcement action, dependent on whether there are significant changes in the level of activity at the site which give rise to unacceptable impacts or upon determination of the application.

5. RECOMMENDED

That no enforcement action is undertaken in respect of the existing breach of planning control (against the unauthorised development) pending the determination of the extant planning application (ref ESS/69/12/BAS), subject to the Waste Planning Authority continuing to monitor activities on site to ensure that no injury to local amenity takes place.

BACKGROUND PAPERS

Consultation replies
Representations
JR submission and responses

LOCAL MEMBER NOTIFICATION

BASILDON – Pitsea

Grounds of JR Challenge by Owners & Operators of Cromwell Manor

Ground 1

Failure to comply with the duty to have special regard to the desirability of preserving the listed building or its setting as required by the Planning (Listed Buildings and Conservation Areas) Act 1990, ss. 16(2) and 66(1) and in consequence applying a test which was wrong in law when considering the application.

Ground 2

Failure to require a report from the applicant on the significance of the listed building as a heritage asset as required by para. 128 of the National Planning Policy Framework (NPPF) and failure to identify and assess the particular significance of the heritage asset as required by para. 129 of the NPPF.

Ground 3

Misinterpretation and misapplication of the tests provided in the NPPF, paras 131-134 and in particular failure to determine whether there would be substantial harm to the heritage asset, as required by paras. 131-134.

Ground 4

Failure to comply with the publicity and notification requirements under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, reg. 5A in view of the acknowledged fact that the development would affect the setting of a listed building.

Ground 5

Failing to undertake a lawful screening exercise in accordance with reg. 4 and Schedule 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Accordingly planning permission was granted without requiring and taking into account an environmental Statement and other environmental information, in breach of reg. 3(4). This resulted in a failure (Inter alia) to consult English Heritage and a failure to undertake a systematic and cumulative assessment of all the likely significant effects of the proposed development on the listed building and its setting.

TOWN AND COUNTRY PLANNING ACT 1990 (As amended)
TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)
REGULATIONS 2011

PROPOSAL: Screening Opinion on revised application: Change of use to waste recycling and materials recovery facility and erection of buildings, containment walls, hardstanding, roadways, fencing, parking, storage areas and ancillary development (part retrospective)

LOCATION: Land to the south of Terminus Drive, Pitsea Hall Lane, Pitsea, SS16 4UH

APPLICATION NO: ESS/69/12/BAS

JUSTIFICATION FOR SCREENING OPINION THAT ENVIRONMENTAL IMPACT ASSESSMENT IS NOT REQUIRED

Is the proposal in Schedule 1?

The proposal does not fall within Schedule 1 of the Regulations that would require a mandatory Environmental Impact Assessment (EIA).

Is the proposal in Schedule 2?

It does fall within column 1 of Schedule 2 under paragraph 11 (b) Installations for the disposal of waste.

Is the proposal in a sensitive area?

The site lies within 200m of the Pitsea Marsh SSSI which is located to the south east of the site. 300m to the south west lies Vange and Fobbing Marsh SSSI

The site is therefore considered to lie within a statutory 'sensitive area' as defined in paragraph 2 of the Regulations.

National Planning Policy Guidance (NPPG) states that in certain cases other statutory and non-statutory designations, which are not included in the formal definition of 'sensitive areas' in the regulations, but which are nevertheless environmentally sensitive may be relevant in determining whether significant environmental effects are likely and therefore whether an EIA is required and this includes County Wildlife Sites. On the south side of the railway line to the west is the Vange Creek Marsh County Wildlife Site approximately 20m from the site.

Does it meet criteria in Column 2 of Schedule 2

The applicable threshold/criteria that triggers the need to consider whether an EIA is required are:

- I. The disposal is by incineration
- II. The area of the development exceeds 0.5 hectare
- III. The installation is sited to be within 100 metres of any controlled waters.

With respect to the above, the proposal is not for incineration, but is within 100 metres of any controlled waters and the site is above 0.5 hectare in area, it is defined as a 'Schedule 2 project' and therefore the need for EIA must be further considered.

Are there likely to be significant environmental effects

It is the Secretary of State's view (NPPG) that in relation to Schedule 2 paragraph 11 (b) Installations for the disposal of waste, the likelihood of significant effects will generally

depend on the scale of the development and the nature of the potential impact in terms of discharges, emissions or odour. For installations (including landfill sites) for the deposit, recovery and/or disposal of household, industrial and/or commercial wastes (as defined by the Controlled Waste Regulations 1992) EIA is more likely to be required where new capacity is created to hold more than 50,000 tonnes per year, or to hold waste on a site of 10 hectares or more. Sites taking smaller quantities of these wastes, sites seeking only to accept inert wastes (demolition rubble etc.) or Civic Amenity sites, are unlikely to require EIA.

Schedule 3 of the Regulations sets out criteria that should be used to help identify whether a Schedule 2 development is likely to have significant environmental effects and therefore require EIA, as follows:

Location of development

The site is located south of Pitsea, south of the A13 on Pitsea Hall Lane. The site is accessed via Terminus Drive a no through road. The site itself covers an area of approximately 1.24 hectares. The site is located immediately north of the London to Shoeburyness railway line (the Loop which goes via Rainham) and south east of the London to Shoeburyness main line, with the two lines converging at Pitsea station to the east. Pitsea Hall Lane crosses the main line railway line by means of a bridge north east of the site and the Loop by a level crossing south east of the site.

To the southwest, beyond the Loop railway line (approximately 10m), is the Vange Creek Marshes (County Wildlife Site) and to the south east (approximately 10m) is Cromwell Manor (formerly Pitsea Hall), which is a Grade II Listed building used as a wedding and conference venue.

To the north of the site is the A13 flyover, which is closer to the site at its western end. Residential flats lie to the north east of the site beyond the A13 flyover. The nearest of which are 60m from the north west corner of the site on Chestnut Road and the Glen. Pitsea Mount residential area is located approximately 200m to the northeast.

On the north side of the site, at the eastern end of the site, Terminus Drive abuts a car park, the remaining land to the north between the site and the main line railway line is vacant. Beyond the mainline to the north is a Tesco Superstore and associated parking.

Directly east of the site is a fencing business and a residential property permitted for use as offices.

Pitsea Hall Lane is a no through road but gives access to Wat Tyler Country Park, Vange Creek RSPB reserve, Tuskit Works Industrial Area, an ECC Household Waste Recycling Centre and Pitsea sewage treatment works, Pitsea Landfill among others.

Footpath Vange 136 is adjacent to the northern boundary of the site and runs parallel with the site access and then along the northern boundary of the site, where it meets a path that can be used to go north to the residential area of Pitsea or south across the railway line to the marshes.

The site is allocated as Employment Area within the Basildon District Local Plan (adopted 1998)(BDLP). The land immediately to the south is designated as Green Belt (including the railway line) and also as "Marshes Area" within the BDLP.

The Marshes Area is subject of several separate designations. The closest is Vange Creek Marshes County Wildlife Site that lies south west of the site on the southside of the railway line and Vange Creek Marsh SSSI and Pitsea Marsh SSSI which respectively lie to the south east 200m and southwest 300m

The site was vacant prior to the applicant commencing waste storage and sorting on the site. The site was previously permitted as a minerals yard, such that it is likely mineral was imported by road and potentially rail, stored and then distributed from the site by road.

Characteristics of development

Size - The proposed throughput would be 49,000 tonnes per annum which is just less than the capacity which is more likely to require EIA according to the indicative thresholds and criteria in the NPPG.

The waste would consist of construction and demolition, commercial and industrial waste and household waste. 60% by weight would be soils, clays, hardcore, concrete and rubble, 40% would be timber, wood, plastics and some mixed wastes from domestic, commercial and industrial skips.

The majority of the waste would be inert and the NPPG suggests EIA is more likely to be required for non-inert waste.

The proposal is for a change of use to a waste recycling and materials recovery facility, the erection of an industrial type building with associated offices, hard-standing and vehicle movements consisting of staff vehicles, HGVs and skip lorries.

The application site covers an area of approximately 1.24 hectares and the NPPG suggests EIA is more likely to be required for new sites greater than 10ha.

The proposal involves the erection of a single waste processing building on the northern boundary of the site. This building would be constructed from corrugated steel and measure 19 metres deep, 30 metres long and 9 metres to eaves, with a shallow pitched roof over. The ridge, running from east to west would be 11.4 metres in height. The building would face south into the centre of the site. In front of the building would be a screen creating an open topped lobby area.

The materials would enter the site passing to the south of the building and screen to the weighbridge, vehicles would turn around in the west of the site and then approach the building from the west deposit there load in the building and then exit the building to the west turning round in the west of the site before exiting the site passing in front of the building and lobby.

Within the building waste would be loaded onto a feed belt to a trommel and picking station. Waste would either be sorted mechanically or by hand; recovering the following materials metals; brick, concrete and stone; plastics; paper; cardboard; green waste; wood and associated materials.

Sorted materials would be placed in either skip lorries or on fork lift trucks, depending on their type. Wood and hardcore and soil would be removed from the building and placed in the walled storage bays to be created at the western end of the site other materials would be placed in skips and stored within the building before export from the site for

reprocessing. The waste residue would be taken to the landfill potentially Pitsea Landfill located south of the south.

In addition there would be administration offices within portacabins, a weighbridge, lorry, car, motorcycle and bicycle parking and a storage area for skips south of the access.

Cumulation with other development - To the east of the site is a fencing supply business, supplying wood, concrete panels and posts and security fencing. The construction of panels is undertaken within the buildings, but some surplus materials are stored in the open on north side of Terminus Drive. This existing business does generate some noise and dust.

The railway line south of the site gives rise to noise both from the trains themselves, the warning siren on the level crossing on Pitsea Hall Lane and the train horn (required to be sounded due to the footpath crossing the line south west of the site). The trains potentially also give rise to vibration.

Cromwell Manor to the south of the site could be considered a sensitive use as it is used as a wedding and conference facility as well as a residential property. The venue up until June 2014 also had a marquee to extend capacity of the venue. Planning permission to retain the marquee was refused by Basildon Borough Council in March 2014. It is acknowledged that this use could be affected by noise, dust and vibration, but in the context of existing uses, including the railway line, level crossing and proximity of Pitsea Hall Lane (10m west of Cromwell Manor) already subject to HGV traffic (generating noise and vibration) it is not considered the impacts would be such significance alone or cumulatively that the proposal would warrant an EIA.

The development proposes 100 movements a day (50 in and 50 out). Pitsea Hall Lane gives access to an industrial area, sewage treatment works, Wat Tyler Country Pak and Pitsea Landfill (HGV movements to the landfill are limited to 1100 movements a day 550 in 550 out). It is therefore considered that, in the context of the overall traffic on Pitsea Hall Lane, the traffic movements associated with the waste development would not be significant.

Use of natural resources- The proposed development would not use significant quantities of natural resources other than those required in the construction of the building and a small quantity of water for use in dust suppression.

It is not considered there would be a significant impact arising as a result of the use of natural resources.

Production of waste - As a waste recycling business, its main purpose is to recover recyclable/reusable materials from the waste stream, therefore reducing the amount of waste. There would be an element of the waste material important that could not be recycled/reused and this would be required to be exported for landfill, but is considered this would not give rise to significant environmental effects.

Pollution and nuisances -

The site is, without prejudice to any formal decision, suitably located in planning policy terms due to its employment location.

Discharges, emissions and odour are noted as important considerations in NPPG.

Discharges – Surface water runoff would be generated from hard surfaces, the railway line and associated ballast provides an obstruction to surface water. There is no visible or known drainage pathway from the site to the south towards the CWS and SSSI and the controlled water.

The majority of the waste imported to the site would be largely inert, although wood, cardboard, paper and plastics are not totally inert they are not biodegradable in the same manner as putrescible such as household/food waste and are unlikely to give rise to significant leachate.

Drainage to sewer is proposed.

Surface water runoff would be generated from hard surfaces, the railway line and associated ballast provides an obstruction to surface water. There is no visible or known drainage pathway from the site to the south towards the CWS and SSSI and the controlled water. Drainage to sewer is proposed.

Emissions - The importation of waste would be by road such that there would be emissions to air from vehicles. Proposed vehicle movements are 100 HGV movements (50 in 50 out per day), however, it is likely any use of this land allocated for employment use would involve some vehicular usage and as stated above the proposed traffic movements are not considered to be significant in the context of traffic using the Pitsea Hall Lane and the A13, Pitsea Landfill for example is permitted to receive 1100 HGV movements per day.

Odour - The majority of the waste imported to the site would be largely inert, although wood, cardboard, paper and plastics are not totally inert they are not biodegradable in the same manner as putrescible such as household/food waste and are unlikely to give rise to significant odour.

The sorting of waste is likely to give rise to dust and noise. The nearest residential property is Cromwell Manor to the south of the railway, which is also a wedding and conference venue. In addition there are residential properties to the north west on Chestnut Road and the Glen and at Pitsea Mount. While there is potential for impacts from noise and dust it is not considered that these would be of more than local importance that would warrant an EIA.

There is potential for generation of vibration from the operation of plant and machinery, but in view of existing vibration from existing adjacent road traffic, which cross the level crossing in close proximity to the site and trains on the adjacent line, it is not considered this would give rise to significant environmental effects that warrant an EIA.

There would be a requirement for an Environmental Permit. Whilst this is not relied upon as a reason not to require EIA, it does provide assurance that the environment would be properly protected through the pollution control regime.

The site is separated from the County Wildlife Site and SSSIs by the railway, which creates a physical barrier. The SSSIs to the south west is 200m from the proposed site, while the SSSI to the south east is 300m from the site and is also separated from the site by Pitsea Hall Lane. It is considered due to the position of the railway and the disturbance that already exists due to the railway line, level crossing and traffic on Pitsea Hall Lane and the inert nature of the waste proposed to be sorted and stored on site it is considered that there would not be significant environmental effects resulting from the development on the

CWS or SSSI that warrant an EIA.

Risk of accidents – The proposed development would require an Environmental Permit and environmental controls would be monitored by the Environment Agency.

The proposed waste recycling plant and machinery is in common usage and therefore the potential for accidents is low.

Characteristics of the potential impact

The potential significant effects of the development must be considered in relation to criteria set out above, and having regard in particular to the extent of the impact, the magnitude and complexity of the impact; the probability of the impact; the duration, frequency and reversibility of the impact.

It is not considered that the potential impacts, namely, visual, noise, dust and vibration are likely to effect more than the immediate area surrounding the site. In addition these impacts are not considered of a magnitude or complexity that warrants an EIA and there are known techniques to minimise noise and dust.

In addition, there are a total of 3 SSSI, 6LNR / LoWs and 1 country park within 2km of the proposed site. However due to the nature of the proposal and the fact that it is adjacent to an existing industrial development and railway line it is considered that there will not be significant environmental effects, in part because there are no direct links to these designated sites due to the location of the railway line.

The proposals are within 10m of a Grade II Listed Building (c 16th century) and the proposals have the potential to impact upon the setting to the rear of the Listed Building, although it has to be acknowledged that the railway and Pitsea Hall Lane have in the past degraded the setting of this building. Cromwell Manor has also been extended in the 1990s on its west side, such that its appearance on the west side has been significantly changed. As the proposals do not involve changes to the Listed Building itself and are not within the curtilage of the Listed Building and due to the existence of the railway line behind it is not considered that the effects on this heritage asset from the proposal are of such significance that it would warrant an EIA.

In addition vibration could potentially impact upon the structure of the Listed Building. However, in view of the proximity of Pitsea Hall Lane and the uneven surface of the level crossing north-east of the LB and the railway line, it is considered that the LB is already subject to vibrations and the proposals would not result in a significant change in vibration that would warrant an EIA.

Conclusion

The proposed development would not exceed the thresholds set out in NPPG because it would be located on a site of approximately 1.24ha in size and would have capacity of less than 50,000tonnes and would handle mainly inert waste. The proposed non-inert waste would not be of a nature that would normally create significant odour.

However the site is located within "sensitive area", but in view of the railway line and or road between the designated sites it is not considered there would be significant environmental effects on these designated sites.

NPPG states that, in general, EIA will be needed for Schedule 2 developments for major development of more than local importance, for developments which are proposed for

particularly environmentally sensitive or vulnerable locations, and for developments with unusually complex and potentially hazardous environmental effects.

Advice in the NPPG has not been relied upon solely. Schedule 3 of the Regulations has been taken into account with the result that the development is not considered to be of more than local importance (in the context of EIA legislation), would not have significant environmental effects on nearby CWS and SSSIs or Listed Building and would not have unusually complex/hazardous environmental effects either alone or in combination with other existing or approved developments.

Based on the consideration of criteria for Schedule 2 11) – Installations for the disposal of waste guidance within the NPPG it is considered that **EIA WOULD NOT BE REQUIRED.**

Documents submitted with the Application and taken into account in this Opinion:

Letter and appendices from Smart Planning dated 03/02/2014
Planning, Design and Access Statement and appendices Ref SPL12.1831
Noise Assessment – Integrated Acoustics date 22/01/14
Heritage Statement

Drawings as follows:

M001	Location Map
M002D	Location map
E101A	Existing Site Plan
P201Q	Proposed Site Plan
P202C	Proposed Floor Plan
P203D	Proposed Roof Plan
P204E	Proposed Front and Side Elevation
P206E	Historical Access Route Plan
P207A	Proposed Portakabin
P208A	Proposed Portakabin Elevations
SK-GO1	Proposed Screen General Arrangements

Signed: 
Planning Manager/ Senior Planner

Date: 27/6/14

