

**DR/61/13**

Committee: DEVELOPMENT & REGULATION

Date: 13 December 2013

# **INFORMATION ITEM - APPEAL DECISION**

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

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

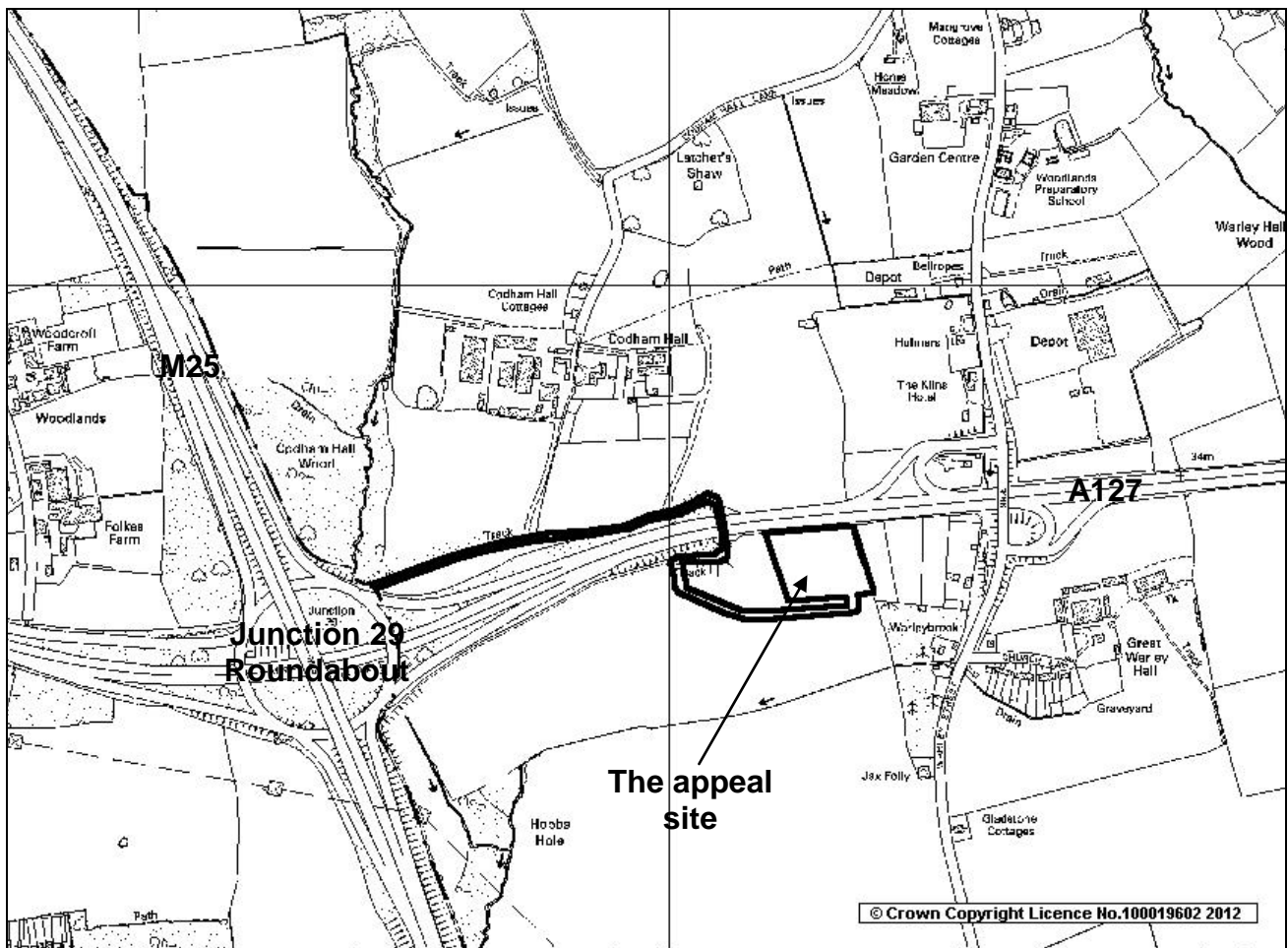
ECC Reference: **ESS/40/12/BRW**

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

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

Report by Director for Operations, Environment and Economy

Enquiries to: Tom McCarthy Tel: 01245 437507



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## **1. BACKGROUND AND SITE**

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

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

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

Condition 7 specifically stated:

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

## **2. CURRENT POSITION**

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

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

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

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

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

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

## **LOCAL MEMBER NOTIFICATION**

BRENTWOOD – Brentwood South

## APPENDIX 1



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## Appeal Decision

Accompanied site visit made on 22 October 2013

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

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

Decision date: 13 November 2013

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

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

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

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

### Main Issue

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

### Reasons

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

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<sup>1</sup> Junction 29



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

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

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





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

*Paul Dobsen*

INSPECTOR