

Development and Regulation Committee

10:30	Friday, 19 April 2013	Committee Room 1, County Hall, Chelmsford, Essex
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Quorum: 3

Membership:

Councillor Nigel Edey
Councillor Bill Dick
Councillor R Boyce
Councillor M Garnett
Councillor I Grundy
Councillor T Higgins
Councillor S Hillier
Councillor G McEwen
Councillor M Miller
Councillor D Morris
Councillor I Pummell
Councillor J Reeves

Chairman
Vice-Chairman

For information about the meeting please ask for:

Matthew Waldie, Committee Officer

Telephone: 01245 430565

Email: matthew.waldie@essex.gov.uk



Essex County Council

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Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

		Pages
1	Apologies and Substitution Notices The Committee Officer to report receipt (if any)	
2	Declarations of Interest To note any declarations of interest to be made by Members	
3	Minutes To approve as a correct record the minutes of the Development and Regulation Committee held on Friday 22 March 2013.	7 - 14
4	Identification of Items Involving Public Speaking To note where members of the public are speaking on an agenda item. These items may be brought forward on the agenda.	
5	Minerals and Waste Development	
5a	Tyre UK Retrospective planning application for the change of use of the site from storage land to the manufacture and storage of blocks using waste tyres as raw material and the storage and sale of waste tyre products and the use of existing offices. Location: Unit 2, Level D, Fulton road, Manor Trading Estate, Benfleet, Essex, SS7. Ref: ESS/76/12/CPT. DR1413	15 - 40
6	Village Green	
6a	Harwich Green Application to register land at Harwich Green, Harwich as a Village Green. DR1513	41 - 62
7	Enforcement of Planning Control	

- | | | |
|-----------|--|----------------|
| 7a | <p>Birkett Hall</p> <p>Unauthorised importation of and spreading of waste materials (including waste soils and rubble) on the land and the unauthorised raising of land.</p> <p>Location: Land at Birkett Hall, Main Road, Woodham Ferrers, Chelmsford, CM3 8RJ.</p> <p>Ref: ENF/0497.</p> <p>DR1613</p> | 63 - 66 |
| 7b | <p>Cock Inn</p> <p>Unauthorised importation, deposition crushing and processing of construction and demolition waste (including concrete, brick other rubble and road scalpings).</p> <p>Site: Land adjacent to The Cock Inn, Boreham.</p> <p>Ref: 70.421.33.</p> <p>DR1713</p> | 67 - 70 |
| 8 | Information Items | |
| 8a | <p>Statistics April 2013</p> <p>To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee. DR1813</p> | 71 - 74 |
| 9 | <p>Date of Next Meeting</p> <p>To note that the next meeting will be held on Friday 24 May 2013.</p> | |
| 10 | <p>Urgent Business</p> <p>To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.</p> | |

Exempt Items

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

11 Urgent Exempt Business

To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.

All letters of representation referred to in the reports attached to this agenda are available for inspection. Anyone wishing to see these documents should contact the Officer identified on the front page of the report prior to the date of the meeting.

**MINUTES OF A MEETING OF THE DEVELOPMENT AND REGULATION
COMMITTEE HELD AT COUNTY HALL, CHELMSFORD ON
22 MARCH 2013**

Present

Cllr N Edey (Chairman)
Cllr R Boyce
Cllr W Dick
Cllr M Garnett
Cllr I Grundy
Cllr T Higgins

Cllr S Hillier
Cllr G McEwen
Cllr M Miller
Cllr D Morris
Cllr J Reeves
Cllr C Riley

1. Royal Town Planning Institute Award

Richard Greaves, Planning Manager, informed the meeting that Essex County Council, along with the RSPB, had recently won the 2012 RTPI East of England Planning Achievement Award. This had been in respect of the "Wallasea Island Wild Coast Project", which sought to create new intertidal habitats by reusing inert waste material. On behalf of the Committee the Chairman congratulated the Planning Team.

2. Apologies and Substitution Notices

Apologies were received from Cllr I Pummell (substituted by Cllr Riley).

3. Minutes

The Minutes and Addendum of the Committee held on 22 February 2013 were agreed and signed by the Chairman.

4. Matters Arising

There were no matters arising.

5. Declarations of Interest

Councillor Higgins declared a prejudicial interest in item 8, as Chairman of Colchester Borough Council's Planning Committee. She would make a statement about this application, but would not take any further part in the discussion or decision-making process.

6. Identification of Items Involving Public Speaking

The persons identified to speak in accordance with the procedure were identified for the following items:

The continuation of the development of the site at Royal Oak Quarry, Woodham Walter, Danbury
Public speaker: Mr Simon Chaffe speaking for.

Construction of a new 300m place primary school on Circular Road East, Colchester

Public speakers: Mrs Gillian Phillips speaking against
Mr Simon Billings speaking for.

Minerals and Waste

7. Royal Oak Quarry

The Committee considered report DR/11/13 by the Assistant Director, Sustainability, Environment and Enterprise.

The Members of the Committee noted the contents of the Addendum attached to these minutes and a change to the conditions.

The Committee was advised that the proposal was for the continuation of the development at the site without compliance with Condition 1 (Time period for implementation of development) attached to planning permission ESS/27/02/MAL to allow an additional period of 10 years for the Implementation of the development

Policies relevant to the application were detailed in the report.

Details of Consultation and Representations received were set out in the report.

The Committee noted the key issues that were:

- A. Principle of the development.
- B. Residential Impact
- C. Agriculture
- D. Traffic & Highways
- E. Ecology & Hydrology
- F. Landscape

In accordance with the protocol on public speaking and with the agreement of the Chairman of the Committee a statement was read out by the Committee Officer on behalf of Mr Simon Chaffe, who had registered to speak but was unable to attend the meeting in person.

Mr Chaffe, speaking on behalf of Matthews & Son LLP, said:

- This application should be approved subject to conditions
- The report is well written, balanced, professional and proposes a recommendation based on sound planning reasons
- Danbury Aggregates Ltd provides local jobs and contributes to the local economy
- The proposals seek to remedy timescale conflicts created by the previous operator
- Full consultations have been held and any identified issues have been

addressed.

In response to questions raised, Members were informed that

- The applicants would be likely to apply for an extension from 2014, to finish Phase 3. This application area is separate and they must finish work on Phase 3 before they will be able to commence the work covered by this application
- The apparent contradiction between the description of the raised material as “in a damp condition” (on page 24 of 58) and being “worked dry” (page 26 of 58) arose from the use of technical terminology, which did not conflict.

The resolution was moved, seconded and unanimously agreed and

Resolved:

That planning permission be **granted** subject to the following amended wording for Condition 1 to state:

Condition 1

The development hereby permitted shall be begun before the expiry of 5 years from the date of this permission. Written notification of the date of commencement shall be sent to the Mineral Planning Authority within 7 days of such commencement.

and that Condition 5 be varied to state:

Condition 5

This permission shall be limited to a period of 5 years from the date of commencement of the development by which time the development shall have ceased and the site shall have been restored in accordance with scheme approved under Condition 2

and:

That condition 7 is deleted and all other conditions of ESS/27/02/MAL to be re-imposed and updated as appropriate

and

Add the following conditions:

PROD1 – annual and total export restriction

PROD2 - Records of output

Annual and total waste input restriction

PROD4 – Monitoring waste data

HIGH5 – Vehicle Movements Limits – 40 a day (20 in 20 out).

County Council Development

8. New St Johns Green School

The Committee considered report DR/12/13 by the Assistant Director, Sustainability, Environment and Enterprise.

The Members of the Committee noted the contents of the Addendum attached to these minutes and a change to the conditions.

The Committee was advised that the proposal was for Construction of a new 300 place primary school with external hard and soft play areas, canopy and 20 space car park.

Policies relevant to the application were detailed in the report.

Details of Consultation and Representations received were set out in the report.

The Committee noted the key issues that were:

- A. Need
- B. Design and the Conservation Area
- C. Archaeology
- D. Impact on Amenity
- E. Landscape and Visual Impact
- F. Impact on Ecology
- G. Traffic & Highways
- H. Community Facilities

In accordance with the protocol on public speaking and with the agreement of the Chairman of the Committee a statement was read out by the Committee Officer on behalf of local resident Mrs Gillian Phillips, who had registered to speak but was unwell and unable to attend the meeting in person, and the Committee was addressed by Simon Billings.

Mrs Phillips said:

- The main access to the school will be opposite her house; so she has concerns over the heavy construction traffic while it is being built, and the heavy traffic during drop-off and collection times at the school, once it is fully operational. Removing the bollards at the other end of the road would ease the problem.

Mr Billings said:

- The school has been involved in the design process from the outset, in 2011
- The design is not only fit for purpose, but is unique and will serve as a legacy
- In ICT it should become a beacon of excellence
- The architects, Farrans, Essex County Council and Colchester Borough Council had all contributed to the quality of this scheme.

Councillor Higgins pointed out that the proposed scheme would meet a local need, as new housing is being developed in the town; and the community use of

the premises was an important feature.

In response to questions raised, Members were informed that:

- The school's capacity will be 300; and the likely impact of any future housing developments on the school have been taken into consideration
- With regard to parking, the 20 spaces are for staff parking. It was not envisaged these should be for parents and there is further parking a short distance away. The number of disabled spaces is in accordance with the relevant standards.
- The bollards in the road will not be moved
- The immediate and future provision of cycle facilities will be required via condition.

The resolution was moved, seconded and unanimously agreed (Councillor Higgins not taking part in the vote) and

Resolved:

That pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, planning permission be **granted** subject to the following conditions:

1. COM1 – Commencement within 5 years.
2. COM3 – Compliance with submitted details.
3. LGHT1 – Fixed lighting restriction.
4. Traffic Management Plan.
5. All footpaths within the proposal site shall be constructed to not less than 2m in width.
6. Grassland seeding to be implemented in the autumn and fenced off for 1 year.
7. Landscape and Biodiversity Management Plan.
8. ECO3 – Protection of breeding birds.
9. ECO7 – Update of survey before commencement of development.
10. DET1 – Details of external appearance.
11. Materials sample panel.
12. DET2 – Design detail.
13. Details of signage on west elevation.
14. LAND1 – Landscape scheme.
15. LAND2 – Replacement Landscaping.
16. Adherence to the tree work, construction works and protection proposed in the Arboricultural Method Statement Rev B dated 28/04/12.
17. Details of method of de-compaction around root protection zone prior to commencement of development.
18. HIGH8 – Cycle parking areas.
19. HOUR1 – Construction hours: 07:00 to 18:30 hours Monday to Friday, 07:00 to 13:00 hours Saturdays and at no other times, including no other times on Sundays, Bank or Public Holidays.

Information Items

9. Statistics March 2013

The Committee considered report DR/13/13, Applications, Enforcement and Appeals Statistics, as at end of the previous month, by the Assistant Director Sustainability, Environment and Enterprise.

The Committee **NOTED** the report

10. Date and Time of Next Meeting

The Committee noted that the next meeting will be held on Friday 19 April 2013 at 10.30am in Committee Room 1.

There being no further business the meeting closed at 11.25am.

Chairman

ADDENDUM FOR THE MEETING OF DEVELOPMENT & REGULATION COMMITTEE
22 MARCH 2013

Part 1 Item 6a

Page 3: Delete '(replacing St John's Green).'

Item 5(a) Royal Oak Quarry, Woodham Walter, Danbury, Essex
ESS/70/12/MAL & ESS/70/12/MAL

Page 25 -D HIGHWAYS

5th paragraph delete and replace with

It is considered that subject to the imposition of additional conditions with respect to vehicle numbers and extraction output limits and waste infill rates and re-imposition of conditions requiring measures to prevent mud being carried out onto the highway the development accords with MLP policies MLP4 Access and MLP13 Development Control.

Page 26 E – ECOLOGY & HYDROLOGY

1st paragraph add

The application was submitted with an updated ecological assessment, but no issues since the original assessment in 202 were identified.

Page 28 – RECOMMENDED

Add the following conditions

PROD1 – annual and total export restriction

PROD2 - Records of output

Annual and total waste input restriction

PROD4 – Monitoring waste data

HIGH5 – Vehicle Movements Limits – 40 a day (20 in 20 out)

Item 6(a) Vacant Land, Circular Road East, Colchester, Essex.
CC/COL/34/12

PAGE 43 – NEED

5th line of 1st paragraph: Replace 'role' with 'roll'.

.....

DR/14/13

committee DEVELOPMENT & REGULATION

date 19 April 2013

MINERALS AND WASTE DEVELOPMENT

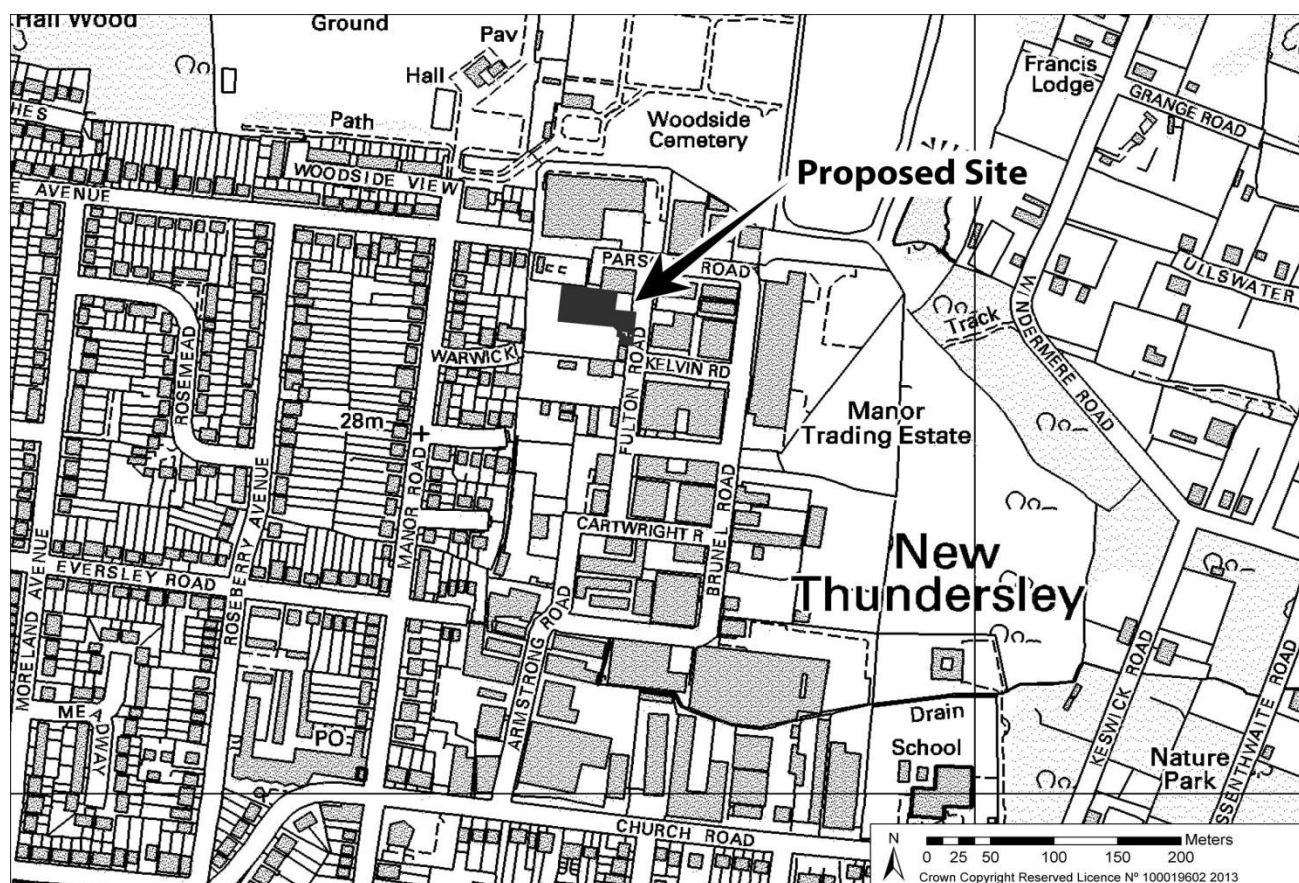
Proposal: **Retrospective planning application for the change of use of the site from storage land to the manufacture and storage of blocks using waste tyres as raw material and the storage and sale of waste tyre products and the use of existing offices**

Location: **Unit 2, Level D, Fulton road, Manor Trading Estate, Benfleet, Essex, SS7**

Ref: **ESS/76/12/CPT**

Report by Head of Planning, Environment and Economic Growth

Enquiries to: Glenn Shaw 01245 437117





1. BACKGROUND

In September 2010 planning permission ESS/28/10/CPT was granted at a site on Brunel Road, Manor Trading Estate for the change of use of site and buildings from “the sale of tyres and installation of equipment for the bailing and sale of waste tyre product” to a metal recycling site and end of life vehicle de-pollution facility. In June 2012, the facility was relocated to Unit 2, Level D, Fulton Road, Manor Trading Estate as the applicant downsized its operations.

The applicant is currently operating at the Fulton Road site, without the benefit of planning permission and hence, following officer advice, the current retrospective application was submitted.

2. SITE

The site lies to the west of the Manor Trading Estate, Thundersley. Access to the site is off Fulton Road and all vehicles from the industrial estate have access to the A13 and A130.

The industrial estate accommodates a variety of industrial units including waste transfer operations on adjacent sites and is adjacent to residential areas.

Tyre UK operates in a small part of Unit 2, Level D, with the remainder of the site occupied by a builders yard which is used for storage. There is established planting

on the western side of the site.

The properties on Warwick Close have gardens which back onto Unit 2. There is a 30 metre strip from the residential properties on Warwick Close to the start of applicant's boundary within Unit 2.

Robert Drake County Primary School is approximately 500 metres to the south east of the site.

The site occupies an area of 0.13 hectares.

The site is surrounded by secure palisade fencing on three sides and a concrete wall on the fourth.

The site is located approximately 1.5 kilometres west of an area of Thundersley Great Common, a designated SSSI.

3. PROPOSAL

This retrospective application proposes a change of use on part of the site to the manufacture and storage of blocks using waste tyres as raw material and the storage and sale of waste tyre products and the use of existing offices. Operations on site would include the storage of used tyres from cars, goods vehicles, agriculture and industrial vehicles. The tyres would then be compacted and baled to create 1 tonne blocks known as "Euro Blocks", the bales/blocks would then be stored on site prior to sale.

The proposed traffic movements include 2 – 3 transit vans per day (4 to 6 movements a day) and 4 x 7.5 tonne lorries per day (8 movements a day) and a 26 tonne HGV per month (2 movements per month). There are 3 parking spaces for staff on site and adequate room for parking of visiting transit vans. The applicant has stated there would be no need for parking of vehicles associated with the business outside the site.

The estimated throughput per annum is 3,500 tonnes.

Hours of operation would be 07:30 to 16:30 Monday to Friday only. The site would not be operating at weekends or Bank holidays.

4. POLICIES

The following policies of the Castle Point Local Plan (CPLP) adopted in November 1998. It was saved in its totality until 28th September 2007 and the Essex and Southend Waste Local Plan (WLP) 2001 provide the development framework for this application. The following policies are of relevance to this application:

	<u>CPLP</u>	<u>WLP</u>
Waste Strategy		W3A
Flooding		W4A
Highways		W4C

Materials Recovery Facilities		W7E
Preferred Sites		W8A
Alternate Sites		W8B
Development Control		W10E
Operational Hours		W10F
Design	ED2	
Residential Amenity	EC3	
Protection of Employment Areas	ED3	
Intensification of Access Use	T3	
Car Parking Standards	T8	

The National Planning Policy Framework (the Framework), sets out requirements for the determination of planning applications and a material consideration. It does not contain specific waste policies, 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.

It is important to note that Castle Point District Council adopted its Local Plan document post 2004. The Framework (paragraph 214) states from the date of publication (27 March 2012) for a 12-month period the determining planning authority can give full weight to the relevant policies of those plans even if there is a limited degree of conflict with the Framework. This 12-month grace period has expired meaning the Local Plan falls into interpretation under paragraph 215.

Paragraph 215 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 level of consistency of the policies contained within the Castle Point Local Plan and Essex and Southend Waste Local Plan (2001) is set out in Appendix 1.

5. CONSULTATIONS

CASTLE POINT BOROUGH COUNCIL – Objects to the proposals and supports local residents concerns in respect of fire risks, hazards to health and noise generated by activity on site.

ENVIRONMENT AGENCY – No objection, however the operator has registered a Waste Exemption.

ESSEX COUNTY FIRE & RESCUE SERVICE – No objection but offers advice covering the following matters.

- Provision of additional water supply on site.
- Separate storage of loose tyres and blocks and keep to a manageable size.
- Fire breaks between the blocks.
- Secure fencing

PLACE SERVICES (Landscape) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection but would require the planting on the western side thickened.

HIGHWAY AUTHORITY – No objection.

FLOOD PARTNERSHIPS (Environment, Sustainability and Highways) – No objection but recommends sustainable drainage techniques.

WASTE MANAGEMENT - No objection

LOCAL MEMBER – CASTLE POINT – Thundersley – Any comments will be reported.

6. REPRESENTATIONS

274 properties were directly notified of the application. 17 letters of representation have been received. These relate to planning issues covering the following matters:

<u>Observation</u>	<u>Comment</u>
Potential increase in noise on the residential area, park and cemetery.	See appraisal
The potential fire risk through spontaneous combustion or vandalism and resulting impact from smoke.	See appraisal
Increase in traffic volumes and the effect on the roads which are already in a poor state of repair.	See appraisal
Air pollution and odours arising from the manufacturing process on the local area.	See appraisal
Flooding due to blocked or failing drains within the Manor Trading Estate.	See appraisal
The Robert Drake County Primary School is close to the proposed site and already suffers from noise and air pollution.	See appraisal
Visual impact of the tyre operation	See appraisal
Unable to find the application on the web.	Only the application summary and site notice are currently available on the web.

7. APPRAISAL

The key issues for consideration are:

- A Need
- B Highways and Vehicle Access
- C Visual Impact, Odours and Fumes
- D Noise
- E Fire Risk
- F Flooding

A NEED

Planning Policy Statement 10 (PPS 10) (Planning for Sustainable Waste Management) encourages waste to be managed as per the principles set out in the waste hierarchy. The waste hierarchy promotes, in this order; the reduction of waste; re-use of waste; recycling/composting of waste and the recovering of energy from waste. It states that the disposal of waste should be the last resort. This principle is supported by WLP policy W3A (Waste Strategy) which pre dates PPS10.

CPLP policy ED3 (Protection of Employment Areas) states that within the Manor Trading Estate “*applications for development falling within Classes B1 B2 or B8 of the Town and Country Planning (Use Classes) Order 1987, or any subsequent amendment of that order will be permitted, subject to compliance with any other relevant policy of the local plan. Sui generis uses will be considered on their individual merits, having regard to the relevant objectives of the local plan and any other relevant policy of the plan. Uses falling outside those classes specified in this policy will be refused*”.

This retrospective application proposes to utilise waste tyres from a variety of sources and compress them to make 1 tonne block/bale. These blocks/bales are then used for a variety of civil engineering uses such as coastal erosion, permanent sub-base for landfill and construction sites and the construction of farm and animal housing and are also exported for use as fuel source in power stations. In relation to this, it is considered that as the proposal would be re-using a waste source and it is considered to be in compliance with the objectives of PPS 10 and WLP policy W3A as it pushes waste up the hierarchy and reduces the amount going to landfill.

WLP policy W7E (Materials Recovery Facilities) encourages “...*the facilitation of efficient collection and recovery of materials from the waste stream...*”. Policy W7E goes on to indicate that in relation to material recovery facilities, which are essentially recovery and bulking up facilities would be supported at locations that comply with the criteria in WLP policy W8A and W8B.

WLP policy W8B (Alternate Sites) identifies types of location other than those in Schedule 1 of the WLP at which waste management facilities would be permitted subject to the proposal being in line with relevant criteria of WLP policy W8A (Preferred Sites); these areas include existing general industrial areas. Policy W8A

requires that there is a need for the type of facility proposed; that the proposal has regard to the waste hierarchy; that the proposal complies with all other relevant policies; that adequate highways access is provided; and that the buildings are of a high standard.

Unit 2 Fulton Road is located in an employment area, as defined in the Castle Point Local Plan and the applicant previously operated at a different unit within the Manor Trading Estate, which is an industrial estate. There are a number of waste management operations located on the industrial estate. Within CPLP policy ED3 it is suggested that Land Use Class 'B', (which includes business, general industrial and storage and distribution) is generally more acceptable on the Manor Trading Estate and this proposal is considered to be similar to B2 General Industrial use.

The National Planning Policy Framework (NPPF) dated March 2012 is of relevance.

“An economic role requires by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation and by identifying and coordinating development requirements, including the provision of infrastructure and further states in the chapter Delivering Sustainable Development should support existing business sectors, taking account of whether they are expanding or contracting and where possible, identify and plan for new or emerging sectors likely to locate in their area.”

The proposal would maintain the existing 6 permanent jobs and 3 part time jobs. It is considered that the proposal would comply with the economic dimension of sustainable development as supported by the NPPF.

Castle Point Borough Council has objected to the proposal.

As discussed above, it is considered that the proposals meet a need to provide an alternative to disposal of tyres and their re-use in bales in various ways meets the requirement to push waste management up the waste hierarchy. The facility is located within an industrial estate on a site identified in Castle Point Local Development plan as an employment area. The facility would maintain existing jobs and therefore considered to be in compliance with WLP policies W3A, W7E, W8A, W8B and CPLP policies ED3, PPS10 and the NPPF.

While the principle of the development would seem to be in accordance with local plan policies and is considered acceptable, it is nonetheless necessary to consider the environmental impacts of the proposals as set out below.

B HIGHWAYS & VEHICLE ACCESS

CPLP policy EC2 (Design) details that proposals should have regard to:

“i. The scale, density, siting, design, layout and external materials of any development, which shall be appropriate to its setting and which should not harm the character of its surroundings;

- ii. The appearance and treatment of spaces around buildings which shall be enhanced by appropriate hard and soft landscaping;*
- iii. The need to ensure that all modes of movement are made safe and convenient.”*

CPLP policy EC3 (Residential Amenity) states that inter-alia development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area by reason of traffic, noise, fumes or other forms of disturbance will be refused.

*CPLP policy T2 - intensification of access use
Proposals which would result in the intensification of the use of existing accesses or the creation of new accesses onto any trunk, principal or other classified road will, in appropriate cases, require the submission of a traffic impact study demonstrating the ability of the highway network to accommodate the proposed development.*

Where such demonstration cannot be shown, or where there is a policy objection from the highway authority, permission will be refused.

When considering applications that would affect these roads the council will consult the highway authority and will take the advice received into account when determining applications for planning permission.

CPLP policy T8 - car parking standards

The council will apply, with specified exceptions¹, the revised standards for car parking in Essex, published by the Essex county council.

WLP W4C (Access).

Access for waste management sites will normally be by a short length of existing road to the main highway network consisting of regional routes and county/urban distributors identified in the structure plan, via a suitable existing junction, improved if required, to the satisfaction of the highway authority.

The type baling facility would generate both LGV and HGV movements, however these would be limited in view of the small scale of the operation a total of approx. 10 movements a day. On the previous site the scale was larger with 20 movements a day and did not result in complaints or problems with respect to traffic volumes.

Representation has been received that the roads within the estate are in a poor state of repair and this proposal would further add to the congestion on the site and add more to traffic outside the Robert Drake County Primary School located on Church Road.

The Highway Authority and Castle Point Borough Council have not objected on highway safety or capacity grounds and the applicant has stated that the responsibility for the repair of the roads on Manor trading Estate lies with the owner of the Trading Estate.

CPLP T8 Car parking standards states, in summary, that Essex Planning Officers Association (EPOA) Vehicle Parking Standards will apply. The current Parking

Standards Design and Good Practice adopted September 2009 states that for B2 General Industrial there should be 1 space per 50 sqm. The site is approx. 1,300sqm, suggesting a large number of spaces would 26 spaces are required, however, the applicant has stated due to the nature of the business only 3 car parking spaces and 6 spaces for light good vehicles are required. The applicant has stated that there are 3 existing car parking spaces to be retained and within the operating area there are spaces available to accommodate the 6 light good vehicles and there would be no need for parking on Fulton Road.

In conclusion the number of vehicle movements associated with this proposed operation have decreased and the previous larger facility operated without complaint, taking into account that the facility is on the industrial area design for businesses requiring LGV and HGV vehicles, this proposal would be in accordance with CPLP policies EC2, EC3, T2 and T8 and WLP policies W4C and W10E.

C VISUAL IMPACT, ODOURS AND FUMES

CPLP policy EC3 (Residential Amenity) states *that inter-alia development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area by reason of traffic, noise, fumes or other forms of disturbance will be refused.*

WLP policy 10E details the necessary provisions in respect of the application that should be satisfied. *Criteria point 1 indicates, inter-alia that every application must take account, and mitigate against if necessary, the effects of the proposal in relation to amenity for neighbouring occupiers including noise, smell and dust.*

Visual Impact

The properties on Warwick Close have gardens which back onto Unit 2. There is a 30 metre strip from the residential properties on Warwick Close to the start of applicant's boundary within Unit 2 and Robert Drake Primary School is located approximately 500 metres to the south east of the site.

1 letter of representation has been received regarding the visual impact of the manufacture and storage of the tyres and blocks.

The applicant has responded by stating that there is thick landscaping on the western boundary which minimises the views from the residential properties and there is a 30 metre strip between the boundary of the site and the perimeter boundary and the applicant's site has a combination of wall and fencing around the perimeter adding additional screening to the site. It is proposed that the blocks would be stacked to a height of 1.8 metres high. If planning permission were granted an appropriate condition could be attached limiting the height of the stacked blocks to 1.8 metres, such that the bales would not be visible from outside the site.

Places Services (Landscape) has not objected to the proposal but has recommended that the existing landscaping on the western boundary needs

thickening. The applicant has responded that the existing landscaping is not within his control and therefore additional planting could not be secured.

Subject to the proposed condition with respect to bale heights, it is considered that would not be a significant visual impact from the proposals, such that they accord with CPLP policy EC3 and WLP policy W10E.

Odours and Fumes

Castle Point Borough Council and representees have objected to the proposal as the storage of the waste tyres and manufacture of the blocks would produce fumes and odours. The applicant has responded stating that the waste tyres are not known to produce odour or fumes and the baling process does not change the nature of the tyres. In addition contaminated, burnt or dirty tyres are not accepted at the site. The applicant also states that as this is retrospective application no representations have been received regarding odours or fumes, since commencement of operation in June 2012.

The Environment Agency has not objected to this proposal.

It is considered that this proposal would not give rise to odour of fumes and therefore accord with CPLP policy EC3 and WLP policy W10E.

D NOISE

CPLP policy EC3 (Residential Amenity) states *that inter-alia development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area will be refused.*

WLP policy 10E details the necessary provisions in respect of the application that should be satisfied.

Criteria point 1 indicates, inter-alia, that every application must take account, and mitigate against if necessary, the effects of the proposal in relation to amenity for neighbouring occupiers including noise, smell and dust.

Castle Point Borough Council and representees have objected to the proposal stating the development will increase the noise levels from the trading estate.

The applicant has submitted that the compactor for compressing the tyres is run on electricity and is very quiet. The applicant has also stated that the stacked blocks also act as a partial noise barrier. The applicant has also stated that 1 letter of complaint has been received regarding noise from the site at 07:00. The applicant has stated that operations on site do not begin before 07:30 and this noise was generated may have been from the adjacent builders' yard. It would not be appropriate to impose hours of operation as on an industrial estate hours of operation would not have been imposed on other businesses. No lighting is proposed such that operations could not continue after dark in any event and a condition could be imposed, if planning permission were granted, preventing the installation of lighting without details having been previously submitted and

approved.

Considering the industrial nature of the surroundings units and the general level of noise on the industrial estate, it is considered that any noise generated by this proposal would not significantly increase the noise emitted from the trading estate.

It is considered that this proposal accords with CPLP policy EC3 and WLP policy W10E and the NPPF.

E FIRE RISK

CPLP policy EC3 (Residential Amenity) states that *inter-alia development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area by reason of traffic, noise, fumes or other forms of disturbance will be refused.*

WLP policy W10E details the necessary provisions in respect of the application that should be satisfied. *Criteria point 1 indicates, inter-alia that every application must take account, and mitigate against if necessary, the effects of the proposal in relation to amenity for neighbouring occupiers including noise, smell and dust.*

Castle Point Borough Council and representees have objected to as the proposal give rise to a potential fire risk and the blocks could spontaneously combust which would create fumes.

The applicant has submitted a fire risk assessment. The applicant has submitted that tyre blocks and loose tyres do not spontaneously catch fire and the site is appropriately fenced to prevent unauthorised access. The tyre blocks were thoroughly tested by HR Wallingford for the DTI & Environment Agency where it was found that it takes a very high and constant heat to set the blocks alight. It was seen that the blocks would only smoulder or burn on the outer edges due to the lack of oxygen. The fire risk assessment concluded that in the unlikely event that the tyres were set alight by the time it takes for the edges to start to burn, there would be sufficient time for the fire brigade to attend and control and contain the fire.

Essex County Fire & Rescue Service was consulted and noted there was good road access, however did suggest:

- Provision of additional water supply on site.
- Separate storage of loose tyres and blocks and keep to a manageable size.
- Fire breaks between the blocks.
- Secure fencing

The applicant has confirmed, following a visit by a Fire Officer and the advice from Essex County Fire & Rescue Service, that the following have now been installed:

- a 30 mm automatic hose reel;
- fire bell;
- fire extinguishers with mobile sand box;

- out of hours contact numbers and fire safety training for employees.

The applicant has also stated that 85% of all tyres delivered are baled that day and loose tyres are stored away from the blocks. The applicant also goes onto to state that the Fire Officer confirmed that there is a very low risk of fire to the site other than from malicious arson.

The Environment Agency and Essex County Fire & Rescue Service have not objected to this proposal.

It is considered that the applicant has taken reasonable steps to reduce and mitigate the fire hazards on site and as such the proposal is considered to accord with CPLP policy EC3 and WLP policy W10E.

F FLOODING

W4A waste management development will only be permitted where:

- *There would not be an unacceptable risk of flooding on site or elsewhere as a result of impediment to the flow or storage of surface water;*
- *There would not be an adverse effect on the water environment as a result of surface water runoff;*
- *Existing and proposed flood defences are protected and there is no interference with the ability of responsible bodies to carry out flood defence works and maintenance.*

Representees who live to the south of the trading estate have objected to the proposal as their properties have been flooded because the drains and road surface on the estate are in a very poor condition and an increase in traffic would only make matters worse.

Essex County Council is the Lead Local Flood Authority (LLFA) and is undertaking a series of Surface Water Management Plans (SWMP) throughout the county and these plans classify local catchment as Critical Drainage Areas (CDAs). Manor Trading Estate has been identified as a CDA in the South Essex SWMP. LLFA consider that this proposal would not increase the existing level of flood risk.

The Environment Agency and the Lead Local Flood Authority have not objected to this proposal on drainage or flooding grounds.

It is considered that this proposal would reduce the volume of traffic entering the site and would not increase the existing level of flood risk due to poor road surfaces and drains within the estate and that the proposal accords with WLP policy W4A.

8. CONCLUSION

It is considered that there is a justified need for this proposal as it would re-use and recycle a waste source and push the waste stream up the waste hierarchy in accordance with PPS10 and maintain existing employment in accordance with the environmental and economic dimensions of Sustainable development as supported by the NPPF.

The applicant has also operated on another part of the site, without complaint and it is considered subject to appropriate conditions to ensure the proposals continue at the scale proposed, the development would not give rise to significant environmental effects and as such is considered Sustainable Development in accordance with the NPPF and is in accordance with WLP policies W3A, W4A, W4C, W7E, W8A, W8B, W10E, W10F and CPLP policies ED2, ED3, EC3, T2 and T8.

9. RECOMMENDED

That planning permission be **granted** subject to the following conditions:

1. COM3 – Compliance with submitted details
2. Stockpile heights at 1.8m maximum
3. Light 1- Fixed Lighting Restriction
4. Light 2 - Use of Lighting Restriction

BACKGROUND PAPERS

Consultation replies

Representations

Ref: P/DC/Glenn Shaw ESS/76/12/CPT

LOCAL MEMBER NOTIFICATION

CASTLE POINT – Thundersley

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

It is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required in respect of this application.

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.

WORKING WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER

In determining this planning application, the Local Planning Authority had pre-application discussions with the applicant and has worked 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.

Consideration of Consistency of Policies with NPPF

The Essex & Southend Waste Local Plan Adopted September 2001

Policy Ref No	Policy Title	Policy Wording	Consistency with the Framework and PPS10
W3A	Sustainable Development, National Waste Hierarchy & Proximity Principle	<p>The WPAs will:</p> <p>1. In determining planning applications and in all consideration of waste management, proposals have regard to the following principles:</p> <ul style="list-style-type: none"> • Consistency with the goals and principles of sustainable development; • Whether the proposal represents the best practicable environmental option for the particular waste stream and at that location; • Whether the proposal would conflict with other options further up the waste hierarchy; • Conformity with the proximity principle. <p>2. In considering proposals for managing waste and in working with the WDAs, WCAs and industrial and commercial organisations, promote waste reduction, re-use of waste, waste recycling/composting, energy recovery from waste and waste</p>	<p>Paragraph 6 of the Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development.</p> <p>PPS10 supersedes 'BPEO'.</p> <p>PPS10 advocates the movement of the management of waste up the waste hierarchy in order to break the link between economic growth and the environmental impact of waste.</p> <p>One of the key planning objectives is also to help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations.</p> <p>See reasoning for Policy W8A.</p> <p>Therefore, Policy W3A is considered to be consistent with the Framework and PPS10.</p>

		<p>disposal in that order of priority.</p> <p>3. Identify specific locations and areas of search for waste management facilities, planning criteria for the location of additional facilities, and existing and potential landfill sites, which together enable adequate provision to be made for Essex, Southend and regional waste management needs as defined in policies W3B and W3C.</p>	
W4A	Flooding & protection of the water environment	<p>Waste management development will only be permitted where:</p> <ul style="list-style-type: none"> • There would not be an unacceptable risk of flooding on site or elsewhere as a result of impediment to the flow or storage of surface water; • There would not be an adverse effect on the water environment as a result of surface water run-off; • Existing and proposed flood defences are protected and there is no interference with the ability of responsible bodies to carry out flood defence works and maintenance. 	<p>Paragraph 99 of the Framework states that 'Local Plans should take account of climate change over the longer term, including factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure'. In addition Annex E of PPS10 highlights at section a. protection of water resources that 'Considerations will include the proximity of vulnerable surface and groundwater. For landfill or land-raising, geological conditions and the behaviour of surface water and groundwater should be assessed both for the site under consideration and the surrounding area. The</p>

			<p>suitability of locations subject to flooding will also need particular care’.</p> <p>Therefore, as policy W4A seeks to only permit development that would not have an adverse impact upon the local environment through flooding and seeks developments to make adequate provision for surface water run-off the policy is in conformity with PPS10 and the Framework.</p>
W4C	Highway/Transport Access	<ol style="list-style-type: none"> 1. Access for waste management sites will normally be by a short length of existing road to the main highway network consisting of regional routes and county/urban distributors identified in the Structure Plan, via a suitable existing junction, improved if required, to the satisfaction of the highway authority. 2. Exceptionally, proposals for new access direct to the main highway network may be accepted where no opportunity exists for using a suitable existing access or junction, and where it can be constructed in accordance with the County Council’s highway standards. 3. Where access to the main highway network is not 	<p>Paragraph 21 (i) of PPS10 highlights that when assessing the suitability of development the capacity of existing and potential transport infrastructure to support the sustainable movement of waste, and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport.</p> <p>Furthermore, Paragraph 34 of the Framework states that ‘Decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised’.</p> <p>Policy W4C is in conformity with paragraph 34 in that it seeks to locate development within areas that can accommodate the level of traffic proposed. In addition the policy seeks to assess the existing road networks therefore, being in accordance with the Framework and PPS10.</p>

		<p>feasible, access onto another road before gaining access onto the network may be accepted if, in the opinion of the WPA having regard to the scale of development, the capacity of the road is adequate and there would be no undue impact on road safety or the environment.</p> <p>4. Proposals for rail or water transport of waste will be encouraged, subject to compliance with other policies of this plan.</p>	
W7E	MRF's, waste recycling centres, CA/WTS	<p>To facilitate the efficient collection and recovery of materials from the waste stream, in accordance with policy W3A, the WPAs will seek to work with the WDAs/WCAs to facilitate the provision of:</p> <ul style="list-style-type: none"> • Development associated with the source separation of wastes; • Material recovery facilities (MRF's); • Waste recycling centres; • Civic amenity sites; • Bulking-up facilities and waste transfer stations. <p>Proposals for such development will be supported at the following locations:</p>	See explanation notes for Policy W3C, W8A and W8B as these are relevant and demonstrate conformity with the Framework and PPS10.

		<ul style="list-style-type: none"> • The waste management locations identified in Schedule 1 (subject to policy W8A); • Other locations (subject to policies W8B and W8C); • In association with other waste management development; • Small scale facilities may be permitted at current landfill sites, provided the development does not unduly prejudice the agreed restoration timescale for the site and the use ceases prior to the permitted completion date of the site (unless an extension of time to retain such facilities is permitted). <p>Provided the development complies with other relevant policies of this plan.</p>	
W8A	WM facilities – schedule 1	<p>Waste management facilities will be permitted at the locations shown in Schedule 1 provided all of the following criteria, where relevant, are complied with:</p> <ul style="list-style-type: none"> • There is a need for the facility to manage waste arising in Essex and Southend (subject to policy W3C); • The proposal represents the Best 	<p>PPS10 at paragraph 17 identifies that ‘Waste planning authorities should identify in development plan documents sites and areas suitable for new or enhanced waste management facilities for the waste management needs of their areas. Waste planning authorities should in particular:</p> <p>– allocate sites to support the pattern of waste management facilities set out in the RSS in accordance with the broad</p>

		<p>Practicable Environmental Option (BPEO) for the particular waste stream, having regard to any alternative options further up the waste hierarchy;</p> <ul style="list-style-type: none"> • The development complies with other relevant policies of this Plan, including the policy/ies in Chapter 7 for the type(s) of facility proposed; • Adequate road access is provided in accordance with policy W4C. Access by rail or water will be supported if practicable; • Buildings and structures are of a high standard of design, with landscaping and screening provided as necessary; and • Integrated schemes for recycling, composting, materials recovery and energy recovery from waste will be supported, where this is shown to provide benefits in the management of waste which would not otherwise be obtained. 	<p>locations identified in the RSS; and,</p> <ul style="list-style-type: none"> – allocate sites and areas suitable for new or enhanced waste management facilities to support the apportionment set out in the RSS. <p>The WPA has identified sites within the Waste Local Plan under policy W8A which seek to support the pattern of waste management and that are suitable for new or enhanced waste management facilities.</p> <p>BPEO has been superseded by PPS10.</p> <p>Therefore, the policy is in conformity with the requirements of the PPS10.</p>
W8B	Non schedule 1 WM facilities	Waste management facilities (except landfill to which policies W9A and W9B apply) will be permitted at locations other	Policy W8B is concerned with identifying locations for sites that have not been identified within the Plan as preferred sites of waste related

		<p>than those identified in this plan, provided all of the criteria of policy W8A are complied with where relevant, at the following types of location:</p> <ul style="list-style-type: none"> • Existing general industrial areas; • Areas allocated for general industrial use in an adopted local plan; • Employment areas (existing or allocated) not falling into the above categories, or existing waste management sites, or areas of degraded, contaminated or derelict land where it is shown that the proposed facility would not be detrimental to the amenity of any nearby residential area. <p>Large-scale waste management development (of the order of 50,000 tonnes per annum capacity or more, combined in the case of an integrated facility) will not be permitted at such non-identified locations unless it is shown that the locations identified in Schedule 1 are less suitable or not available for the particular waste stream(s) which the proposal would serve.</p>	<p>developments. By setting a criteria for non-preferred sites this allows for the protection of the natural environment in conformity with the third strand of the three dimensions of sustainable development. Additionally, in conformity with paragraph 17 of the Framework, the policy contributes to the conservation and enhancement of the natural environment. The Framework goes on to state that 'Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework.</p>
W10E	Development Control	Waste management development, including landfill, will be permitted	Policy W10E is in conformity with the Framework in that the policy is concerned with the

		<p>where satisfactory provision is made in respect of the following criteria, provided the development complies with other policies of this plan:</p> <ol style="list-style-type: none"> 1. The effect of the development on the amenity of neighbouring occupiers, particularly from noise, smell, dust and other potential pollutants (the factors listed in paragraph 10.12 will be taken into account); 2. The effect of the development on the landscape and the countryside, particularly in the AONB, the community forest and areas with special landscape designations; 3. The impact of road traffic generated by the development on the highway network (see also policy W4C); 4. The availability of different transport modes; 5. The loss of land of agricultural grades 1, 2 or 3a; 6. The effect of the development on historic and archaeological sites; 7. The availability of adequate water supplies and the effect of the 	<p>protection of the environment and plays a pivotal role for the County Council in ensuring the protection and enhancement of the natural, built and historic environment. The policy therefore, is linked to the third dimension of sustainable development in the meaning of the Framework.</p>
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		<p>development on land drainage;</p> <p>8. The effect of the development on nature conservation, particularly on or near SSSI or land with other ecological or wildlife designations; and</p> <p>9. 9. In the Metropolitan Green Belt, the effect of the development on the purposes of the Green Belt.</p>	
W10F	Hours of operation	<p>Where appropriate the WPA will impose a condition restricting hours of operation on waste management facilities having regard to local amenity and the nature of the operation.</p>	<p>In addition Paragraph 123 of the Framework states that planning decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new developments, including through the use of conditions. Furthermore, paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.</p> <p>It is considered that as policy W10F is concerned with the protection of amenity and seeks to impose conditions to minimise this policy W10F is in conformity with the requirements of the Framework.</p> <p>Also see above regarding PPS10 and conditions.</p>

CASTLE POINT LOCAL PLAN POLICIES adopted September 2007

ED3	Protection of Employment Areas	<p>Within the Manor Trading Estate “applications for development falling within Classes B1 B2 or B8 of the Town and Country Planning (Use Classes) Order 1987, or any subsequent amendment of that order will be permitted, subject to compliance with any other relevant policy of the local plan. Sui generis uses will be considered on their individual merits, having regard to the relevant objectives of the local plan and any other relevant policy of the plan. Uses falling outside those classes specified in this policy will be refused”.</p>	<p>The NPPF at paragraph 17 stipulates that planning policies should proactively drive and support sustainable economic development to deliver business and industrial units that the country needs. Plans should allocate sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities</p> <p>The NPPF at Paragraph 17 also states that policies should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings</p> <p>The CPLP under policy ED3 allocates sufficient land which is suitable for industrial development.</p>
EC2	Design	<p>“i. The scale, density, siting, design, layout and external materials of any development, which shall be appropriate to its setting and which should not harm the character of its surroundings; ii. The appearance and treatment of spaces around buildings which shall be enhanced by appropriate hard and soft landscaping; iii. The need to ensure that all modes of movement are made safe and convenient.”</p>	<p>The NPPF at paragraph 17 stipulates that planning policies should proactively drive and support sustainable economic development to deliver business and industrial units that the country needs. Plans should allocate sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities</p> <p>The NPPF at Paragraph 17 also states that policies should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings</p> <p>The CPLP under policy ED3 allocates sufficient land which is suitable for industrial development and the policy also seeks to strike a balance</p>

			between growth and safeguarding existing amenity
EC3	Residential amenity	Development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area will be refused.	See policy notes for EC2
T2	Intensification of access use	Proposals which would result in the intensification of the use of existing accesses or the creation of new accesses onto any trunk, principal or other classified road will, in appropriate cases, require the submission of a traffic impact study demonstrating the ability of the highway network to accommodate the proposed development. Where such demonstration cannot be shown, or where there is a policy objection from the highway authority, permission will be refused. When considering applications that would affect these roads the council will consult the highway authority and will take the advice received into account when determining applications for planning permission.	See policy notes for EC2 as these are relevant and demonstrate conformity with the NPPF.
T8	Car parking Standards	The council will apply, with specified exceptions ¹ , the revised standards for car parking in Essex, published by the Essex county council.	See policy notes for EC2 as these are relevant and demonstrate conformity with the NPPF.

DR/15/13

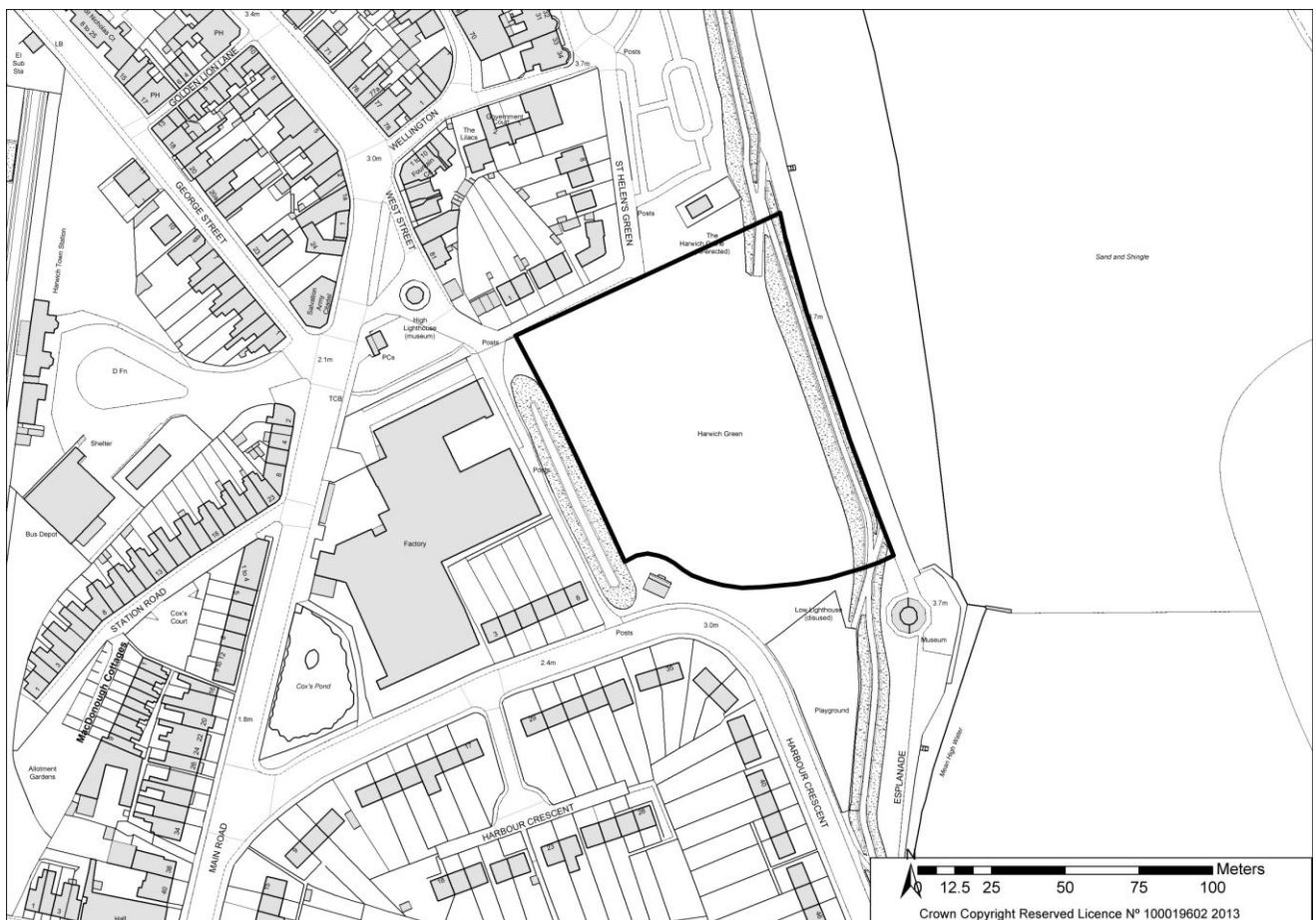
Committee: DEVELOPMENT AND REGULATION

Date: 19 April 2013

APPLICATION TO REGISTER LAND AT HARWICH GREEN, HARWICH AS A VILLAGE GREEN

Report by County Solicitor

Enquires to: Jacqueline Millward, telephone 01245 506710



1. PURPOSE OF REPORT

To consider an application received on 14 October 2005 from The Harwich Society under Section 13 of the Commons Registration Act 1965 (“the 1965 Act”) as amended to register land at Harwich Green, Harwich as a Village Green. The area to be registered was subsequently revised.

2. BACKGROUND

The County Council has a duty under Section 3(1) of the 1965 Act to maintain the Registers of Commons and Town and Village Greens. Under Section 13 of the 1965 Act applications can be made to the Registration Authority to amend the Register. The legislation has now been superseded by the Commons Act 2006 but the tests for registration where use is continuing remain essentially the same.

The County Council as Registration Authority has received an application made by Mr Andy Rutter, Secretary of The Harwich Society of 4 Hall Lane, Harwich, CO12 3TE to register the application site as a Town or Village Green under the provisions of Section 13 of the 1965 Act. The application form claimed the land has become town or village green on 3 January 1970 by ‘actual use of the land by local inhabitants for lawful sports and pastimes as of a right for not less than 20 years’. The application form stated that ‘the Green is used daily by families of Old Harwich for pastimes since they have no gardens’. The Harwich Society is stated to currently have over 2000 members.

No evidence of use was submitted with the application form. 24 evidence questionnaires were later received in support of the application in 2010 using a form provided by the Open Spaces Society for Commons Act 2006 applications. These attached a plan of the area claimed by these users as the area on which they carried out the activities covered by their questionnaire which was considerably reduced from the application area. The principal differences were that it did not include the playground to the south or the laid out foot route area to the north. It also excluded that part of the field on which the re-erected Harwich Crane was located. A number of letters referring to use or records of use, such as postcards and photographs, were also provided. The owner was listed on the application form as Tendring District Council.

The application did not specify the locality or neighbourhood within a locality to which the rights claimed were attached.

The application was advertised in the local press and on site on 8 February 2007 with any objection to be lodged by 22 March 2007. Notice was also served on the landowner.

The County Council received a letter from Tendring District Council (TDC) dated 20 March 2007. It objected to the application for the following reasons (a) that some of the land was restricted to public access such as the Harwich crane enclosed by secure fencing, the refreshment kiosk and the row of beach huts subject to annual licences (b) the use of the land is permitted subject to byelaws

dating back to 1924 and (c) the application (as originally made) did not provide evidence of use but asserted use.

In response the applicant agreed that the Harwich Crane, the refreshment kiosk and the beach huts should be treated as excluded from the application. They intended to consider the byelaw point but thought it unlikely they would conflict with the principle of a village green and proposed to provide user evidence in support of their application.

Further comments were made by the applicant in December 2007 that they had seen the TDC byelaws and that 'there is nothing therein which would conflict with the registration of the town green since the byelaws relate to the usual round of control of dogs, ball games, vehicles etc.'

As further evidence was not received in August 2009 a reminder was sent to the applicant. In reply the applicant stated that information collected from their witnesses may result in a reduction to the application area. A revised plan was submitted in October 2009 which excluded the areas beyond the main playing field area and the historic boundary of the playground. This was the plan that was subsequently attached to the user questionnaires.

In February 2010 15 witness questionnaires were submitted and in March 2010 a further nine. The applicant indicated that 'these cover use for a large number of years, many in excess of twenty, and some for a lifetime. They prove that the citizens of Harwich have used Harwich Green for walking, dog walking, football, cricket, fetes and exhibitions etc as of a right, without force or secrecy and without permission. And they continue to do so.' They also stated that these 24 'are representative of a much larger section of the community'.

TDC wrote to the applicant in May 2011 confirming that there was no current plan for the district council to sell or develop any part of the area. They confirmed the land was already subject to democratic control as Council owned land. There were also technical protections in the form of the Local Government Act, the Adopted Local Plan and Planning Policy Guidance 17 which would require public consultation before any change of use could be approved. TDC indicated that they already considered the provision of open space in the area was already protected and registration as a village green would add costs and restrictions on future options for the land even where they may enhance the Green.

In February 2012 as matters had not been resolved both parties were contacted in relation to a proposed non-statutory public inquiry in May 2012. The parties indicated that they were seeking a compromise and arrangements for an inquiry were put on hold.

A meeting took place in May 2012 between the Harwich Society and TDC. Correspondence from TDC to the applicant in June 2012 records that the applicant proposed a compromise application area and the applicant also wrote to the commons registration authority to confirm that 'a compromise has been reached which satisfied both sides' and asking for the revised plan be substituted for the original plan in their application. In September 2012 TDC confirmed to the

commons registration authority that it had agreed this compromise area with the applicant and TDC provided a matching copy of the revised plan. This agreed area is the area shown on the front of the report, to which the application would apply. TDC confirmed that 'on the basis of the revised plan I can confirm the withdrawal of the Council's objection to the proposed registration'.

None of the land on the compromise plan now incorporated in the application for registration is affected by highways or rights of way. The land at West Street abutting the posts at the boundary of the application land is publicly maintainable highway as is the road and adjacent footway at Harbour Crescent. The land between these two routes beyond the embankment and now outside the application area is recorded as definitive footpath 39 Harwich on the county council's Definitive Map of Public Rights of Way.

In the case of Village Green applications the County Council has a discretion whether to hold an oral hearing before confirming or rejecting the application. Where there is a dispute which "is serious in nature" to use the phrase of Arden LJ in *The Queen (Whitney) v The Commons Commissioners* [2004] EWCA Civ. 951 (para 29), a registration authority "should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry". Following the application, discussions between the land owner and the applicant in relation to a compromise area for the application indicated that there is no dispute in the instant case and I am satisfied that this is a case that does not warrant the holding of a non-statutory local inquiry.

The landowner has confirmed that, although their compromise was reached before the court of appeal's decision in *Barkas v North Yorkshire County Council* [2012] EWCA 1373, which may have made them look at the position differently, they are prepared to stand by the compromise agreement reached with the applicant.

Although the Commons Act 2006 has changed some of the rules in relation to how applications are determined this case falls to be determined under the 1965 Act interpreted in accordance with the case law and amendments made pertinent to the application.

3. THE APPLICATION SITE

The application form referred to a plan on which the application site was marked. It lay between the adjacent road or footpath features known as the Esplanade along the sea front, Harbour Crescent, West Street, St Helens Green and the car park off Wellington Road. The area comprised a number of existing public access features. In the southern part of the application route is a playground. In the northern part is a formal area laid out with foot routes. The bulk of the land is a grassed area available for activities and included the re-erected Harwich Crane and the refreshment building. Existing embankments along West Street, the Esplanade and the car park off Wellington Road were within the application area. There is a tennis court type fence along St Helens Green to prevent footballs

breaking the house windows and a fence in front of the factory building between Harlow Crescent and West Street.

The area now applied for and shown on the map at the front of this report is a grassed area open on its boundaries and surrounded in part by embankment. It is bounded by footpaths 38 running along St Helens Green and 39 running along the western boundary between West Street and Harbour Crescent. This area now excludes the other features apparent on the original application map.

The applicant's witnesses confirm that the application area is accessed on foot from the unfenced boundaries. This is directly available from footpath 38 and available via other parts of the recreation facility owned by TDC.

The applicant confirmed that they did not consider that the revised application area excluded any of the activities said to be carried on on the land by the users.

Tendring District Council confirmed that the Borough of Harwich acquired the land (with other land) from the War Department on 2nd October 1930 and it subsequently became part of the district council's property on local government reorganisation in 1974. They provided a copy of the conveyance. Clause (3) of the conveyance is a covenant from the owner that 'no building or other erection for residential or commercial purposes shall be erected or allowed to remain on the portion of the property hereby conveyed known as The Green and hatched with red lines on the said plan and the said proportion of the property shall remain and be kept for ever hereafter as a Public Recreation Ground and open space'. The application area falls within the area identified on the plan to be covered by the covenant.

4. DEFINITION OF A TOWN OR VILLAGE GREEN

Section 13 of the Commons Registration Act 1965 obliges the Registration Authority to amend the Register where "any land becomes.....a Town or Village Green".

For these purposes a "Town or Village Green" used to be defined as:

"land...on which the inhabitants of any locality having indulged in lawful sports and pastimes as of right for not less than twenty years" (section 22 of the 1965 Act).

Section 98 of the Countryside and Rights of Way Act 2000 ("the 2000 Act") amended section 22 of the 1965 Act, so that land can become a village green "if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and...continue to do so".

The definition divides such greens into three classes. Firstly, land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality. Secondly, land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes. Thirdly, a class c green

which is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either (i) continue to do so, or (ii) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions. No period was prescribed for the purposes of class c.ii greens under the 1965 Act. This is an application which falls to be considered under section 13(c)(i).

5. THE APPLICATION

In October 2005 an application was made to the County Council to register land referred to by the users as Harwich Green or St Helens Green, Harwich as land which had become a Village Green on 3 January 1970.

The application is supported by 24 user questionnaires and 10 letters (5 letters being from persons who completes questionnaires). A summary of the evidence is in Appendix 1. The type of use which has occurred on the site is indicated as children playing, painting/drawing, team games, cricket, picnics, kite flying, walking and dog walking, community events and fetes, bicycle riding. The application land has also been used for organised events associated with the yacht club, the Air Ambulance and the motorcycle club. The detail shown on a map provided by the applicant to show the addresses where the users live is on the map at Appendix 2.

The application stated the owner to be Tendring District Council. Tendring District Council have managed the land and adjacent land and its use is covered by byelaws. The area to which the application relates, as shown on the map at the front of this report, was reached by agreement between the applicant and the landowner. When the area was reduced a further public notice on site and in the local paper was given giving an opportunity for any additional comments to be made within 14 days (by 19 October 2012). No comments were received.

The application form stated the locality to be Harwich. Following the advertisement for the revised application area the applicant was asked to provide further information as to the definition of the locality as there are legal requirements in relation to the nature of a locality and confirmed that this would be the Harwich East Ward of Tendring District which shown on Appendix 3. They did not claim any smaller neighbourhood within the identified locality. As can be seen from the spread of user addresses on Appendix 2, this boundary includes the majority of users with a significant density around the immediate environs of the application land.

The applicant subsequently confirmed that they intended to substitute the date on their form as the date when the land became town green with 13 October 1984. The landowner had no objection to either date being the date claimed by the applicant.

6. OUTLINE OF THE RELEVANT ISSUES

The relevant issues for consideration are:

- a. Has the use been for lawful sports and pastimes?
- b. Has there been 20 years of such use?
- c. Is there a specific locality the inhabitants of which have indulged in lawful sports and pastimes or is there a neighbourhood within a locality of which a significant number of the inhabitants have so indulged?
- d. Has the user by inhabitants been as of right?

7. HAS THE USE BEEN FOR LAWFUL SPORTS AND PASTIMES?

The relevant test is: “how the matter would have appeared to the owner of the land”. Applying this test, it can be concluded that the use was sufficient to bring to the notice of a reasonable landowner the fact that VG rights were being asserted.

The evidence of use is summarised in Appendix 1. It summarises what each document indicates in terms of their use of the land in support the application and what has been observed. The onus is on the applicant to establish his case with sufficient certainty as to the nature, extent, time and locations of the alleged activities.

One of the stated activities is shortcutting across the area of reach the beach huts on the Esplanade or other facilities in the immediate area. Tendring District Council have confirmed that there is no provision for access to the beach huts in the beach hut licences they have granted but access is from the public promenade immediately adjacent.

The majority of the activities which take place on the application site (as listed on Appendix 1) constitute lawful sports and pastimes.

In relation to the organised and community events the applicant said that as far as they were aware there are no on going arrangements for Harwich Town Sailing Club’s special event days. As they are few each is considered on its own merits and usually only involve temporary parking of visitor’s boats on areas adjacent to the road. They confirmed that there was no charge for consent.

TDC were asked for their views. They confirmed they had no knowledge of any charge or access arrangements but provided a list of events which had been held over the last two years as follows:

17 May 2011 Digital UK Roadshow,
1 July 2011 Harwich Children’s Carnival,
24 July 2011 Harwich Sea Festival,
25 July to 1 August 2011 Stocks Funfair,
18 May 2012 Sparks will Fly,
20 July 2012 Harwich Sea Festival,
27 to 29 July 2012 Stocks Funfair,
5 October 2012 Night of Action.

Events were held on the land in accordance with a procedure which requires an application form and a list of requirements are imposed relating to risk management on the site.

8. HAS THERE BEEN 20 YEARS USE?

Use of the claimed land is continuing at the present date. The user evidence covers a period from 1920 to 2010. Taken together there is good evidence of use in excess of 20 years up to the date of the application.

Part 4 of the application form stated that the land became town green on 3 January 1970. From the way the application was framed it was anticipated that the applicant would be relying on 20 years use from that date backwards which would encompass 10 of the 24 users for the whole of that period. When confirmation was requested as to the date the applicant intended to rely on, a new date was proposed to be substituted for the date the land became a town green of 13 October 1984. This would appear to make the 20 year user period October 1964 to October 1984 and would encompass 18 of the 24 users.

Many of the evidence forms provided are submitted in a format identifying the Commons Act 2006 although the application is stated to be under the 1965 Act. When the applicant was asked to comment the reply was that 'it was thought that the later forms would then be relevant', the implication being that the application was intended to be made under the 1965 Act but the user forms were stated to be under 2006 Act so they could be taken into account. This is a rather disconnected approach but the evidence in the forms, as the heading is not a significant part of the purport of the form, can still be taken as supporting the application under the 1965 Act.

9. IS THERE A SPECIFIC LOCALITY THE INHABITANTS OF WHICH HAVE INDULGED IN LAWFUL SPORTS AND PASTIMES OR IS THERE A NEIGHBOURHOOD WITHIN A LOCALITY OF WHICH A SIGNIFICANT NUMBER OF THE INHABITANTS HAVE SO INDULGED?

The applicant only indicated that the locality was 'Harwich' and was later asked to clarify this and invited to consider whether they wished to promote a neighbourhood within a locality. The response was that the locality was the administrative ward area of Tendring District known as Harwich East Ward which is shown on Appendix 3.

East Ward has its own school, residents association, community centre, church and local shops. It is a fairly small ward area and the populated area is formed by the densely packed streets between the two sea fronts with the application land on the north eastern part of the Ward.

As an administrative area Harwich East Ward satisfies the legal requirements for a locality. The information from the applicant also supports the fact that this is a cohesive area within which the majority of the users reside.

10. HAS THE USER BY INHABITANTS BEEN AS OF RIGHT?

As the land was transferred from the War Department in 1930 it has been in public ownership for a long time. In 1930 the reduced application land area shown on the front of this report was shown as being part of the property described as The Green. The War Department obligated the purchaser to keep the land 'for ever hereafter as a Public Recreation Ground and open space'. This would usually engage the powers of the district council, commonly under the Public Open Spaces Act 1906 and/or the Public Health Act 1936

No challenge to use is indicated by the user evidence that has been submitted. The landowner has specifically confirmed that they have no objection to the application land so far as it relates to the reduced area shown on the front of this report so it would appear that there is no claim from the landowner that use of the land by the local residents has not been "as of right".

The district council has previously been subject to applications for village green status on its land and is broadly aware of the criteria to be established. However, it is apparent that it had not occurred them to argue that the way the land was made available was 'by right' rather than by permission, as they argued unsuccessfully in the situation concerning a recent application at Brighton Road in Clacton on Sea, until after the recent decision of the court of appeal in the *Barkas v North Yorkshire County Council and Scarborough Borough Council* case decided in October 2012 ([2012] EWCA Civ 1373). The court in that case affirmed the position that local inhabitants can be said to have a statutory right to use land which is made available to the public for the purpose of lawful sports and pastimes by a local authority under a public law duty to use the land for the purpose until such time as it formally appropriates it to some other statutory purpose. This is a significant difference in the position of a private landowner who may, subject to planning controls, change the use of their land at will. To bring the 'by right' use to an end the local authority would have to appropriate it to another purpose inconsistent with those rights.

Although the Barkas case concerned an application under section 15 of the Commons Act 2006 the interpretation on the 'by right' point remains equally valid in relation to being satisfied that use under the 1965 Act occurred 'as of right' for village green status to be established.

11. CONCLUSION

Tendring District Council have accepted that use of the land has occurred as claimed by the applicant. It seems likely that they became owners of land which was already acknowledged as being for public recreation ground and open space but have not claimed the use that occurs necessarily occurred 'by right'.

Although some control has been exerted by them over events held on the land it is directed at appropriate use of the land and risk control and has been low impact with eight events being held in the last two years.

The user evidence is consistent with lawful sports and pastimes on land over which village green rights have been acquired.

The locality now claimed appears relevant and cogent.

There is no impediment to the application being treated as compliant with the legislation under which it is made.

12. LOCAL MEMBER NOTIFICATION

Councillor Callender has been notified of the proposed report to committee on this matter and any comments received will be reported.

13. RECOMMENDATION

It is recommended

(1) That the applicant's substitute plan for the application land and the area of Harwich East Ward for the locality be accepted.

(2) That the application for village green status in relation to the area shown on the front of this report is accepted and the village green record be amended to include the application site with village green status recording the owner as Tendring District Council.

BACKGROUND PAPERS

Application by Harwich Town Council as amended, dated 13 October 2005.

Local member Harwich: Councillor Callender.

Ref: Jacqueline Millward CAVG/27

APPENDIX 1

Evidence in support		
1	Betty Holbrook Government House St Helens Green CO12 3NH	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Used between 1935 and 2010 • Used to walk, access across unfenced boundaries, approximately twice a week • Immediate family also use • Sea Festival held annually on land on one day • Activities seen taking place on land – children playing, drawing/painting, dog walking, community celebrations, football, cricket, picnicking, kite flying, people walking <p>Letter (2012)</p> <ul style="list-style-type: none"> • Chairman of Harwich Conservation Panel and want to see Harwich Green registered to save it for future generations • All ages have played football, cricket, pitched tents, picnics • Get together back to 1944-45 when met on green, went for a swim then lay on the green in the sun eating sandwiches at weekends
2	Christopher Hart 90 Lee Road Dovercourt CO12 3SB	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Used between 1948 and date of form, 2010 • Included facilities which could be identified within locality including local church, shops, scout hut and doctor's surgery • Used 'for pleasure of open space' and walking, access across unfenced boundaries, 3/4 times per week • Immediate family also use for walking, relaxation, enjoying refreshments • Used by Harwich Town Sailing Club, annual motor cycle event and football games. Annual Fair held on land • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking • Has been given permission to use the land through Harwich Town Sailing Club (HTSC) for national sailing championships
3	Lady Primrose Lewis 39 West Street Harwich CO12 3DD	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Known the land from 1967 to date of form, 2010 • Used the land from 1970 – 1981, 1982 – 1989 and 1994 – 2010 • Included facilities which could be identified within locality including local church, shops and scout hut • Uses land to access beach hut he owns near the light house frequently in the spring, summer and autumn. Also uses land for walking and playing with grandchildren. • Grandchildren use land for cycling and playing football.

		<ul style="list-style-type: none"> • Sea Festival activities and The Fair also held on the land. Other community activities take place with RNLI and school groups. • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, picnicking, kite flying, people walking, bicycle riding • She also included a list of names of others who could provide additional evidence
4	Mrs Margaret Griffiths 9 St Nicholas Court George Street Harwich CO12 3ND	User Questionnaire <ul style="list-style-type: none"> • Known the land from 1930 to 2010 • Used the land from 1930 – 1935, 1963 – 2010 • Included facilities which could be identified within locality including local church, shops and scout hut • Uses land to access beach hut she owns near the light house. Used to play on land as a child. Also uses to help at Maritime museum, to attend community functions and for walking most days during the summer. Winter use dependant on weather. • Community activities listed are sea festival, motor bike charity day and annual fair sailing activities which she has participated in. Also used by Motor Bike Association • Activities seen taking place on land – children playing, drawing/painting, dog walking, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking, bonfire parties
5	Frank Pells 3 St Helen's Green Harwich CO12 3NH	User Questionnaire <ul style="list-style-type: none"> • Used the land between 1954 and 2010 • Included facilities which could be identified within locality including local church, shops, community centre and scout hut • Used to walk and play/sports with grandchildren, access across unfenced boundaries, daily • Community activities listed are school trips, motorcycle rally, fun fair (every summer), fetes, sea festivals • Also organisations use for rounders, cricket and football • Activities seen taking place on land – children playing, rounders, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking • Has marked his address on map • Has provided photographs of air ambulance landing on green, people walking in snow on application land and a summer festival/fete
6	Mr M P Gordon-Jones 6 Fronks Road Harwich CO12 3RH	User Questionnaire <ul style="list-style-type: none"> • Previously resided at 32 Kings Quay Street. Known land 1987 to date of form, 2010 • Used land 1987 – 2008 and 2008 – 2010. Uses land to access adjoining premises and facilities and for games and community uses. Walking, games, local societies. Uses every day • Immediate family also uses land • Community activities include fetes and fairs

		<ul style="list-style-type: none"> • Included facilities which could be identified within locality including local church, shops and community centre • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking, bonfire parties and bicycle riding • Has marked his address on map
7	Mr David Price 4 St Helens Green Harwich CO12 3NH	User Questionnaire <ul style="list-style-type: none"> • Has known land both as Harwich Green and St Helens Green and used from 1953 to date of form, 2010 • Uses land to walk on the promenade and beach, frequently • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, picnicking, kite flying, people walking and bicycle riding. Also seen helicopter landings. • Community events listed are annual fun fair in July, Air Ambulance Motorcycle Rally. Also police and royalty have been on land. • Included facilities which could be identified within locality including local church, shops, doctor's surgery, community centre and scout hut
8	Betty Turner 33 Church Street Harwich CO12 3EA	User Questionnaire <ul style="list-style-type: none"> • Known land from 1948 to 2010. has used a few times each year (doesn't specify years of use) • Used land for walking and took part in charity events • Immediate family also uses the land • Activities seen taking place on land – children playing, drawing/painting, dog walking, community celebrations, fetes, football, picnicking, kite flying, people walking and bicycle riding. Sea Saturdays • Included facilities which could be identified within locality including local church and shops • Didn't sign map of land used attached to user questionnaire
9	P F Webb 4 Esplanade Court Wellington Road Harwich CO12 3DT	User Questionnaire <ul style="list-style-type: none"> • Known and used land between 1963 and 2010 • Has used land for 'pleasure' several times a year for walking, attending organised events, dog walking and organising use for boat parking on sailing events. Immediate family also uses land for same purposes • Community events listed are one day festival events and four day fair events • Identifies Harwich Town Sailing Club, Harwich Rotary and Harwich Motor Cycle Club as organisations using the land • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking and boat parking for sailing events. • Indicates that permission was given by the owner for activities by Harwich Town Sailing Club

		<ul style="list-style-type: none"> Included facilities which could be identified within locality including local church, shops, doctor's surgery, community centre and scout hut
10	Mr and Mrs F S Humphreys 26 Barrack Lane Harwich CO12 3NP	User Questionnaire <ul style="list-style-type: none"> Known and used land between 1945 and 2010 Goes on to land every weekend and in the evenings in summer to walk on grass away from cars, to see people enjoying the green. Took part in football, rounders and cricket Son and grandson use land. Football, rounders, kite flying and walking dog Activities seen taking place on land – children playing, rounders, dog walking, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking and bicycle riding Didn't list any facilities which could be identified within locality Form signed by one of those named only
11	Donald Hambling 49 Harbour Crescent Harwich CO12 3NL	User Questionnaire <ul style="list-style-type: none"> Previously resided at 16 Fernlea Road. Known land as Harwich Green and The Green from childhood (date of birth 20 May 1940) to present (form dated 2010) and used over same period Walking access over unfenced boundary, most direct access to Old Harwich. Uses frequently Refreshment hut within boundary of land built as football changing rooms Activities seen taking place on land – children playing, drawing/painting, dog walking, team games, community celebrations, fetes, football, picnicking, kite flying, people walking and bicycle riding Community activities listed are annual Fun Fair, annual Motor Cycle Rally, Royal Helicopters landing, Radio Essex Broadcasting, Air Ambulance landing and Yacht Championship parking. Included facilities which could be identified within locality including local church and shops
12	Mrs Dilys Elizabeth Sedgwick 13 St Austins Lane Harwich CO12 3EX	User Questionnaire <ul style="list-style-type: none"> Known and used the land from 1987 to date of form, 2010 Access by walking across unfenced boundary. Uses land for pleasure and to reach her beach hut on most days depending on the weather Used with grandchildren when younger for ball games Lists community events as Life Boat fun day, air ambulance fete, bikers day, fun fair in August which she attends Activities seen taking place on land – children playing, drawing/painting, dog walking, community celebrations, fetes, football, picnicking, kite flying and people walking Included facilities which could be identified within locality including community activities and a central feature
13	Andrew Neil Tannock	User Questionnaire

	42 Wick Lane Dovercourt CO12 3TA	<ul style="list-style-type: none"> Known and used the land from 1971 to date of form, 2010 Uses land for walking 2-3 times a week Immediate family uses land for recreation Lists community activities as RBL veterans day parade and drumhead service. Also Sea Festival. He participates in these. Activities seen taking place on land – children playing, dog walking, football, cricket, picnicking, kite flying and people walking Included facilities which could be identified within locality including a community centre, church, shops, doctor's surgery and scout hut <p>Letter (2012)</p> <ul style="list-style-type: none"> Moved to Dovercourt 8 years ago but moved to Harwich 40+ years ago Enjoyed fairs and amenities with family Aware of parking and café proposals and protest to loss of communal grassland
14	Mrs L Whitnall 40 Main Road Harwich CO12 3LU	<p>User Questionnaire</p> <ul style="list-style-type: none"> Known and used the land from 1920 to 2010 Uses daily for walking for recreation Used by immediate family for recreation Lists community activities as fair and motorcycle rally Activities seen taking place on land – children playing, drawing/painting, dog walking, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking and bicycle riding Included facilities which could be identified within locality including a church and shops <p>Letter (2012)</p> <ul style="list-style-type: none"> Born in Harwich 92 years ago Played on land as a girl Aware of parking and café proposals and protest to loss of communal grassland
15	Michael P Roberts 80 West Street Harwich CO12 3DA	<p>User Questionnaire</p> <ul style="list-style-type: none"> Previously at 13 St Austins Lane, Harwich Known and used from 1970 to 2010 Uses land to cross to beach for daily walks, dog walking. Immediate family also use for same purpose Activities seen taking place on land – children playing, drawing/painting, dog walking, team games, community celebrations, football, picnicking and people walking Lists community activities as raft racing, emergency helicopter landing area, fair and annual motorcycle rally Has marked position of property on map accompanying user questionnaire Included facilities which could be identified within locality including a community centre, church, scout hut and shops
16	Daphne Rogers 1 St Helens Green	<p>User Questionnaire</p> <ul style="list-style-type: none"> Known land from 1925 to 2010. Used land from

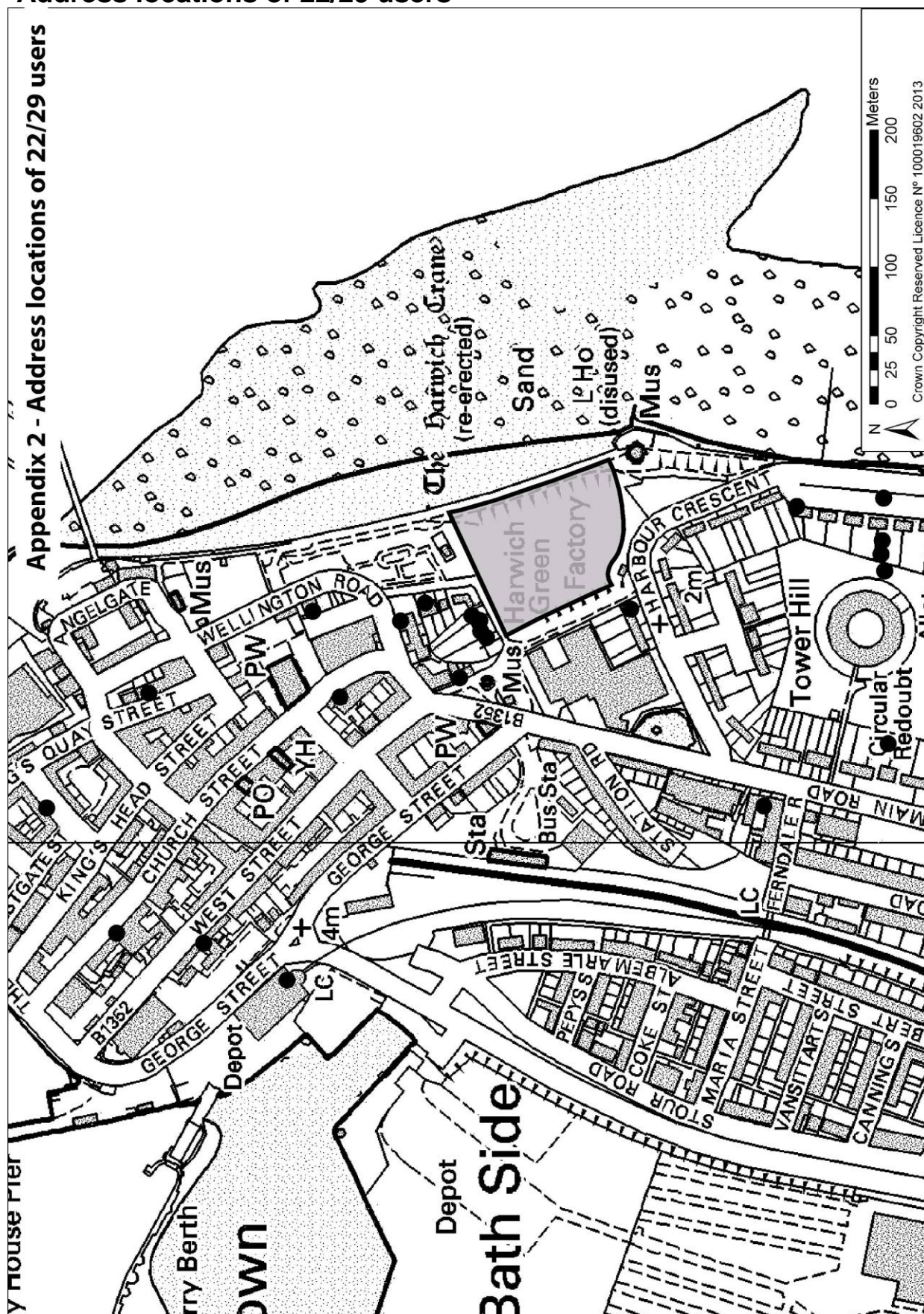
	Harwich CO12 3NH	<p>1929 to 2010 to walk the dog daily.</p> <ul style="list-style-type: none"> • Lists community activities as fun fair and Sea Festival, Motorbike Rally, school fundays/sports days which she has participated in. • Activities seen taking place on land – children playing, rounders, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking and bicycle riding • Has marked position of property on map accompanying user questionnaire • Included facilities which could be identified within locality including a community centre, church, scout hut and shops
17	Mr and Mrs C E Oakley 44 Kings Quay Street Harwich CO12 3ER	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Known and used land as Harwich Green and St Helens Green between 1978 to 2010. Uses for dog walking at least twice daily. Also uses for football practice and cricket • Immediate family use land for dog walking • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, people walking and bicycle riding • Lists community activities as raft race, travelling fair and motor cycle rally. Organisations use for football, cricket and kite flying • Has marked position of property on map accompanying user questionnaire • Included facilities which could be identified within locality including a community centre, church and shops
18	Mrs C Kelly 8 Harbour Crescent Harwich CO12 3NJ	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Has known land from 1951 to 2010 and used from 1960 to date of form, 2010 • Walks on land every day. Immediate family also use for same purpose • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, football, cricket, picnicking, kite flying and people walking • Lists community activities as Sea Festival, fair, motor cycle rally and yacht regatta some of which she participates in. Organisations use the land • Has marked position of property on map accompanying user questionnaire but not signed map • Included facilities which could be identified within locality including a community centre, church, doctor's surgery, scout hut and shops
19	John Bennett 2 St Helens Green Harwich CO12 3NH	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Known and used land between 1964 and 2010 • Uses land to play with children and grandchildren daily for football and immediate family use for

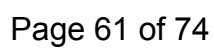
		<p>playing games/sports</p> <ul style="list-style-type: none"> • Lists community activities as fun fair, school fun sports activities, Essex Ambulance charity day, Sea Festival and education purposes/history tours which he participates in. some are organised by schools • Activities seen taking place on land – children playing, rounders, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying and people walking • Has marked position of property on map accompanying user questionnaire but not signed map • Included facilities which could be identified within locality including a community centre, church, scout hut and shops
20	Cheryl Thomson Brereton Lower Marine Parade Harwich CO12 3SR	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Previous addresses were 32 Church Street 1956-76, 11 Kings Quay Street 1976-89, 57 Quay Street 1989-1997 • Known and used land from 1954 to date of form, 2010 • Walks onto land from footway or from promenade. Dog walks, kite flying, picknicking, playing rounders, judging school carnival entries and team games, daily from 1959 to 1989, every other day 1989-1997 and once a week after 1997 in better weather • Immediate family also uses for walking, picnicking and playing football • Tendring District Council maintain grass • Lists community activities as rounders matchers, school carnival, sailing boats on land for championships at weekends. Also motorcycle run and Sea Festival. Local primary schools organise events on land • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, community celebrations, fetes, football, picnicking, kite flying and people walking • Has photographs, not attached • Included facilities which could be identified within locality including a community centre, church, scout hut and shops. Indicates doctor's surgery is 3 miles away. 2 sailing clubs also stated <p>Letter (2012)</p> <ul style="list-style-type: none"> • For 55 years + have used for flying kites playing rounders with primary school team and walking dog. • Agree should be registered as town green
21	Leonard Smith 25 Mayflower Avenue Harwich CO12 3NW	<p>User Questionnaire</p> <ul style="list-style-type: none"> • Known and used land from 1958 to 2010 • Walks on land daily • Activities seen taking place on land – children playing, dog walking, football, cricket, picnicking, kite flying and people walking • Has photographs, not attached • Included facilities which could be identified within locality including a community centre, church,

		doctor's surgery, scout hut and shops
22	Mr M Basham 7 Beacon Hill Avenue Harwich CO12 3NR	User Questionnaire <ul style="list-style-type: none"> • Known and used land from 1935 to 2010 for walking, weekly • Immediate family use for dog walking and pleasure • Activities seen taking place on land – children playing, dog walking, fetes, football, cricket, picnicking, kite flying and people walking • Lists community activities as fairs, football and games and has participated in them. Also used by organisations – HTSC and Motorcycle Clubs in aid of Air Ambulance • Has marked position of property on map accompanying user questionnaire • Included facilities which could be identified within locality including a community centre, church, doctor's surgery, scout hut and shops
23	Mrs F Vincent 8 St Helens Green Harwich CO12 3NH	User Questionnaire <ul style="list-style-type: none"> • Known and used land as Harwich Green and St Helens Green from 1947 to 2010 for recreation, games, picnics and sunbathing at least once a week • Immediate family use land for walking • Included facilities which could be identified within locality including a church, doctor's surgery, scout hut and shops • Lists community activities as a Pageant in the early 1950s for the Esplanade School and annual Motorbike rally • Activities seen taking place on land – children playing, rounders, drawing/painting, dog walking, team games, football, cricket, picnicking, kite flying and people walking • Has assumed land was open space • Has marked position of property on map accompanying user questionnaire
24	Gertrude Hazel Barrett 47 Barrack Lane Harwich CO12 3NP	User Questionnaire <ul style="list-style-type: none"> • Known and used land between 1928 and 2010 for walking 'very often'. Immediate family use land for leisure • Included facilities which could be identified within locality including a church, doctor's surgery, scout hut and shops • Activities seen taking place on land – children playing, dog walking, football, cricket, picnicking, kite flying and people walking • Indicates use by organisations but does not provide any detail of these or any community activities Letter (2012) <ul style="list-style-type: none"> • Aged 84 • Older residents call it The Link meaning a meeting place for Harwich Town • Used diving board towed round the green for summer use
25	Susan Anderson 20 Barrack Lane	Letter (2012) <ul style="list-style-type: none"> • Aged 61 • Says land has been used for recreational activities

	Harwich CO12 3NP	<p>and children play football cricket, picnics and walk through as long as can remember.</p> <ul style="list-style-type: none"> • Doesn't indicate her own use • Indicates concerned that TDC opposing application
26	Ivan Henderson MP 104 Fronks Road Harwich CO12 3RY	<p>Letter (2012)</p> <ul style="list-style-type: none"> • Supports proposal for Harwich Green in Harwich East Ward to be designated at village green • Born in Harwich East Ward in 1958 • Aware application land is vital to local community and supports protection for future generations.
27	Andy Rutter, Secretary of Harwich Society 5 Church Street Harwich CO12 3DR	<p>Letter (2012)</p> <ul style="list-style-type: none"> • Reinforcing application to have Harwich Green registered as village Green as 'meets all the criteria laid down in the Commons Act.' • Listing names of those who had submitted evidence of 20 years use (does not wholly align with forms received and analysed above) and three others including himself who would provide evidence as well • 'the bulk of the local community use the Green, since there are no gardens it he Old Town, and they are prepared to a man to defend it'
28	John Thurlow 484 Main Road Dovercourt Bay Harwich CO12 4ES	<p>Letter (2012)</p> <ul style="list-style-type: none"> • 75 years old, local resident. Lived in Harwich in early years. • Would spend whole day on the green picknicking, football games, fairs. • Fence erected at one end to protect row of houses from footballs and kites. • Still enjoyed by families today
29	David Male, Society Archivist and Librarian Harwich Society 15 The Mariners Marine Parade Dovercourt CO12 3RL	<p>Letter (2012)</p> <ul style="list-style-type: none"> • Information from collection of books/postcards/photographs • Illustration in book of cricketers playing on Harwich Green in 1794 • Postcard postmarked September 1905 showing Green used recreationally • Collection of Local Photographs caption stating Green leased as a public pleaser ground from the War Department in 1912 and subsequently purchased. Transactions will be recorded at Harwich Borough Council minutes

Address locations of 22/29 users





committee DEVELOPMENT & REGULATION

date 19 April 2013

ENFORCEMENT OF PLANNING CONTROL

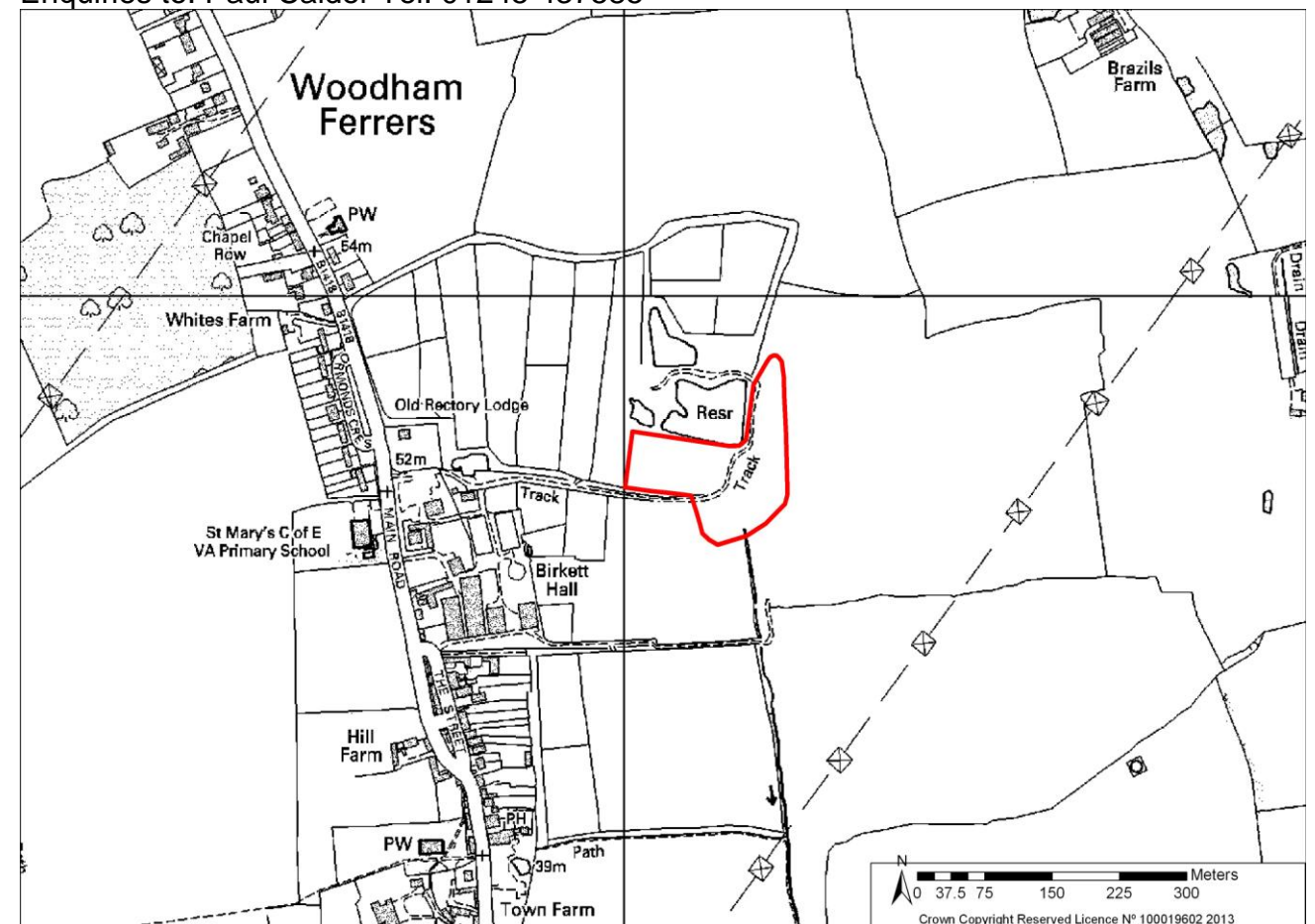
Unauthorised importation of and spreading of waste materials (including waste soils and rubble) on the land and the unauthorised raising of land.

Location: **Land at Birkett Hall, Main Road, Woodham Ferrers, Chelmsford, CM3 8RJ**

Ref: **ENF/0497**

Report by Head of Planning, Environment and Economic Growth

Enquiries to: Paul Calder Tel: 01245 437585



1. BACKGROUND

On 21 May 2009 the County Council as Waste Planning Authority issued a temporary stop notice alleging that there had been a breach of planning control relating to the following matters;

- a) The unauthorised importation of and spreading of waste materials (including waste soils and rubble) on the land, and;
- b) The unauthorised raising of land.

The landowner was required to;

- a) Cease, and do not resume, the importation of waste materials, including waste soils and rubble, on the land;
- b) Cease, and do not resume, the spreading of waste materials, including waste soils and rubble, on the land, and;
- c) Cease, and do not resume, raising the land (with any materials already existing on site or any further imported materials) on the land.

The notice was issued on the grounds that no planning permission existed for the importation, spreading and use of waste materials for the raising of land levels. The notice took full effect on 21 May 2009 and ceased to have effect on the 18th June 2009.

2. SITE

Birkett Hall lies on the east side of Main Road, Woodham Ferrers, to the north of the defined settlement of Woodham Ferrers.

3. DISCUSSION

The landowner has had discussions with the Waste Planning Authority (WPA) stating that it is no longer the intention to import materials and that the required landscape works (as the stated reason for importation) have since been completed. Since serving the temporary stop notice, the landowner ceased importing materials.

Enforcement Protocol: The County Council's Development Control Enforcement Policy sets out principles and procedures for enforcement action relating to unlawful development but such action is a discretionary power as the Town and Country Planning Act 1990 (as amended) 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'.

The County Council's Enforcement Code and Practice (ECP) adopted in 1997 complies with the approach taken in the Framework as it forms part of the WPA's enforcement plan. The ECP encourages officer meetings with landowners/operators before and during enforcement action to seek an agreed solution. If the foregoing remedies are not available or unlikely to succeed then a judgement has to be made whether initiating enforcement action would be expedient and in the public interest.

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.

As noted earlier within the report the applicant has ceased importation and spreading of waste material since issue of the temporary stop notice (21 May 2009) and has already started to restore the breach of planning control area.

Given this, and the operator's commitment not to import any more waste materials in the future, it is not considered appropriate to take any formal action at this time seeking removal of the waste materials.

Nevertheless, should the landowner recommence importation and spreading of waste material to raise the level of land and depart from their commitment not to import waste materials in the future enforcement action would therefore remain an available option for the WPA to take.

RECOMMENDED

That:

- 1) Subject to no further waste materials being imported to the site, it is not considered expedient to take enforcement action requiring the removal of the previously deposited waste materials. Officers shall continue to monitor the site to ensure that the land is restored appropriately, and thereafter;
- 2) a further update shall be provided at the October 2013 meeting.

BACKGROUND PAPERS

Ref: P/DM/SA/ENF/0497

LOCAL MEMBER NOTIFICATION

CHELMSFORD – South Woodham Ferrers

committee DEVELOPMENT & REGULATION

date 19 April 2013

ENFORCEMENT OF PLANNING CONTROL

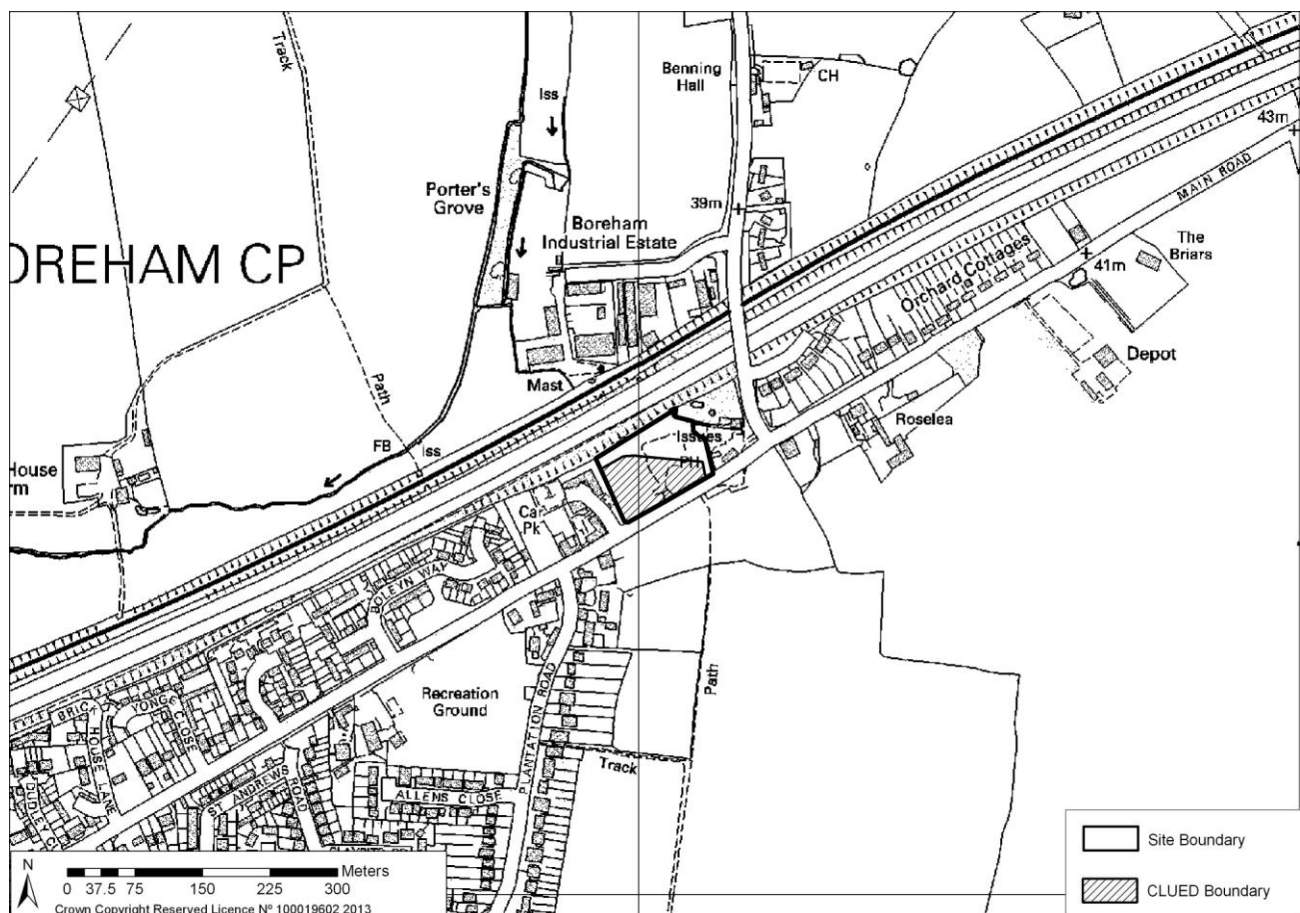
Unauthorised importation, deposition crushing and processing of construction and demolition waste (including concrete, brick other rubble and road scalplings).

Site: **Land adjacent to The Cock Inn, Boreham**

Ref: **70.421.33**

Report by Head of Planning, Environment and Economic Growth

Enquiries to: Suzanne Armstrong 01245 437556



1. BACKGROUND AND SITE

On 23 May 2012 the County Council as Waste Planning Authority issued a Temporary Stop Notice (TSN) for activities on land at the Cock Inn, Boreham, alleging that there had been a breach of planning control relating to the following:

“The unauthorised importation, deposition, crushing and processing of construction and demolition waste (Including concrete, brick, other rubble and road scalpings)”

The landowner was required to:

“Cease the importation, deposition, crushing and processing of construction waste (including concrete brick other rubble and road scalpings)”

The notice took effect on 23 May 2012 and was in force for 28 days during which the importation of waste ceased at the site.

Two Certificates of Lawful Use (CLUED) were issued on the 10th December 1990 in respect of the land adjoining the Cock Inn, Boreham by the then Chelmsford Borough Council, now Chelmsford City Council.

The first Certificate (Certificate A) allows:

“The siting of two sheds each 2.3m by 3.5m for the storage of grease, oil, tyres and engine parts to serve on site machinery.”

The second Certificate (Certificate B) allows:

“Storage of topsoil in heap with a maximum height of about 3 metres (10 feet), screening of top soil and selling onto landscape gardeners and the general public and to a lesser extent storage of paving slabs and bricks.”

The certificates only authorise a lawful use on the land and do not restrict or limit the intensity of the use such as limiting the number of vehicle movements, control of noise, dust or mud on the road and various other operations (as would, for example, a planning permission).

The site is situated next to The Cock Inn Public House on Main Road, Boreham, adjacent to the A12.

This site has a complex history with numerous unauthorised activities dating back many years. A number of previous operators started to operate outside of the area of the area defined in the CLUED, causing local residents and the Parish Council to lodge complaints with both the City Council and the County Council, as Waste Planning Authority (WPA).

Large amounts of inert waste materials have been imported and added to previously stockpiled crushed concrete, topsoil and general builders hardcore and waste - outside the CLUED area.

2. CURRENT POSITION

The current operator has had discussions with the WPA and since serving the TSN the operator has ceased importing and depositing materials outside of the scope of the CLUED.

The current operator moved on to the site in November 2012. A meeting was arranged with the new operator in December 2012 to discuss the best way forward to resolve the issues of local concern. The operator did accept that the CLUED did not authorise operations at the scale and nature that were historically taking place. As such the current operator has been actively removing large amounts of materials (hardcore etc.) working towards compliance with the existing CLUED

Officers of the WPA have carried out monthly visits and it is estimated that the operator has already removed in excess of 6000 tonnes of materials from the site. Although officers are continuing to receive complaints the operator is making efforts to pull back to the activity to that within the CLUED area and accordingly taking steps to remedy this breach of planning control.

3. DISCUSSION

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. 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.”

The County Councils Enforcement Code and Practice (ECP) adopted in 1997 complies with the approach taken in the Framework as it forms part of the WPA's enforcement plan. The ECP encourages officer meetings with landowners/operators before and during enforcement action to seek an agreed solution. If the foregoing remedies are not available or unlikely to succeed then a judgement has to be made whether initiating enforcement action would be expedient and in the public interest.

In considering any enforcement action, the WPA is required to act proportionality, 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.

As stated, the operator has ceased importing materials (outside the area authorised by the CLUED) and has already started clearing the land to remedy the breach of planning control. As the current operator is actively working to remedy the breach of planning control it is considered that it would not be expedient to proceed with formal enforcement action at the present time. Should the operator however recommence importation or not continue to make progress in working towards compliance with the existing CLUED in the future, enforcement action would remain an option for the WPA.

Officers are continuing to work with Chelmsford City Council Environmental Health team to monitor the noise and dust.

Boreham to Hatfield Peverel is a very busy stretch of road and whilst it may be stained there has been no evidence of significant debris from this site. The operator is nonetheless taking action to maintain a clean access from the site.

RECOMMENDED

That:

- 1) Subject to the continued removal of excess materials to restrict the operation to that permitted by the CLUED, it is not considered expedient to take further enforcement action. Officers shall continue to monitor the site to ensure that the materials are removed in accordance with a timetable to be agreed with the operator.
- 2) a further update shall be provided at the October 2013 meeting.

BACKGROUND PAPERS

Ref: P/DM/SA/ENF/70.421.33

LOCAL MEMBER NOTIFICATION

CHELMSFORD – Chelmer

committee DEVELOPMENT & REGULATION

date 19 April 2013

INFORMATION ITEM**Applications, Enforcement and Appeals Statistics**

Report by Head of Planning, Environment & Economic Growth
Sustainable, Environment and Enterprise

Enquiries to Tim Simpson – tel: 01245 437031

or email: tim.simpson2@essex.gov.uk

1. PURPOSE OF THE ITEM

To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee.

BACKGROUND INFORMATION

None.

Ref: P/DM/Tim Simpson/

MEMBER NOTIFICATION

Countywide.

SCHEDULE**Minerals and Waste Planning Applications**

No. Pending at the end of previous month

20

No. Decisions issued in the month

6

No. Decisions issued this financial year

54

Overall % age in 13 weeks this financial year

72%

% age in 13 weeks this financial year (NI 157a criteria, Target 60%)	72%
Nº Delegated Decisions issued in the month	4
Nº Section 106 Agreements Pending	1*
<u>County Council Applications</u>	
Nº. Pending at the end of previous month	11
Nº. Decisions issued in the month	7
Nº. Decisions issued this financial year	51
Nº of Major Applications determined (13 weeks allowed)	0
Nº of Major Applications determined within the 13 weeks allowed	0
Nº Delegated Decisions issued in the month	6
% age in 8 weeks this financial year (Target 70%)	84%
<u>All Applications</u>	
Nº. Delegated Decisions issued last month	10
Nº. Committee determined applications issued last month	3
Nº. of Submission of Details dealt with this financial year	192
Nº. of Submission of Details Pending	141
Nº. of referrals to Secretary of State under delegated powers	2
<u>Appeals</u>	
Nº. of appeals outstanding at end of last month	3
<u>Enforcement</u>	
Nº. of active cases at end of last quarter	19
Nº. of cases cleared last quarter	10

Nº. of enforcement notices issued last month	0
Nº. of breach of condition notices issued last month	0
Nº. of planning contravention notices issued last month	0
Nº. of Temporary Stop Notices Issued last month	0
Nº. of Stop Notices Issued last month	0

