

DR/47/12

committee DEVELOPMENT & REGULATION

date 23 November 2012

INFORMATION ITEM - APPEAL DECISION

Proposal: **Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing (part-retrospective)**

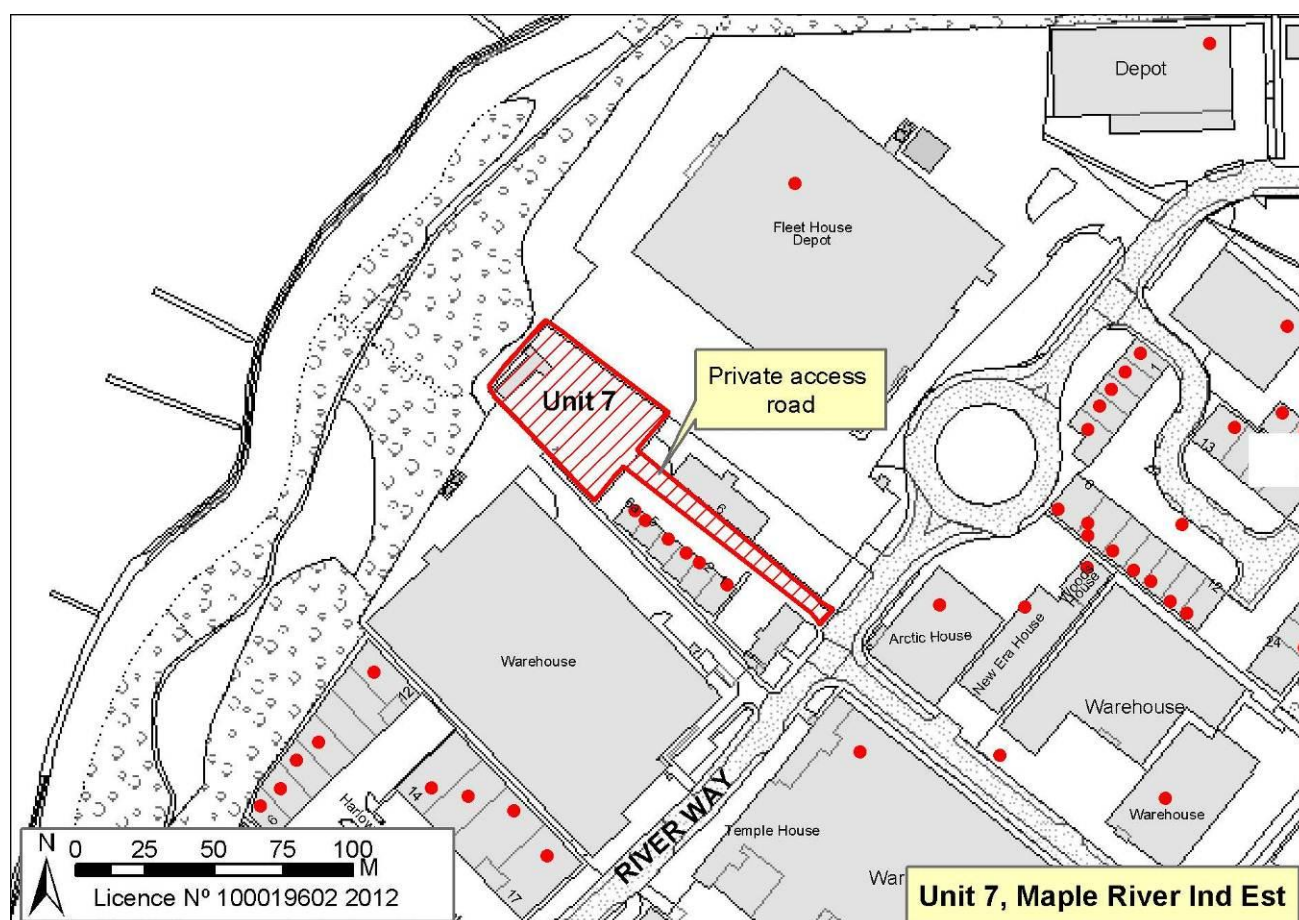
Location: **Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex, CM20 2DP**

ECC Reference: **ESS/52/11/HLW**

Planning Inspectorate Reference: **APP/Z1585/A/12/2173892**

Report by Head of Environmental Planning

Enquiries to: Tom McCarthy Tel: 01245 437507



Reproduced from the Ordnance Survey Map with the permission of the Controller of Her Majesty's Stationery Office, Crown
Copyright reserved Essex County Council, Chelmsford Licence L000 19602

1. BACKGROUND AND SITE

Members of the Development and Regulation Committee resolved to refuse an application for a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles (part retrospective), at the February 2012 meeting (with the reason for refusal being agreed at the March 2012 meeting).

The facility which would have had capacity for up to 75,000 tonnes of waste per annum was refused for the following reason:

1. The proposed development represents an over-intensification of use of the site and would lead to an unacceptable increase in vehicle movements, causing congestion, which would be detrimental to the efficient and safe use of the private access road and would have a detrimental impact on the operation of the adjacent business units, contrary to Harlow Local Plan (2006) policy ER6 (Retaining Existing Employment Areas)

2. CURRENT POSITION

An appeal and application for costs against the decision was lodged with the Planning Inspectorate and was determined by way of written representation. The Planning Inspector's decisions (proposal and costs), which were issued on 30 October 2012, are attached at Appendix 1.

The Planning Inspectorate accepted and treated the appeal against 'non-determination' as it was claimed by the appellant that the decision notice was not received until after the appeal had been lodged. In treating the appeal as such the Inspector concluded that *"no party to the appeal would be disadvantaged as a result."*

With regard to the application, the Inspector considered that the main issue was *"whether the proposed development would cause unacceptable harm to the character of the area or the business environment, by reason of increased traffic generation."*

At paragraph 11, of the decision, it is considered by the Inspector that *"the proposed use would not have a significantly worse effect on traffic conditions in the vicinity of the appeal site than an alternative employment use, as envisaged by the site's designation."* Elaborating on this he states that he is *"not persuaded that the new use would cause undue congestion, undermine highway safety or efficiency or, in consequence, cause unacceptable harm to the character of the area or business environment."*

Furthermore, at paragraph 13, he considers *"the proposed development would not cause unacceptable harm to the character of the area or the business environment, with by reason of increased traffic generation or more generally"* and in this instance the concerns raised, by occupiers of neighbouring businesses, do not

justify a refusal of planning permission. As such the Inspector decided to approve planning permission, subject to 18 conditions.

The claim for costs was been made in respect of Paragraph A3 of Circular 03/2009 that inter-alia aims to ensure Authorities properly exercise their development control responsibilities and rely only on reasons for refusal which stand up to scrutiny and do not add to development cost through avoidable delay. It was claimed the Council had relied on a small number of third party objections, which themselves have failed to substantiate a clear planning objection. Further to this, in support of the claim, Paragraph B18 was also cited, in that; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a costs award.

The Inspector, in respect of the above, at paragraph 9, states that *"in this case, the Council's case focussed on the argument that potential traffic movements would cause congestion on nearby roads but they did not produce substantial evidence to justify their assertions, in the face of the technical evidence presented on behalf of the appellants or in the light of their own officers' technical advice. Nor was there any substantive evidence to show that significant harm would be caused to the character of the surroundings or the operation of nearby businesses, especially bearing in mind the nature of the industrial estate the previous use of the site itself."*

In conclusion to the above the Inspector considers that, in failing to provide such evidence, the Council has acted *"unreasonable...resulting in unnecessary expense...and that a full award of costs is justified."* As such *"it is hereby ordered that Essex County Council shall pay to GBN Services Limited the costs of the appeal proceedings described in the heading of this decision."* It is anticipated, as alluded to at paragraph 12, that details of those costs will subsequently be forwarded to Essex County Council with a view of reaching an agreement as to the payable amount.

Therefore, at the time of writing, the full amount required to be paid by the County council is not yet known.

LOCAL MEMBER NOTIFICATION

HARLOW – Harlow North

Appeal Decision

Site visit made on 23 August 2012

by Roger C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MIL

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

Decision date: 30 October 2012

Appeal Reference: APP/Z1585/A/12/2173892

Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by GBN Services Limited against Essex County Council.
 - The application (reference ESS/52/11/HLW) is dated 27 October 2011.
 - The development proposed is described in the application form as follows: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing".
-

Application for Costs

1. An application for costs has been made by GBN Services Limited against Essex County Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted, on land at Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP, for the following development: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles; proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing". Planning permission is granted in accordance with the terms of the application (reference ESS/52/11/HLW, dated 27 October 2011, subject to the conditions set out in the attached Schedule of Conditions.

Procedural Point

3. The application which is the subject of this appeal is dated 27 October 2011. The Council's decision is dated 23 March 2012 and was issued on the same day, though it was not received by the appellant until after the appeal had been lodged. The appeal is dated 4 April 2012 and was expressed as being against a failure to give notice within the prescribed period.
 4. The Planning Inspectorate have advised that the appeal would be treated as
-

being "against non-determination" and I have concluded that no party to the appeal would be disadvantaged as a result.

Main issue

5. I have concluded that the main issue to be determined in this appeal is whether the proposed development would cause unacceptable harm to the character of the area or the business environment, by reason of increased traffic generation.

Reasons

6. River Way is a main thoroughfare serving an extensive area of industrial and commercial development in Harlow. The Maple River Industrial Estate is a small estate in its own right, comprising a number of busy premises along a subsidiary cul-de-sac access road leading from River Way. The whole area provides a modern business setting, within a reasonably spacious environment, but it is plainly industrial and commercial in character and generates significant traffic along River Way.
7. The appeal site lies at the north-west end of the access road serving the Maple River Industrial Estate, with woodland beyond. The site itself is a predominantly open area of land, occupied by an office building of a temporary nature and a large "wall" structure, and it was vacant at the time of the site visit, though it was previously in use as a ready-mix concrete plant. By contrast, business units stand either side of the access road, each with their own parking and servicing areas but creating a more closely built up character.
8. At the time of my inspection there was relatively little traffic on River Way, though other roads were rather busy in the wider area (it being about 1700 in the afternoon on a working day). Even so, there was some congestion on the Maple River Industrial Estate access road itself, caused by lorries which were loading or unloading in the roadway.
9. The proposed new use would involve the introduction of additional lorry traffic (and other traffic) in the cul-de-sac access road, though the vacant site could be brought back into use, in any case. Information submitted in support of the planning application explains that the site has good road links and is well located in relation to the area to be served. The access road itself would need to be managed, to prevent neighbouring businesses from interrupting each other's operations, but that would be required in any case (as at present) and it is not necessary for additional controls to be imposed through the planning system in connection with the appeal scheme.
10. In their decision notice, the Council make clear their concern regarding an "over-intensification of use of the site" that would lead to an "unacceptable increase in vehicle movements". The proposed use would, of course, need to be serviced by large lorries and other vehicles. Evidently, it would add to traffic in the Maple River Industrial Estate, since the site is currently vacant.
11. Nevertheless, the proposed use would not have a significantly worse effect on traffic conditions in the vicinity of the appeal site than an alternative employment use, as envisaged by the site's designation. Therefore, I am not persuaded that the new use would cause undue congestion, undermine

highway safety or efficiency or, in consequence, cause unacceptable harm to the character of the area or the business environment.

12. Turning to more general matters, it is self evident that poorly managed waste sites can cause a variety of problems. Even so, it must be acknowledged that conditions can be imposed and that other controls exist to ensure that such sites do not cause harm to human health or to the environment. Thus, the site would not have an undue effect on the amenities of the area, bearing in mind the industrial and commercial nature of the locality, especially in the light of the previous use of the site as a ready-mix concrete plant.
13. In short, the proposed development would not cause unacceptable harm to the character of the area or the business environment, either by reason of increased traffic generation or more generally. Nor do the concerns raised by occupiers of neighbouring businesses justify a refusal of planning permission in this instance.
14. Policies in the 'Essex and Southend Waste Local Plan' provide a policy framework for making decisions on planning applications relating to waste management proposals. They emphasise the principles of sustainable development and identify the characteristics of suitable locations and other relevant criteria for waste management development. The appeal site is not a preferred site within the Waste Local Plan but is suitable for the proposed use in principle, bearing in mind the characteristics of the location.
15. Policy ER6 of the 'Adopted Replacement Harlow Local Plan' is concerned with "Retaining Existing Employment Areas". It points out the need to avoid the change of "employment land" to "non-employment uses" and records that "there have been a few significant losses of employment land to other uses, notably retailing, car showrooms and leisure uses". Policy ER5 of the Local Plan identifies the uses suited to "general Employment Areas" as being "within use classes B1, B2 and B8".
16. The National Planning Policy Framework, which was published in March 2012, does not include specific policies relating to waste management proposals but does give greater emphasis to the need to apply principles of sustainable development and to encourage economic activity.
17. Although the waste management proposal is not a use that falls within the definitions of use classes B1, B2 and B8, it does have the general employment characteristics of an industrial use, in broad terms. The appeal site is within a busy industrial area and, although the proposed waste management activity has some obvious special characteristics, it would not be essentially inimical to the surroundings. It would, moreover, be an employment generating use in its own right, as well as providing a practical service for the locality.
18. Evidently, the appeal site lies within an established urban area at a location which is suited to its function and which is "sustainable" in planning terms. The contribution that the appeal scheme would make to the provision of necessary services, in a location which would be convenient in relation to the sources of the waste to be processed, weighs in favour of the appeal. I have concluded that the project would not be in conflict with the Development Plan, in principle, and that objections to the scheme can be overcome by the imposition

of suitable conditions. In short, I am persuaded that the scheme before me can properly be permitted, subject to conditions.

19. Although I have taken account of all the matters that have been raised in the representations, in relation to the appeal and at the application stage, including those made by the Highway Authority and those made by interested persons, I have found nothing to cause me to alter my decision.
20. I have, however, also considered the need for conditions and I have concluded that a number of conditions are necessary. In imposing conditions, I have taken account of the conditions suggested by the Council in the usual way, without prejudice to their main arguments in the appeal, subject to modifications that are necessary, in my opinion, in the interests of enforceability, clarity and simplicity.
21. Conditions numbers 1 and 2 are needed to define the planning permission, though I am convinced that, in the interests of achieving clarity, it is sufficient for condition 2 simply to specify the application drawings (incorporated in the 'Planning Design and Access Statement', dated October 2011) as the approved drawings.
22. Conditions are also needed to ensure that quality is maintained and that the proposed recycling centre waste would be operated in a way that would mitigate its effect on its surroundings. As suggested by the Council, the conditions imposed include controls on the size of stones to be transported away from the site on un-sheeted lorries, the storage and handling of waste, ground surface treatment, drainage details, cleaning facilities for vehicles leaving the site and other matters.
23. Bearing in mind the relative lack of detail of the proposed new buildings and structures included in the application drawings, a condition has also been imposed to require full details of those buildings and structures to be submitted to and approved by the planning authority, prior to the commencement of development.

Roger C Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings (except as required by other conditions of this decision):
 - Drawing number 31049/PA/01 (Rev 0) 'Site Location Map', dated September 2011;
 - Drawing number 31049/PA/02 (Rev 2) 'Existing Site Layout', dated October 2011;
 - Drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011;
 - Drawing number 31049/PA/04 (Rev 0) 'Proposed Buildings Elevations', dated October 2011;
 - Drawing number 31049/PA/05 (Rev A) 'Perimeter Elevations', dated 2011;
3. No deliveries or collections shall be made to or from the premises outside the times of 0600-1800 on Mondays to Saturdays (or at any time on Sundays and Bank Holidays).
4. The recycling centre hereby permitted shall not be operated outside the following times:
 - 0600-1800 on Mondays to Saturdays
 - 1000-1600 on Sundays and Bank Holidays
5. No development shall take place until details of all ground surface finishes (including kerbs and manhole covers) have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.
6. No development shall take place until full details of all the buildings and structures to be erected on the site have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.
7. No development shall take place until details of wheel washing facilities to be provided on the site have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.
8. No vehicles shall leave the site unless they are clean in accordance with the standards achieved by the use of the approved wheel washing facilities.
9. No loaded vehicles shall leave the site un-sheeted, except those carrying only washed stone in excess of 500mm in dimension.
10. There shall be no intake of waste to the site until the measures to prevent odour nuisance and the measures to prevent to minimise dust emissions, as detailed in section 4.2 of the Planning and Design and Access Statement dated October 2011, have been implemented. There shall be no intake of waste to the site at any time that those measures are not being continued.
11. No demolition or groundworks shall take place on the appeal site other than in accordance with a written scheme of archaeological investigation which has been submitted to and approved in writing by the planning authority.
12. No development shall take place until details of surface and foul water drainage have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.

13. All fuel, lubricant or chemical storage vessels on the site (whether temporary or not) shall be placed or installed within an impermeable container with a sealed sump and capable of holding at least 110% of the vessel's capacity. All fill, draw and overflow pipes shall be properly housed within the said container to prevent spillage. No fuel, lubricant or chemicals shall be stored on the site other than within a storage vessel in accordance with this condition.

14. Waste brought on to the site shall be deposited and handled only within the areas shown for the relevant activity on drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011.

15. No waste shall be stored or deposited on site at any time to a height of more than 5 metres above ground level.

16. No waste shall enter the site other than waste originating either from within the administrative area of Essex and Southend or from within a radius of 15 miles from the boundary of the site. No waste shall enter the site other than waste the origin of which is recorded in records kept by the operator and available to the Waste Planning Authority within seven days of receipt of a written request for the information.

17. No salvaging operations, including the de-pollution and dismantling of end-of-life vehicles (ELVs) shall take place outside the processing workshop shown on drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011.

18. There shall be no direct sale of vehicle parts or components to the public. Recovered vehicle parts or components may be sold only wholesale, for onward distribution.



Costs Decision

Site visit made on 23 August 2012

by **Roger C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MIL**

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

Decision date: 30 October 2012

Costs Application in relation to Appeal Ref: APP/Z1585/A/12/2173892 Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The appeal is made by GBN Services Limited for a full award of costs against Essex County Council.
 - The appeal was made against the refusal of planning permission for: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing".
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for GBN Services Limited

2. The appellants point out that the Council's decision was made against officers' advice. They argue that the Council have failed to substantiate the basis of their concerns either in terms of traffic generation or otherwise. They go on to assert that the Council have had undue regard to the objections of others and have failed to make their own objective appraisal of the proposals.
3. The appellants claim that the Council has failed to support with substantive evidence their assertion that the proposed use would lead to an unacceptable increase in vehicle movements as stated in the sole reason for refusal. They have disregarded the sound evidence provided in the 'Transport Statement', prepared on behalf of the appellants by Waterman Boreham who are respected consultants.
4. In support of their application for costs, they draw particular attention to paragraphs B16, B20 and B21 of Circular 03/2009.

The response by Essex County Council.

5. The Council state that their decision involved a judgement concerning the character of the area and the effect of the development on adjoining occupiers. Likewise, they argue that they were entitled to make a judgement on potential traffic movements and to conclude that the proposals would cause congestion on nearby roads and loss of amenity for the surroundings.
-

6. Thus they argue that the Council acted reasonably and that their decision in this case was entirely justified.

Reasons

7. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. Nevertheless, paragraph B16 of the Circular makes it plain that "authorities will be expected to produce evidence to show clearly why the development cannot be permitted". While they "are not bound to accept the recommendations of their officers", they are expected to produce "relevant evidence on appeal to support their decisions in all respects" (paragraph B20) and, though they are expected to consider any objections that may be raised, they need to "make their own objective appraisal and ensure that valid planning reasons are stated and substantial evidence provided" (paragraph B21). In cases where matters of judgement are involved, it is also necessary for "realistic and specific evidence" to be provided "about the consequences of the proposed development" (paragraph B18).
9. In this case, the Council's case focussed on the argument that potential traffic movements would cause congestion on nearby roads but they did not produce substantial evidence to justify their assertions, in the face of the technical evidence presented on behalf of the appellants or in the light of their own officers' technical advice. Nor was there any substantive evidence to show that significant harm would be caused to the character of the surroundings or the operation of nearby businesses, especially bearing in mind the nature of the industrial estate and the previous use of the site itself.
10. I have allowed the appeal and, furthermore, I have concluded that the Council have, indeed, failed to produce substantive evidence in support of their case. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.
11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Essex County Council shall pay to GBN Services Limited the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Essex County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

RC Shrimplin INSPECTOR