

AGENDA ITEM5b.....

DR/02/13

committee DEVELOPMENT & REGULATION

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MINERALS AND WASTE DEVELOPMENT

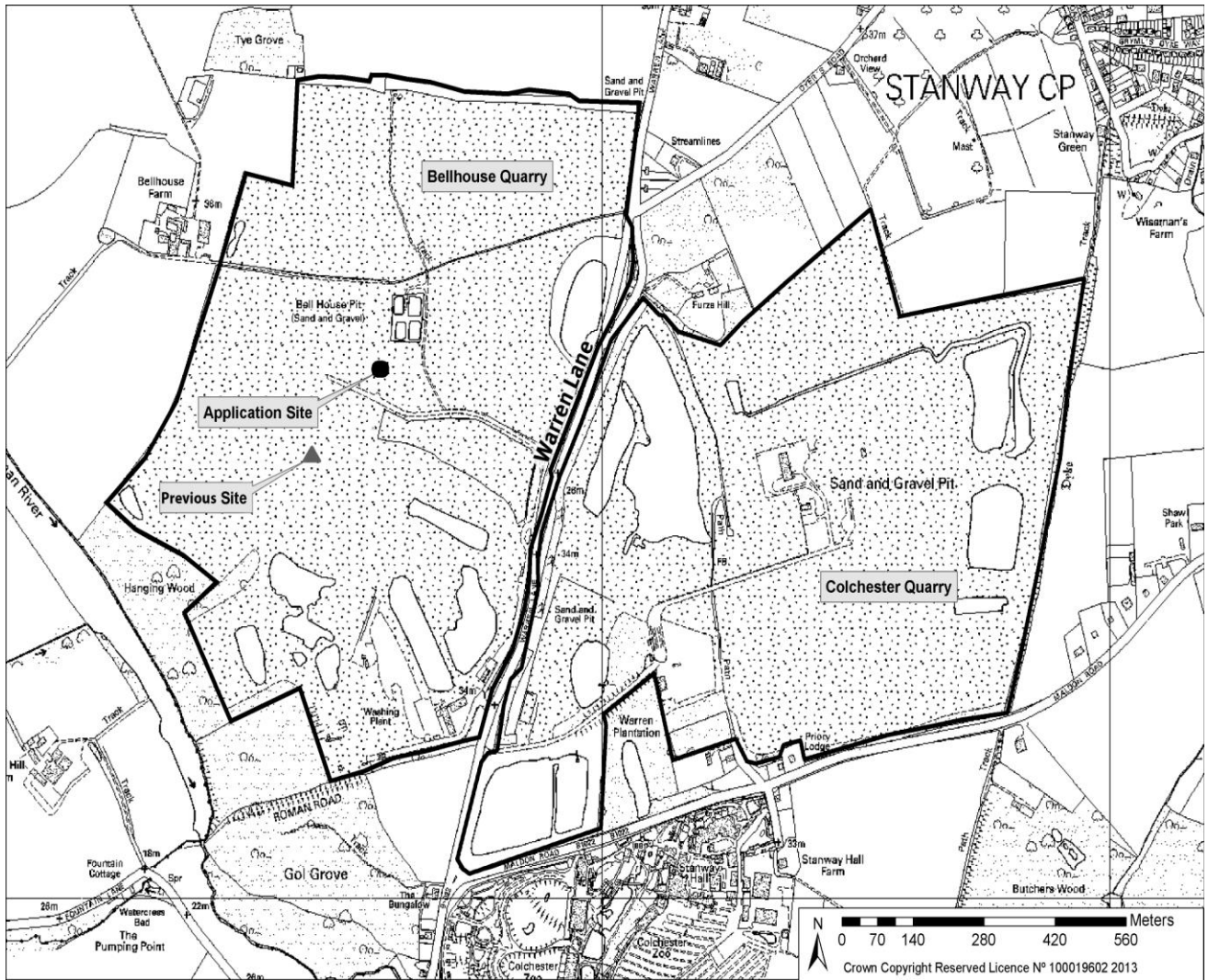
The relocation of a 2000 SCMH flare within the Bellhouse Landfill Site for a temporary period not exceeding 9 months.

Bellhouse Landfill, Warren Lane, Stanway, Colchester, CO3 0NN.

Ref: ESS/62/12/COL

Report by Assistant Director of Sustainable Environment and Enterprise

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1. BACKGROUND

The Bellhouse site is currently being landfilled under planning permission ref ESS/07/01/COL/REV.

Planning permission ref ESS/31/11/COL was granted on 12 August 2011 for the installation of an environmental flare within the site for a temporary period of 12 months. The flare was required to assist in the control of landfill gas.

The time limit for removal was extended to 25 October 2013 through permission ref ESS/53/12/COL.

Other planning permissions relevant to this proposal include permission refs ESS/24/00/COL, granted in 2004, ESS/09/12/COL, granted on 12 June 2012 and ESS/09/12/COL/NMA granted 20 September 2012. Together, these permissions allow the installation of a compound on the eastern side of Warren Lane to utilise landfill gas from the Bellhouse site for electricity generation as well as a flare.

2. SITE

The application site is located to the west of Warren Lane within the existing landfill area. It is located approximately 130m to the north east of the flare location originally permitted by permission ref ESS/31/11/COL.

The nearest property is located at Bellhouse Farm, approximately 400m to the north west of the proposal site, and adjacent to the western edge of the landfill. The farmhouse itself and two associated barns are Grade 2 Listed Buildings.

Footpath 15 Stanway runs in an east to west direction approximately 200m to the north of the application site.

3. PROPOSAL

The application is for the relocation of the gas flare originally permitted under ref ESS/31/11/COL to an area approximately 130m to the north east. The application site is still within the Bellhouse Landfill site.

Associated with the 8.4m high flare would be a base slab, diesel storage tank (to hold diesel used to power a generator) and ancillary equipment situated within a compound 5m x 11m in size surrounded by a 2.4m high security fence.

The applicant has stated that the relocation of the flare would allow the current location to be landfilled during the winter months.

The applicant has requested a temporary permission period of 9 months. This would allow for the upgrading works permitted at the gas compound on the east of Warren Lane to be carried out. The operational capacity of the proposed flare would then be taken up by the main plant in the compound on a permanent basis.

It is noted that, on 13th November 2012, the gas flare was moved from the location

originally permitted under permission ref ESS/31/11/COL to the proposed location prior to the determination of the planning application. The question of the appropriateness of enforcement action will be assessed further in the report.

4. POLICIES

The following policies of the Essex and Southend Waste Local Plan (WLP), Adopted 2001, The Colchester Local Development Framework (Colchester Core Strategy, (CCS), Adopted December 2008, the Colchester Development Policies (CDP), Adopted October 2010, and the Colchester Site Allocations, (CSA), Adopted October 2010), provide the development plan framework for this application. The following policies are of relevance to this application:

	<u>WLP</u>	<u>CDP</u>	<u>CCS</u>
Development Control Criteria	W10E		
Historic Environment Assets		DP14	
Retention of Open Space and Indoor Sports Facilities/Open Space		DP15	PR1

It is noted that, as of 03 January 2013, the Regional Spatial Strategy for the East of England (RSS) has been revoked and therefore no longer forms part of the development plan.

The National Planning Policy Framework (NPPF), published in March 2012, sets out requirements for the determination of planning applications and is also a material consideration. It does not contain specific policies on waste, since national waste planning policy will be set out in the future National Waste Management Plan. In the meantime, Planning Policy Statement 10: Planning for Sustainable Waste Management, remains a material consideration in planning decisions.

Paragraph 214 of the NPPF states that, for 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework.

The Colchester Borough Council Local Development Policies, Adopted December 2008 and October 2010, are considered to fall into paragraph 214.

Paragraph 215 of the NPPF states, in summary, that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

The policies within the Essex and Southend Waste Local Plan are considered to fall into paragraph 215. Therefore, the level of consistency of those policies with the NPPF will be considered further in the report.

5. CONSULTATIONS

COLCHESTER BOROUGH COUNCIL – No objection.

ESSEX & SUFFOLK WATER – No comments received.

NATIONAL GRID – No comments received.

ENVIRONMENT AGENCY – No objection. Comments that the flare would ensure the control of landfill gas and that the applicant has previously submitted justification to the EA for this operation. The flare would not be permanent but would be removed once the infrastructure in the compound east of Warren Lane has been installed.

THE COUNTY COUNCIL'S NOISE CONSULTANT – No objection subject to the imposition of a noise limiting condition as in permission ref ESS/31/11/COL. Notes that the flare would be approximately 400m from the nearest sensitive receptor. Noise levels at this receptor would remain at around 30dB or less.

WASTE DISPOSAL AUTHORITY – No comments received.

PLACE SERVICES (Landscape) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No comments to make. Viewpoints had been previously agreed with the landscape consultant acting for the applicant.

STANWAY PARISH COUNCIL – Objects to the application and raises concern that the flare has been moved already.

LOCAL MEMBER – COLCHESTER – Stanway and Pyefleet – Requests that the application is heard at Development and Regulation Committee and comments that the County and Borough Member for Stanway have expressed their concern about the retrospective nature of the application, together with visual impact from public viewpoints including Warren Lane. Also comments that there is insufficient capacity because EDL underestimated gas levels and this could be solved by using spare capacity at the County Council's generating plant. Requests that the Committee finds a way of instructing the applicants not to submit retrospective applications and to consult with local Councillors and residents wider in future.

6. REPRESENTATIONS

No properties were directly notified of the application as there are none within the required radius. 1 letter of representation has been received. This relates to planning issues covering the following matters:

<u>Observation</u>	<u>Comment</u>
The visual impact assessment shows viewpoints when trees were in leaf. The flare can be seen from Warren Lane now that the leaves have fallen and this is distracting for traffic.	See appraisal.
The applicant underestimated gas levels and there is insufficient capacity and infrastructure to deal with it. This	Noted.

could have been resolved by using spare capacity at ECC's generating plant.

There is lack of compliance with the working plan and phased restoration.

This matter is being dealt with separately from this planning application.

7. APPRAISAL

The key issues for consideration are:

- A. Policy Considerations
- B. Need
- C. Retrospective Nature of the Application
- D. Amenity/Landscape Impact
- E. Impact on Listed Buildings

A POLICY CONSIDERATIONS

At the heart of the NPPF is a presumption in favour of sustainable development. For decision-taking, this means approving development proposals that accord with the development plan without delay, and, where the development plan is absent, silent or out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF; or specific policies in the NPPF indicate development should be restricted.

The term 'sustainable development' is given three dimensions in the NPPF which give rise to the need for the planning system to perform an economic role, a social role and an environmental role.

These roles should not be undertaken in isolation, because they are mutually dependent. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously. The extent to which the proposed development achieves each of these 3 roles is assessed throughout the report.

The application area is within a Minerals and Waste Safeguard Zone and an area designated for Open Space as defined by the Colchester Borough Council Proposals Map.

The principle of open space provision and protection is put forward through CCS Policy PR1 (Open Space) and CDP Policy DP15 (Retention of Open Space and Indoor Sports Facilities).

Neither of the above designations would be prejudiced by the proposals, since the gas flare is required only for a temporary period and would still allow the land to be appropriately restored.

B NEED

A temporary flare is currently required to control gas at the Bellhouse landfill site.

In general terms, landfill gas migration can result in fires, odours, damage to vegetation and the environment if not properly controlled.

The applicant has stated that the low-lying area the flare was in was required for winter tipping, and that such tipping would ensure effective litter control over the winter period by avoiding more exposed areas of the site.

The proposed location is also more readily accessible for operation and for maintenance during the winter months.

The applicant has stated that the flare would be required only until upgrading works have been completed on the compound on the eastern side of Warren Lane, and that these works are due for completion in December 2012.

However, a period of 9 months has been applied for as a contingency.

Nuisance odour can result from a lack of capacity to deal with landfill gas. Given the case put forward by the applicant and the Environment Agency's consultation response, it is considered that there is a need for the proposed development.

The appropriateness of the proposed location will be considered further in the report.

C RETROSPECTIVE NATURE OF THE APPLICATION

The applicant informed the Waste Planning Authority, the Local Ward Member and the Local County Member on 12th November 2012 of the intention to relocate the flare on 12th and 13th November 2012.

The applicant was informed by the Waste Planning Authority that planning permission was required and any further development would be carried out at the applicant's own risk of enforcement action.

A complaint was received by telephone call on 12th November 2012 from a member of the public and a site visit by the planning officer on 22nd November 2012 confirmed that the flare had been moved.

The NPPF has replaced Planning Policy Guidance 18: Enforcing Planning Control. The NPPF states:

'Effective enforcement is important as a means of maintaining public confidence in

the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control...'

The merits of the application and of taking enforcement action will be considered further in the report.

D AMENITY/LANDSCAPE IMPACT

The nearest sensitive receptor to the flare is Bellhouse Farm.

It is of particular note that the flare was previously located 10m below the level of the landfill site, and therefore very well hidden from view. The proposed location is sited between 41m-42m AOD compared to Bellhouse Farm which sits at approximately 36m AOD and Warren Lane which is at approximately 29m AOD.

WLP Policy W10E (Development Control) requires, in summary and among other requirements, satisfactory provision to be made in respect of the amenity of neighbouring occupiers, and in respect of the effect of the development on the landscape. These elements of the policy are considered below:

Visual

There would be no visible flame, only a clear heat haze, which it is considered reasonable to assume may be visible from Bellhouse Farm at times. However, it is considered that this would not be intrusive and the temporary nature of the development would assist in mitigating any impact. The topography of the landfill is such that the flare structure would be unlikely to be seen from Bellhouse Farm. A condition could be imposed to require the removal of the flare and compound within 9 months, as suggested by the applicant.

It is further considered that users of Footpath 15 Stanway would not be significantly affected by the installation of the proposed flare and associated development, especially considering the presence and context of the existing landfill operations.

The application notes that the flare would be of very low impact to the landscape. Various viewpoints have been assessed and the report notes that the flare would not be visible from any of them.

Having visited the site since the flare has been erected, it is noted that it can be seen from Warren Lane, most likely due to the time of year and because the existing screen vegetation is not in leaf. However, this view is a glimpsed view and, due to the location approximately 420m to the west of Warren Lane, it is not considered that this could be said to be distracting for drivers.

The flare may be able to be seen from a low number of properties located along Warren Lane directly opposite the landfill. However, given the distance between the flare and properties, and the presence of the landfill itself, it is not considered that this would have any significant impact on amenity.

Noise

The County Council's noise consultant has no objection to the proposals subject to the imposition of a noise-limiting condition. It is considered that such a condition could be imposed, in the event that permission is granted, and therefore noise would not have a significant detrimental impact on amenity.

Odour

It is further noted that the proposal is directly related to the control of odour at the site. Without the flare and prior to the installation of appropriate equipment in the compound to the east of Warren Lane there may well be odour generated which could impact on the local area.

It is therefore considered that, in respect of impact on amenity and landscape, WLP Policy W10E (Development Control) would be complied with.

E IMPACT ON LISTED BUILDINGS

WLP Policy W10E (Development Control) requires, in summary and among other requirements, satisfactory provision to be made in respect of the effect of the development on historic sites.

CDP Policy DP14 (Historic Environment Assets), in summary, does not permit development which would adversely affect a listed building.

As the flare structure would be very unlikely to be visible from Bellhouse Farm, and due to the temporary nature of the proposal, it is considered that there would be no adverse impact on the listed buildings or their setting and the development would comply with WLP Policy W10E (Development Control) and CDP Policy DP14 (Historic Environment Assets).

8. CONCLUSION

In conclusion, it is considered that the gas flare is required for the appropriate management of landfill gas and that its temporary location for a period of 9 months would not prejudice the restoration of the site or the aspirations of the Colchester Borough Council Local Development Framework policies PR1 and CDP Policy DP15.

There would be minimal impact on the landscape and visual amenity and noise could be controlled through the imposition of a condition in the event that permission is granted. The presence of the flare would act to improve amenity in terms of controlling odour, thereby complying with Waste Local Plan Policy W10E.

It is considered that the flare would not adversely affect the listed buildings at Bellhouse Farm, thereby complying with Waste Local Plan Policy W10E and Colchester Development Policies Policy DP14.

Furthermore, the relocation of the gas flare is considered to constitute 'sustainable

development' within the parameters of the NPPF due to the economic, social and environmental gains which would be achieved through the development.

It is also considered that Policy W10E is in conformity with the NPPF in that the policy is concerned with the protection of the environment and plays a pivotal role in ensuring the protection and enhancement of the natural, built and historic environment. The policy is linked to the third dimension of sustainable development in the meaning of the NPPF.

Therefore, approval of the application is recommended.

It is further concluded that the harm caused by the premature relocation of the flare was not significant, especially taking into account the recommendation to approve the application. In considering the advice regarding discretion and proportionality in the NPPF it is recommended that formal enforcement action would not be expedient in this instance.

9. RECOMMENDED

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

1. COM3 – Compliance with submitted details.
2. CESS2 – Cessation of development within 9 months of the date of permission.
3. NSE6 – Silencing of plant and machinery.
4. NSE1 – Noise limits between the hours of 0700 – 2200.

B. That it is not expedient to take enforcement action regarding the premature relocation of the gas flare.

BACKGROUND PAPERS

Consultation replies
Representation

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

The proposed development would not be located adjacent to or within the screening distance of a European site.

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

EQUALITIES IMPACT ASSESSMENT

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

body of the report.

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

In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary.

This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012.

LOCAL MEMBER NOTIFICATION

COLCHESTER – Stanway and Pyefleet