

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**

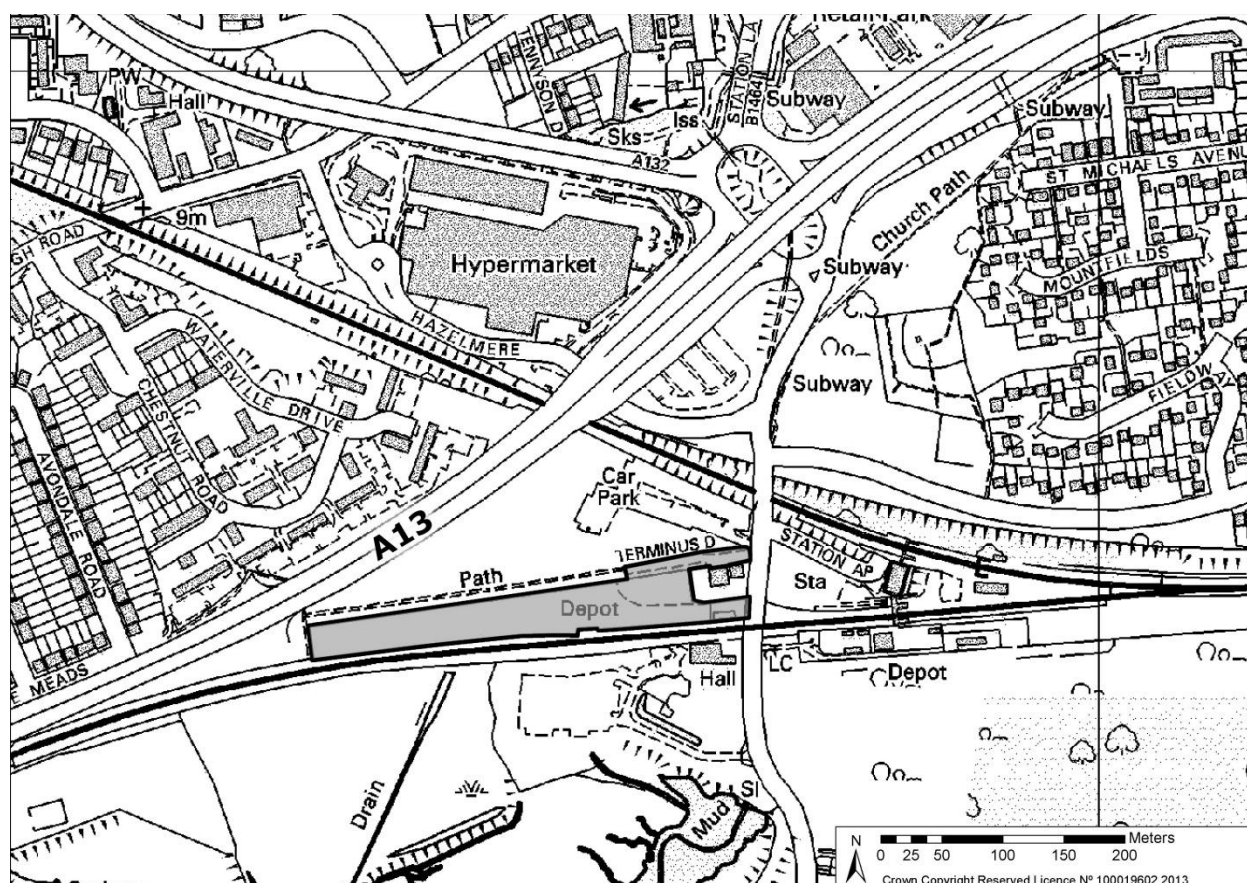
Ref: **ESS/69/12/BAS**

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

Appendix 1

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.