

**Report to:** DEVELOPMENT & REGULATION (24 January 2020)

**MINERALS AND WASTE DEVELOPMENT - ENFORCEMENT OF PLANNING CONTROL AND LEGAL AGREEMENT UPDATE**

**Proposal:** Continuation of installation of waste pre-treatment facilities and recontouring of the landfill to facilitate restoration permitted by ESS/35/06/BAS without compliance with condition 4 (completion timescales), to allow waste to be deposited on site until 31 December 2025 and the site restored to nature conservation by 31 December 2027 and without compliance with condition 3 (waste geographical sources) to allow importation of waste from outside Essex and Southend and also without the development of the previously permitted waste pre-treatment facility

**Ref:** ESS/49/14/BAS

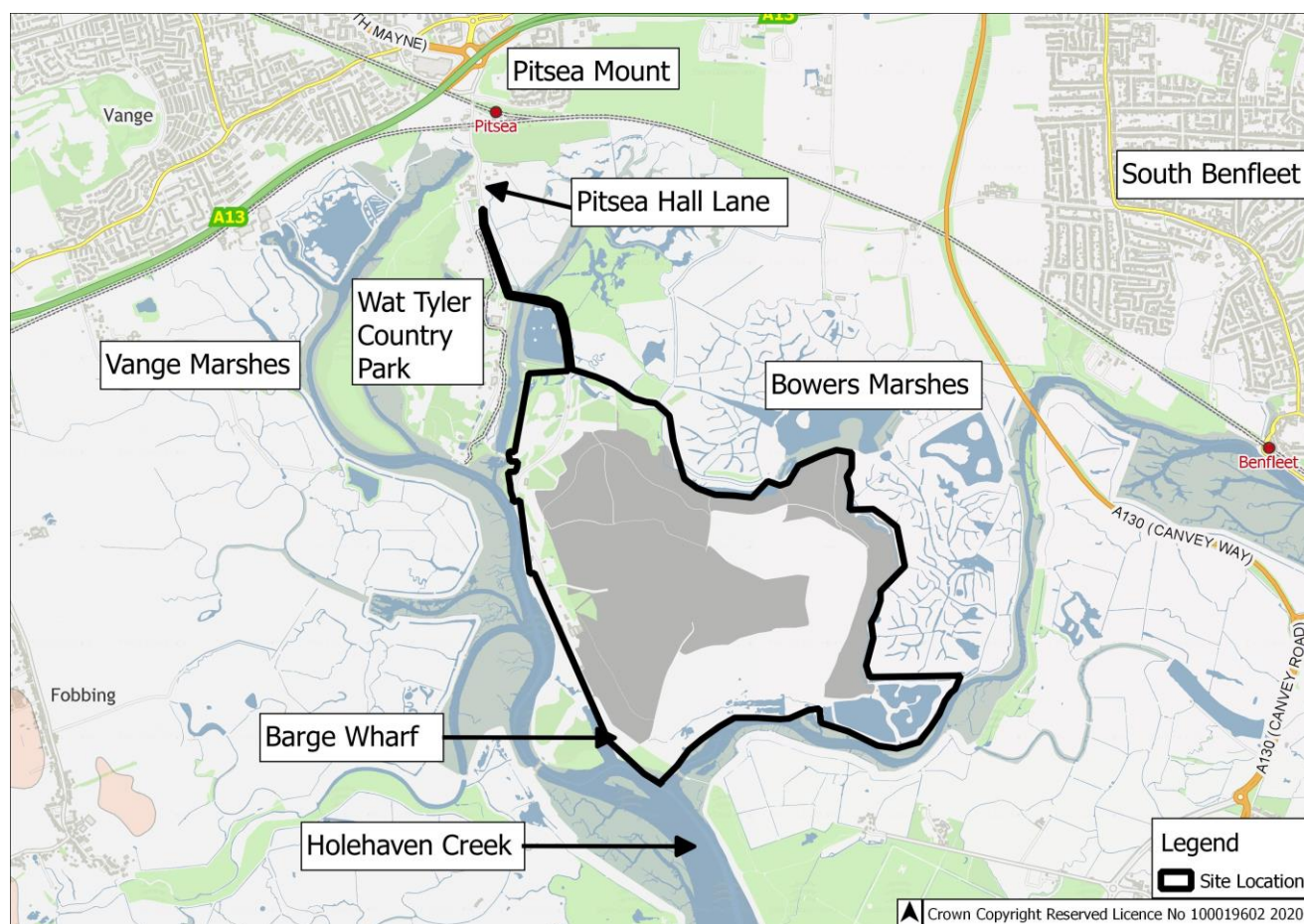
**Applicant:** Veolia ES Landfill Ltd

**Location:** Pitsea Landfill, Pitsea Hall Lane, Pitsea, Basildon, SS16 4UH

**Report author:** Chief Planning Officer (County Planning and Major Development)

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The full application can be viewed at <https://planning.essex.gov.uk>



## 1. BACKGROUND

Pitsea Landfill has a long history the site having started in the early 1900s. The planning history starts in the 1930s and there have been a number of planning applications associated with the landfill site which have sort to ensure a satisfactory restoration of the site and appropriate manage of landfill gas and leachate. The last planning permission for the landfill site was granted in December 2007 and required landfilling to be completed by December 2015 and restoration of the site by December 2017 to a nature conservation afteruse with public access.

There have been other planning permissions for associated development including, an in-vessel composting facility(now ceased), food waste transfer (now ceased), windrow composting (on-going) and electricity generation from landfill gas (on-going).

The current application in relation to the landfill was made in 2014 and seeks to extend the life of the site until 2023 with restoration to be completed in 2025. The additional time was required as a result of an anticipated slowdown in waste inputs to the site, partly due to much local authority waste from Essex being sent to the MBT facility at Tovi Eco Park, rather than to landfill.

The 2014 application was reported to the Development & Regulation Committee in September 2015, the Committee Report is attached at Appendix 1 and at that time it was resolved to be granted subject to conditions and a legal agreement. Many of the legal obligations carried forward obligations of the previous legal agreement associated with the 2007 permission.

The list of obligations as resolved to be granted in 2015 are set out below:

- A. The prior completion of a legal agreement between the RSPB & Veolia for long-term management of the site upon completion of the aftercare period. And that ECC is satisfied that the agreement adequately provides for:
  - the lease of the site by the RSPB,
  - management of the site by the RSPB for nature conservation and public open space, for a period in excess of 130 years
  - and adequate funding mechanisms are in place to ensure the proposed management is deliverable by the RSPB.
- B. AND the prior completion, by the 31 December 2015, of Legal Agreements under the Planning and Highways Acts to secure the following obligations:

### New obligations

- Veolia participation in the Pitsea Barge Impact Group, and implementation of agreed operational practices and funding of monitoring while barges importing material to the site
- Management of restored areas for the benefit of nature conservation in accordance with an agreed scheme of management until completion of

aftercare period on the last phase or until the RSPB take over management whichever is the sooner.

- Compliance and implementation of the Predator Monitoring and Management Plan for Pitsea Landfill and Bowers Marsh.

Existing obligations & amended existing obligations of the 2007 legal agreement

- The total number of all HGV movements Monday to Saturday shall not exceed 1100 movements (550 in 550 out) with 100 movements. In addition 100 HGV movements on Sunday and Public Holidays for deliveries of waste required by the Waste Disposal Authority.
- The preferred route for HGV vehicles via the A13, A132, A127 and A130 and notification of such to all drivers
- No parking of vehicles on the access road and the developer to impose penalties on drivers for non-compliance
- Management of the nature conservation areas by the RSPB until 9 March 2159.
- Provision for release of the site for informal recreation and nature conservation uses upon completion of restoration and aftercare
- To provide for an Education Interpretation and Field Study Centre (EIFSC) at the site, only to be used in relation to informal recreation and nature conservation purposes
- Provide for a liaison group for the life of the site
- The developer to provide at no cost to the County Council a pedestrian bridge over the railway line on Pitsea Hall Lane. Time period for provision of the bridge extended to 31 August 2017. A maintenance sum to be paid with respect to the bridge and funding mechanisms to be put in place to reimburse costs incurred by ECC in assisting with securing the necessary approvals/authorisation from Network Rail for the pedestrian bridge.
- Submission and compliance with Management Plans for the restored areas and for land on the perimeter of the phases until completion of the aftercare period on the last phase.
- Submission and compliance with Management Plans for the Fobbing Horse Area
- Upon completion of the restoration not to use the Site other than for, aftercare, nature conservation, public open space for informal creation, agriculture necessary for aftercare and nature conservation and willow coppicing

- The southern wharf shall only be used for the importation of restoration and engineering materials.
- The use of the EIFSC shall not be detrimental the facilities provided at Wat Tyler Country Park
- Provision of pedestrian and vehicular access to Wat Tyler Country Park via the Old Redland Road.
- Provision of 15 hectares for 50 years for cultivation of biofuel
- Provision of drying and storage for harvested biofuels
- That the agreement supersedes all previous legal agreements

The resolution also included imposition of conditions of the previous permission updated as appropriate.

## **2. SITE**

Pitsea Landfill is located southeast of Pitsea in Basildon District. The landfill site comprises the south-western quadrant of Bowers Marshes, a former salt marsh within a tract of marshland extending from Stanford-le-Hope to Hadleigh on the northern reaches of the Thames estuary. The landscape is predominantly low lying at approximately 2 metres Above Ordnance Datum (AOD) and is dissected by a network of watercourses. Holehaven Creek is to the south with Vange Creek to the west.

Nearby settlements include Pitsea (2km) and Basildon to the north, Canvey Island (1.5km) to the south east, Fobbing/Corringham (2.5km in Thurrock) to the west and South Benfleet (1.5m) to the north east. Thames Enterprise Park and DP World are located to the south (1.5km in Thurrock). The nearest residential property is on Canvey Island at Northwick which is 500m from the site, but approximately 800m from the landfill.

Most of the reclaimed marshland is retained in permanent pasture and has a high ecological value. Bowers Marsh to the north-east of the site has been transformed from pasture into an RSPB reserve with creeks and water bodies created to attract birdlife. The landfill site is surrounded by ecologically nationally and locally designated areas including Pitsea Marsh SSSI, Vange & Fobbing Marshes SSSI, Holehaven Creek SSSI, Bowers Marsh Local Wildlife Site (LWS), Pitsea Landfill LWS and Vange Creek LWS. Also within 2km are Canvey Wick SSSI and internationally designated sites Benfleet & Southend Marshes SPA/Ramsar (encompassing Benfleet & Southend Marshes SSSI and Benfleet & Marshes European Marine site) and Thames Estuary & Marshes SSSI/SPA/Ramsar. Wat Tyler Country Park lies north-west of the site.

Access to the site is via Pitsea Hall Lane is a no through road, which runs south from the A132 junction with the A13. Pitsea Hall Lane also provides access to Wat Tyler Country Park. The dedicated concrete site access road, approximately 1km

in length, runs from the end of Pitsea Hall Lane and enters the site at its north-west boundary, running primarily along the western edge of the facility. The access road is also designated as an escape route in the event of an emergency on Canvey Island.

The majority of existing buildings within the site are located alongside this road. These include the gatehouse, the site offices, an in-vessel composting facility (being demolished) and windrow composting facility, storage buildings, generator compound producing electricity from landfill gas, workshops and associated fixed plant.

### **3. UPDATE OF POSITION**

The landfill has continued to operate since the Committee resolution in 2015 in accordance in principle with the conditions of the 2007 planning permission.

Since 2015, inputs to Pitsea Landfill have not reduced as originally anticipated and landfilling of non-hazardous waste ceased in December 2018, although inert waste imported by barge and lorry continues to be imported to the site to provide the necessary materials for restoration of the site. Capping and restoration works have and will continue. Decommissioning of supporting infrastructure has also commenced.

The legal agreement has not been completed with respect to the application ESS/49/14/BAS and thus the planning permission allowing the site to operate beyond 31 December 2015 has not been issued.

The intention had been that the RSPB and Veolia would have a separate legal agreement giving responsibility to the RSPB for the long-term management of the nature conservation afteruse of the restored landfill site. The WPA were to be provided a copy to ensure the necessary mechanisms were in place to achieve the long-term nature conservation and restoration goals. This agreement has not been completed and it is understood that the RSPB no longer wish to undertake the management of the site, due to changes in the financial position of the RSPB.

In addition, the original legal agreement from 2007 secured an offer from Veolia to provide a pedestrian bridge across the railway line on Pitsea Hall Lane. Veolia and its agents have been trying to secure the delivery of this bridge, but its delivery has proved particularly difficult to achieve due to the requirements/authorisations of Network Rail. Veolia advised the WPA in September 2019 that having expended considerable resources trying to deliver the pedestrian bridge with little progress having been made, that Veolia no longer wish to provide the bridge.

Veolia are exploring different options with respect to partners for the long-term management of the site and also alternative benefits that they could be provided to the community as an alternative to the pedestrian bridge. Such alternatives would need to be submitted as revisions to the current outstanding application.

### **4. ENFORCEMENT OF PLANNING CONTROL**

As explained above, landfilling of non-hazardous waste has continued since 31

December 2015, in breach of planning control. Site Monitoring visits have been undertaken on a quarterly basis and operation of the site and its capping and restoration have been undertaken in accordance with the principles of the planning permission issued in 2007.

There have been no complaints associated with the landfilling and restoration operations, although concern has been raised by residents and Members of Local Councils and the Local MP at the lack of progress with respect to the delivery of the pedestrian rail bridge.

Enforcement protocol: The County Council's Local Enforcement and Site Monitoring Plan sets out principles and procedures for enforcement action relating to unlawful development. Enforcement is a discretionary power as the Town and Country Planning Act 1990 (as amended) which does not impose a general duty to ensure compliance with planning control.

The National Planning Policy Framework (The Framework) states that '*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. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so*'.

In considering any enforcement action, the WPA is required to act proportionately, which involves assessing whether a breach of control would unacceptably affect public amenity or the existing use of land meriting protection in the public interest.

In accordance with the authority's Local Enforcement and Site Monitoring Plan (the plan) a harm assessment was carried out following the last visit to the site (attached Appendix 2).

The procedure assesses the "harm" of that breach against a series of (scored) planning criteria. The level of harm warranting resource (score) is 6 and above. Where the cumulative score is 5 or under, it is generally not considered to be expedient to pursue the breach as the impact on public amenity and or interest will normally be negligible.

The level of harm in this case is registered as scoring 5. As explained there have been no complaints, the operator is fully aware of the breach and it is their intention to resolve the issues that are preventing completion of the legal agreement. It is anticipated revised proposals will be submitted in the near future, which will be subject to consultation prior to consideration by the Development & Regulation Committee in due course.

The continuation of the development without a valid planning permission in place is not ideal, but the restoration is being carried out in accordance with the application details and the draft planning conditions. The breach is not giving rise to any unacceptable impact on public amenity.

## **5. RECOMMENDED**

That, taking into account the results of harm assessment carried out on 20 December 2019, it is not considered expedient to take enforcement action at this time. However the situation will be reviewed within 6 months of the date of this report, should the applicant not have come forward with revised proposals that allow completion of a legal agreement and issuing of a planning permission to address the breach of planning control.

### **LOCAL MEMBER NOTIFICATION**

BASILDON – Pitsea

BASILDON - Westley Heights (within 250m)

CASTLE POINT - Canvey Island West (within 250m)