

# Development and Regulation Committee

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| <b>10:30</b> | <b>Friday, 27<br/>February 2015</b> | <b>Committee Room<br/>1,<br/>County Hall,<br/>Chelmsford,<br/>Essex</b> |
|--------------|-------------------------------------|---|

**Quorum: 3**

**Membership:**

Councillor R Boyce  
Councillor J Abbott  
Councillor J Aldridge  
Councillor K Bobbin  
Councillor P Channer  
Councillor M Ellis  
Councillor C Guglielmi  
Councillor J Lodge  
Councillor M Mackrory  
Councillor Lady P Newton  
Councillor J Reeves  
Councillor S Walsh

Chairman

**For information about the meeting please ask for:**

Matthew Waldie, Committee Officer

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Essex County Council

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Please note that an audio recording may be made of the meeting – at the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

## **Part 1**

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

|           |  | <b>Pages</b>   |
|-----------|--|----------------|
| <b>1</b>  | <b>Apologies and Substitution Notices</b><br>The Clerk to report receipt (if any)  |                |
| <b>2</b>  | <b>Declarations of Interest</b><br>To note any declarations of interest to be made by Members.   |                |
| <b>3</b>  | <b>Minutes</b><br>To approve the minutes of the meeting held on 23 January 2015.   | <b>7 - 18</b>  |
| <b>4</b>  | <b>Identification of Items Involving Public Speaking</b><br>To note where members of the public are speaking on an agenda item. These items may be brought forward on the agenda.  |                |
| <b>5</b>  | <b>Minerals and Waste</b>  |                |
| <b>5a</b> | <b>Rivenhall Airfield, Braintree</b><br>To consider report DR/07/15, relating to the removal of certain conditions (restricting geographical source of Solid Recovered Fuel and of waste paper and card) attached to planning permission ESS/41/14/BTE - planning permission ESS/41/14/BTE being for "An Integrated Waste Management Facility" at Rivenhall Airfield, Coggeshall Road (A120), Braintree.<br><br>Ref: ESS/55/14/BTE | <b>19 - 58</b> |
| <b>6</b>  | <b>Village Green</b>   |                |
| <b>6a</b> | <b>Willingale Glebe, Willingale</b><br>Application to register land at Willingale Glebe, Willingale, as a town or village green.<br>DR/08/15   | <b>59 - 72</b> |
| <b>7</b>  | <b>Information Items</b>   |                |

- |           |   |                |
|-----------|---|----------------|
| <b>7a</b> | <b>Report on the programme of Periodic Reviews Of Mineral Planning Permissions</b><br>To update Members on the current status of the MPA's programme of Periodic Reviews of mineral planning permissions (also known as ROMPS).<br>DR/09/15                                     | <b>73 - 84</b> |
| <b>7b</b> | <b>Applications, Enforcement and Appeals Statistics</b><br>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.<br>DR/10/15 | <b>85 - 86</b> |
| <b>8</b>  | <b>Dates of Future Meetings</b><br>To note Committee meeting dates, up to April 2016.<br>DR/11/15   | <b>87 - 88</b> |
| <b>9</b>  | <b>Date of Next Meeting</b><br>To note that the next meeting will be held on Friday 27 March 2015 at 10.30am.   |                |
| <b>10</b> | <b>Urgent Business</b><br>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.   |                |

### **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.

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**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.

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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.

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**MINUTES OF A MEETING OF THE DEVELOPMENT AND REGULATION  
COMMITTEE HELD AT COUNTY HALL, CHELMSFORD ON 23 JANUARY  
2015**

**Present**

|                         |                |
|-------------------------|----------------|
| Cllr R Boyce (Chairman) | Cllr I Grundy  |
| Cllr J Abbott           | Cllr J Lodge   |
| Cllr J Aldridge         | Cllr J Reeves  |
| Cllr K Bobbin           | Cllr C Seagers |
| Cllr P Channer          | Cllr S Walsh   |
| Cllr M Ellis            |                |

**1. Apologies and Substitution Notices**

Apologies were received from Cllr C Guglielmi (substituted by Cllr Seagers), Cllr M Mackrory, and Cllr Lady Newton (substituted by Cllr Grundy).

**2. Declarations of Interest**

Cllr Aldridge declared a personal interest in agenda item 6a, Good Easter Sports Field Village Green application, as the local member.

Cllr Boyce declared a personal interest in agenda item 5a, Cobbs Farm, Goldhanger, as a member of Maldon District Council, and in 5b, Wallasea Island, as a member of Maldon DC, but also as County Council Member for the division opposite the island.

Cllr Channer declared a personal interest in agenda item 5a, Cobbs Farm, Goldhanger, as a member of Maldon District Council, and in 5b, Wallasea Island, both as a member of Maldon District Council and as a member of the Crouch Harbour Authority Advisory Committee; as the latter she would withdraw for the consideration of this item.

Cllr Seagers declared a personal interest in agenda item 5b, Wallasea Island, as a Member of the Crouch Harbour Authority and as such would withdraw for the consideration of this item.

Cllr Walsh declared a personal interest in agenda item 5b, Wallasea Island, as a Member of the RSPB, the applicant, and as such would withdraw for the consideration of this item.

**3. Minutes**

The Minutes and Addendum of the Committee held on 28 November 2014 were agreed and signed by the Chairman.

**4. Identification of Items Involving Public Speaking**

One person was identified to speak in accordance with the procedure for the following item:

**Retrospective application for a small extension in area (to fit with the field boundary and the Wash Lane crossing) to permission ref APP/Z1585/A/12/2169596/NWF (ECC ref ESS/37/11/MAL) for the construction of an agricultural reservoir by the extraction and removal from the site of sand, gravel and surplus soils, together with the construction of an alternative access, internal road and ancillary buildings AND**

**Retrospective application for the continuation of the extraction of mineral to create an agricultural reservoir without compliance with conditions 2 (compliance with submitted details), 7 (highway improvements), 8 (visibility splays), 9 (Access via Wash Lane), 10 (wheel cleaning facilities), 12 (surface water management), 20 (overburden stockpiles), 22 (dust minimisation), 24 (landscape scheme), 26 (tree and hedgerow retention), 28 (protected species survey), 29 (soil movement scheme), 30 (machine movement scheme), 32 (soil bunds), 35 (scheme of archaeological investigation), 36 (reinstatement of haul route area) and 37 (aftercare scheme) attached to planning permission ESS/37/11/MAL (appeal ref APP/Z1585/A/12/2169596/NWF) to allow an amended layout, phasing and restoration of the mineral extraction and agricultural reservoir development, required due to application ref ESS/34/14/MAL.**

At Cobbs Farm, Maldon Road, Goldhanger, Maldon, CM9 8BQ.

References: ESS/34/14/MAL and ESS/35/14/MAL

Applicant: SRC Ltd

Public Speaker: David Hunter speaking for.

## **5. Cobbs Farm, Goldhanger**

The Committee considered report DR/01/15 by the Director for Operations, Environment and Economy.

The Members of the Committee noted the contents of the Addendum attached to these minutes.

The Committee noted that this application sought to amend and add to an existing permission.

Policies relevant to the application were detailed in the report.

The Committee noted the contents of the Environmental Impact Assessment attached as Appendix A to the report.

Details of consultation were set out in the report.

The Committee noted the key issues that were:

- Policy considerations
- Highway impact
- Amenity & Environmental impact.

In accordance with the protocol on public speaking the Committee was



addressed by David Hunter, a director of SRC Ltd, representing the applicant. Mr Hunter said:

- SRC specialise in the construction of reservoirs for farmers and try to act according to their wishes as well as following the requirements set out in regulations and permissions granted. There existed in the past some degree of operational latitude.
- Conditions on the ground do not always match perfectly those on the plan.
- It is not clear why the crossing used differs from that applied for, but in mitigation, adopting the present one avoided the taking down of mature trees.
- Regarding the work being carried out to the field boundary, rather than the designated area, it is unclear why this occurred, although normally they work to field boundaries when constructing reservoirs; the remaining strip would have not have been wide enough to use in any case.
- The creation of a reservoir, and the biodiversity this encourages, is just what sustainability is about.

Members being satisfied at the proposals before them, the resolution was proposed and seconded, and, following a unanimous vote in favour, it was

### **Resolved**

That planning permission be **granted** subject to:

- A. The completion, within 3 months, of a legal agreement covering the following matters:
  - i. The completion of a 'before' (within a month of the date of this permission) and an 'after' (within one month of the completion of the development) study of the Wash Lane crossing to ascertain any degradation that may occur during the period of development.
  - ii. The provision of a financial guarantee to remedy any such degradation that may occur during development, following the results of the 'after' study.
  - iii. Agreement that the unimplemented crossing over Wash Lane, approved under ref ESS/37/11/MAL, will not be built or used.
- B. And conditions covering the following matters:
  - 1. The development hereby permitted shall be deemed as commenced from the date of this permission;
  - 2. COM3 - Compliance with Submitted Details;
  - 3. CESS1 - Development shall cease by 20 May 2017;
  - 4. CESS3 - Removal of Ancillary Development no later than 20 May 2017;
  - 5. CESS7 - Revised Restoration in Event of Suspension of Operations;
  - 6. PROD3 - Vehicle Records of Output (Minerals);
  - 7. HIGH1 - Site access road to be implemented in accordance with submitted details.
  - 8. HIGH11 – Visibility splays to be implemented in accordance with submitted details.

9. HIGH2 - All vehicular access to be from B1026 (Goldhanger Road) via the Wash Lane crossing;
10. HIGH4 – Wheel cleaning facilities to be implemented in accordance with the details submitted on 10 Oct 2012 pursuant to condition 10 of ESS/37/11/MAL;
11. HIGH3 – First 15m of access road to Goldhanger Road (B1026) and east and west of Wash Lane to be kept free of debris;
12. HIGH14 - No unbound materials between the wheel cleaning facilities and the junction with Goldhanger Road;
13. HIGH16 - Surface water drainage management details shall be submitted within one month of the date of this permission;
14. BESPOKE – Relocation of gates adjacent to Wash Lane outside of the public highway, in accordance with submitted details;
15. HIGH5 - HGV Movement Limits
  - 100 movements (50 in and 50 out) per day (Monday to Friday)
  - 50 movements (25 in and 25 out) per day (Saturdays);
16. HIGH6 - Lorry Sheeting;
17. HIGH7 - Pedestrian/PROW Signage;
18. NSE1 – Noise Limits shall not exceed 10dB(A) above the existing background level;
19. NSE3 – Noise Monitoring shall be submitted to the MPA every 6 months;
20. NSE5 – White Noise Alarms;
21. NSE6 - Silencing of Plant and Machinery;
22. VIS2 - Stockpile heights shall not exceed 3m and only to be in the locations identified in the application, subject to the provisions of condition 23;
23. BESPOKE – The northern environmental bund shall be moved to allow a stand-off distance of 10m from the northern perimeter hedge and the base of the bund;
24. LGHT1 - Fixed Lighting Restriction;
25. DUST1 - Dust suppression scheme to be implemented in accordance with details approved on 06 November 2012 pursuant to condition 22 of ESS/37/11/MAL;
26. DUST3 - Spraying of Haul Road;
27. LAND1 – Revised landscape plan shall be submitted within one month indicating grass seed mix for the final reservoir;
28. LAND2 - Replacement Landscaping;
29. TREE2 - Tree protection scheme shall be implemented in accordance with details approved on 06 November 2012 pursuant to condition 26 of ESS/37/11/MAL as amended by the submitted details;
30. TREE3 - Works Affecting Trees Carried out by Hand;
31. ECO2 – Development shall be implemented in accordance with the Badger survey details approved on 29 January 2013 pursuant to condition 28 of ESS/37/11/MAL;
32. LS2 - Development shall be implemented in accordance with the Soil Movement Scheme approved on 20 November 2013 pursuant to condition 29 of ESS/37/11/MAL;
33. LS3 - Development shall be implemented in accordance with the Machine Movement Scheme approved on 20 November 2013 pursuant to condition 30 of ESS/37/11/MAL;

34. LS4 - Stripping of Top and Subsoil;
35. LS5 - Development shall be implemented in accordance with the Maintenance of Bunds details approved on 20 November 2013 pursuant to condition 32 of ESS/37/11/MAL;
36. LS8 - Soil Handled in a Dry and Friable Condition;
37. LS12 - Topsoil and Subsoil Storage;
38. ARC1 - Advance Archaeological Investigation;
39. BESPOKE - Within 6 months of the completion of restoration the Wash Lane crossing shall be removed and the hedge and Wash Lane reinstated in accordance with details to be submitted approved in writing by the MPA;
40. AFT1 - Aftercare Scheme shall be implemented in accordance with the details approved on 20 November 2012 pursuant to condition 37 of ESS/37/11/MAL;
41. MIN1 - No Importation;
42. HOUR1 -Hours of Working (General) shall be limited to:
  - 07 :00 to 17:30 hours Monday to Friday
  - 07:00 to 13:00 hours Saturdays

And vehicles shall not enter the site outside the following times:

- 07:00 to 18:00 hours Monday to Friday
- 07:00 to 13:00 hours Saturdays.

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Councillors Bobbin, Channer, Seagers and Walsh left the meeting at this point.

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## **6. Land at Wallasea Island, Rochford, Essex SS4 2HD**

The Committee considered report DR/02/15 by the Director of Operations: Environment and Economy.

The Members of the Committee noted the contents of the Addendum attached to these minutes.

The Committee was advised that the application sought an overall reduction in the amount of waste to be imported on the site.

Policies relevant to the application were detailed in the report.

The Committee noted the contents of the Environmental Impact Assessment attached as Appendix 1 to the report.

Details of consultation were set out in the report.

The Committee noted the key issues that were:

- Need and principle of development
- Policy considerations
- Environmental impact
- Amenity impact
- Traffic & Highways

In response to questions raised by Members, it was noted:

- It was not possible to say precisely what sort of material would be used for the landfill, or where it might be from. It could be peat, or construction/demolition material; but it could not be household or food waste. It was considered appropriate that the EA should determine this via an Environmental Permit.
- The principle behind importing material to the application site is to raise the overall level of the island, which is at risk of unmanaged flooding. With this, controlled flooding will be permitted, to restrict flooding to certain areas. Habitats have been developed appropriately. There is no longer the commitment to maintain the sea walls.

The resolution was proposed and seconded, and, following a unanimous vote in favour, it was

**Resolved:**

That planning permission be **granted** subject to:

- the Secretary of State not calling in the application for his own determination; and,
- the completion within 6 months of a S106A legal agreement relating to the removal of the existing obligation for the majority of the imported material to be sourced from the Crossrail project; and,
- conditions covering the following matters:

Conditions to be amended as follows:

2. The development hereby permitted shall be carried out in accordance with the details submitted by way of the application dated November 2008, covering letters dated 28 November 2008 and 16 December 2008 and accompanying Planning Statement, together with drawings numbered 'Location of Wallasea Island' Figure 1 (July 08), 'Planning Application Boundary' Figure 3a (Oct 08), 'Proposed Design' Figure 5 (Oct 08), 60039950/IPER/50 Rev 03 (11/12/08), 60039950/3563/65 (27/11/08), 60039950/3563/66 (26/11/08), 'Aerial View Visualisation at Mean Low Water' Figure 10 (Sept 08), 'Aerial View Visualisation at Mean High Water' Figure 11 (Sept 08), 'Aerial View Visualisation as Viewed from the East at Mean Low Water' Figure 12 (Sept 08), 'Selection of Photos Describing the Key Habitat Types to be Created' Figure 14 (Nov 08), 60039950/3563/60 (26/11/08), 'Location of the Unloading facility and Route of the Conveyor Belt and the Wet Chalk Pipeline' Figure 16 (Oct 08), 60039950/3563/51 Rev 01 (26/11/08), 'Locations of the Footpaths on Wallasea Island' Figure 17 (sept 08) as amended by email from RSPB 'Footpath 21 Supplementary Submission' dated 20 March 2009, 'Topography of the whole of Wallasea Island' Figure 3 (Oct 08), 60039950/3563/100 Rev 01 (11/12/08), Schematic Cross Sections Showing Design of Key Features of the Proposed Realignment Scheme' Figure 9 (Oct 08), 60039950/IPER/101 Rev 02 (15/07/08), 'Location and Extent of the Five Cells' Figure 4 (Oct 08),

60039950/3593/53 November 2008, 60039950/3563/53 Rev 01 (11/12/08), 'Existing and Indicative Standards of Protection along the Crouch and Roach Estuaries' Figure 6 (July 08), 'Historic Embankments, Creeks and Postulated Medieval Marsh Boundaries' Figure 8 (Oct 08) and 'Location of Historical EHER References' Figure 25 (Oct 08) and Environmental Statement dated November 2008 and Appendices A-R, together with email from RSPB dated 11 December 2008, email from RSPB headed 'Burnham Access' dated 09 February 2009, email from RSPB headed 'Working Hours Submission' dated 04 March 2009, email from RSPB headed 'Impacts on Oyster Fishery' dated 06 March 2009, email from RSPB headed 'Wallasea: Supplementary Sailing Submission' dated 20 March 2009, email from RSPB headed 'Wallasea: Supplementary Submission Spreading Hedge Parsley' dated 13 March 2009, email from RSPB headed 'Green Belt Submission' dated 24 March 2009, email from RSPB headed 'PROW steps' dated 25 March 2009, email from RSPB headed 'Wallasea: Supplementary Submission Working Hours (2)' dated 20 March 2009, email from RSPB headed 'Wallasea: 1900-0700 Noise Generation and Mitigation' dated 20 March 2009, email from RSPB headed 'Permissive Paths' dated 26 March 2009, email from RSPB headed 'further submissions' dated 06 April 2009, email from RSPB headed 'Supplementary Submissions' dated 02 April 2009, email from RSPB headed 'Roach Erosion' dated 02 April 2009, email from RSPB headed 'Supplementary Submission: Landscape' dated 02 April 2009 and Design and Access Statement,

#### AS AMENDED BY

- The details of the application dated 17 January 2014;
- covering letter from ABPmer dated 17 January 2014;
- Planning Statement by ABPmer Report no. R.2213 Version 2.0 dated 17 January 2014, including appendices A-C; and
- the Environmental Impact Assessment by ABPmer Report no. R.2202 Version 3.0 dated 17 January 2014, including appendices A-D.

#### AS AMENDED BY

- The details of the application dated 31 October 2014;
- Covering letter from ABPmer dated 31 October 2014;
- Planning Statement by ABPmer Report no. R.2316 dated October 2014, including appendices A and B;
- The Environmental Impact Assessment by ABPmer Report no. R.2314 dated October 2014.

All remaining conditions attached to permission ref ESS/09/14/ROC to be re-numbered, updated, removed or re-imposed as appropriate.

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Councillors Channer, Seagers and Walsh rejoined the meeting at this point.

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## 7. Colchester Quarry

The Committee considered report DR/03/15 by the Head of Planning, Environment and Economic Growth.

The Members of the Committee noted the contents of the Addendum attached to these minutes.

The Committee was advised that the application sought an extension of time for the completion of a S106 Agreement. The Committee noted that, at its September 2014 meeting, it had resolved to approve application ref ESS/23/14/COL subject to the completion, within 3 months, of a legal agreement and to the imposition of several conditions. Although the agreement was close to completion, an extension was being sought to allow this to happen, with a consequent extension to the starting date of the work itself.

No other changes were being proposed.

There being no matters raised by Members, a resolution was proposed and seconded, and, following a unanimous vote in favour, it was

**Resolved:**

That the Committee re-endorses the previous decision to grant planning permission subject to the amended time limit for completion of the legal agreement and planning conditions (with amended condition 1) as set out below:

The completion, within 3 months, of a legal agreement including the following matters:

- Submission of a revised restoration scheme in the event that ESS/63/06/COL is implemented by 11 May 2015.
- The applicant to use best endeavours to upgrade proposed permissive rights of way and existing PROW so that they can be used for cycling;
- A Monument/Conservation Management Plan for Grymes Dyke, in consultation with English Heritage;
- Landscape Management Plan for medium to long term management of the site beyond the 5-year aftercare period;
- The formal implementation of a Local Liaison Group;

and conditions covering the following matters:

1. COM1 – Commencement **within 1 year of the date of decision notice** and notification to the MPA of such commencement.
2. COM3 - Compliance with submitted details.
3. CESS7 – Revised restoration in event of suspension of operations.
4. BESPOKE - Submission of elevations and layout drawings including surfacing of access road, colours of plant and traffic calming methods associated with the DSM plant, recycling facility and associated mobile plant parking area, processing plant, quarry workshop, concrete plant, site offices, visitor parking and lorry parking, within 3 months of the date of permission.
5. HOUR2 – Hours of working (mineral specific):

0700 – 1800 hours Monday to Friday

0700 – 1300 hours Saturdays

No stripping, movement, temporary or permanent placing of soils before 0730 hours on any day.

6. BESPOKE - Hours of operation for the DSM Plant:

0500 – 2000 hours Monday to Friday

0500 – 1800 hours Saturdays

No deliveries of HGV movements other than between:

0700– 1800 hours Monday to Friday

0700– 1230 hours Saturdays.

7. BESPOKE - Hours of operation for the recycling plant:

0700 – 1830 hours Monday to Friday

0700- 1230 hours Saturdays.

8. BESPOKE - Hours of operation for concrete plant:

0700 – 1800 hours Monday to Friday

0700 – 1300 hours Saturdays.

9. BESPOKE - No freestanding stockpiles of aggregate shall be stored within the DSM operational area.

10. BESPOKE - The DSM shall use only indigenous sands.

11. WAST2 – Skips to be incidental to main use.

12. BESPOKE - The recycling plant shall process only dry inert 'Type A' waste and road planings/construction waste.

13. BESPOKE - All waste residues from recycling process to be removed from site each week.

14. BESPOKE - No handling, processing or storage of waste outside of the permitted recycling area.

15. VIS2 – Stockpile heights not to exceed 6.1m in recycling area.

16. BESPOKE - Processing plant used only in connection with sand and gravel from Colchester Quarry.

17. BESPOKE - Quarry workshop used only for the repair of plant and vehicles associated with the quarry and no other use.

18. BESPOKE - No topsoil, subsoil, overburden or soil making material to be removed from site.

19. LAND1 – Landscape scheme including detailed landscape/restoration proposals, surfacing of footpaths, tracks and fencing, detailed sections, depths of excavation and contours within 3 months of date of permission.

20. LAND2 – Replacement landscaping.

21. BESPOKE – Progressive stripping, extraction and restoration to ensure Stanway and FWFF are restored concurrently and in a phased manner.

22. AFT1 – Aftercare scheme to be agreed.

23. AFT2 – Drainage of restored land.

24. ARC1 – Advance scheme of archaeological investigation.

25. EC03 – Protection of legally protected species.

26. LS2 – Soil movement scheme.

27. LS3 – Machine movement scheme.
28. LS4 - Stripping of top and subsoil.
29. LS5 – Maintenance of bunds.
30. BESPOKE - 'Soil Bund 12' to be in place prior to commencement of any works other than formation of the access track.
31. BESPOKE - Soil Bund 12 shall be no higher than 2m in height.
32. BESPOKE - Soil bunds 13 and 14 shall be no higher than 3m in height.
33. LS8 – Soil handled in a dry and friable condition.
34. LS10 – Notification of commencement of soil stripping.
35. LS11 – Notification of soil placement.
36. LS14 – Final soil coverage.
37. BESPOKE - Height of temporary stockpiles of soil-making material not to exceed height of boundary bunds.
38. BESPOKE - No imported material to FWFF.
39. HIGH2 – Vehicular access from Warren Lane only.
40. BESPOKE - Hedge to be kept cut back to maintain visibility along Warren Lane.
41. HIGH3 – Surfacing/maintenance of access road and Warren Lane shall be swept.
42. HIGH4 – Prevention of mud and debris on highway.
43. HIGH6 – Lorry sheeting.
44. HIGH5 – Vehicle movements associated with recycling site no more than 70 movements of up to 32t gvw per day.
45. BESPOKE - No mineral shall be imported to the site from Bellhouse beyond the timescales permitted by ESS/07/01/COL/REV (or as subsequently varied).
46. POLL1 – Surface and foul water drainage, including for the DSM plant and recycling area.
47. POLL6 - Groundwater monitoring and mitigation if levels impact on nearby private wells.
48. LGHT1 – Fixed lighting restriction.
49. BESPOKE - Reptile mitigation strategy.
50. BESPOKE - Construction Environment Management Plan.
51. BESPOKE - Ecological Management Plan.
52. NSE1 - Noise limits for all permitted site operations:
 

|                            |            |
|----------------------------|------------|
| Furze Hill                 | 51dB LAeq  |
| The Bungalow               | 52dB LAeq  |
| Dyer's Road                | 53dB LAeq  |
| Egremont Way               | 51dB LAeq  |
| Randoms                    | 53dB LAeq  |
| Heath Road/Grymes Dyke Way | 50dB LAeq  |
| Wiseman's Farm             | 50dB LAeq  |
| The Nook                   | 50dB LAeq. |
53. NSE2 – Temporary operations (not to exceed 70dBA).
54. NSE3 – Monitoring noise levels and the submission of a scheme of mitigation should noise levels be exceeded.
55. NSE5 – White noise alarms.



56. NSE6 – Silencing of plant and machinery.
57. DUST1 – Dust suppression scheme for all permitted operations.
58. POLL4 – Fuel/Chemical storage.
59. CESS2 – Cessation and removal from site of sand and gravel processing plant, Dry Silo Mortar Plant, concrete plant, access roads, weighbridge, workshop and related infrastructure by 31 October 2026.
60. CESS2 – Cessation and removal from site of the inert recycling operation and associated mobile plant parking area by 31 December 2037.
61. CESS2 – Cessation and restoration of FWFF area within the application site within 7 years of commencement of operations at FWFF and restoration of the entire site by 31 December 2037.
62. RES1 – Stones to be picked.
63. MIN1 – No importation except via conveyor from Bellhouse.
64. WAST1 – Waste type restriction.
65. GPDO1 – Removal of PD rights beyond the areas shown on drawing B30/489 dated February 2005.
66. BESPOKE – Scheme for pumps used for dewatering to be submitted and approved within 3 months.

## **Village Green**

### **8. Good Easter Sports Field, Good Easter**

The Committee considered report DR/04/15 by the Director for Essex Legal Services to consider an application made by Juliet Ann Glass, Anne Helen Clark and Victoria Jane Henderson under Section 15(8) of the Commons Act 2006 (“the 2006 Act”) as amended, to register land at Good Easter Sports Field, Good Easter, Chelmsford, as a Town or Village Green.

The Committee noted:

- The powers set out in section 15(8) of the Commons Act 2006 allow an owner of land to voluntarily dedicate land as a town or village green by applying to have it included in the register of town or village greens
- The normal requirements relating to historical use of the land ‘as of right’ do not apply in such a case; the Committee need only be certain that the applicant owns the land and that relevant consents have been obtained
- The pavilion shown on the map is not included within the application.

Following the presentation, which included photographs and detailed maps of the application land and surrounding area, the recommendation to accept the application in its amended form was moved and seconded, and, following a unanimous vote in favour, it was

### **Resolved:**

That, in accordance with the powers set out in Section 15(8) of the Commons Act 2006:

The application as amended is accepted and the land shown on the report to the Committee be added to the Register of Town and Village Greens, as VG 257.

## **Enforcement Update**

### **9. Enforcement of Planning Control**

The Committee considered report DR/05/15, updating members of enforcement matters for the period 1 October to 31 December 2014.

In response to a question raised by a Member, it was noted:

- Little Warley Hall Farm, Ranks Green – there is as yet no indication of a timeframe for the appeal; the Environment Agency is currently dealing with complaints regarding odour emissions.

The Committee **NOTED** the report.

### **10. Statistics**

The Committee considered report DR/06/15, Applications, Enforcement and Appeals Statistics, as at end of the previous month, by the Director of Operations, Environment & Economy.

The Committee **NOTED** the report

### **11. Date and time of Next Meeting**

The Committee noted that the next meeting will be held on Friday 27 February 2015 at 10.30am in Committee Room 1.

There being no further business the meeting closed at 11.16 am.

Chairman

**DR/07/15**

committee DEVELOPMENT & REGULATION

date 27 February 2015

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**MINERALS AND WASTE DEVELOPMENT**

Proposal: **Removal of condition 28 (restricting geographical source of Solid Recovered Fuel) and condition 30 (restricting geographical source of waste paper and card) attached to planning permission ESS/41/14/BTE to allow importation of Solid Recovered Fuel and waste paper and card without constraint as to the geographical source of the material. Planning permission ESS/41/14/BTE being for “An Integrated Waste Management Facility comprising:**

- **Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators;**
- **Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals;**
- **Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel;**
- **De-inking and Pulping Paper Recycling Facility to reclaim paper;**
- **Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void;**
- **visitor/education centre;**
- **extension to existing access road;**
- **provision of offices and vehicle parking;**
- **and associated engineering works and storage tanks.**

Location: **Rivenhall Airfield, Coggeshall Road (A120), Braintree**

Ref: **ESS/55/14/BTE**

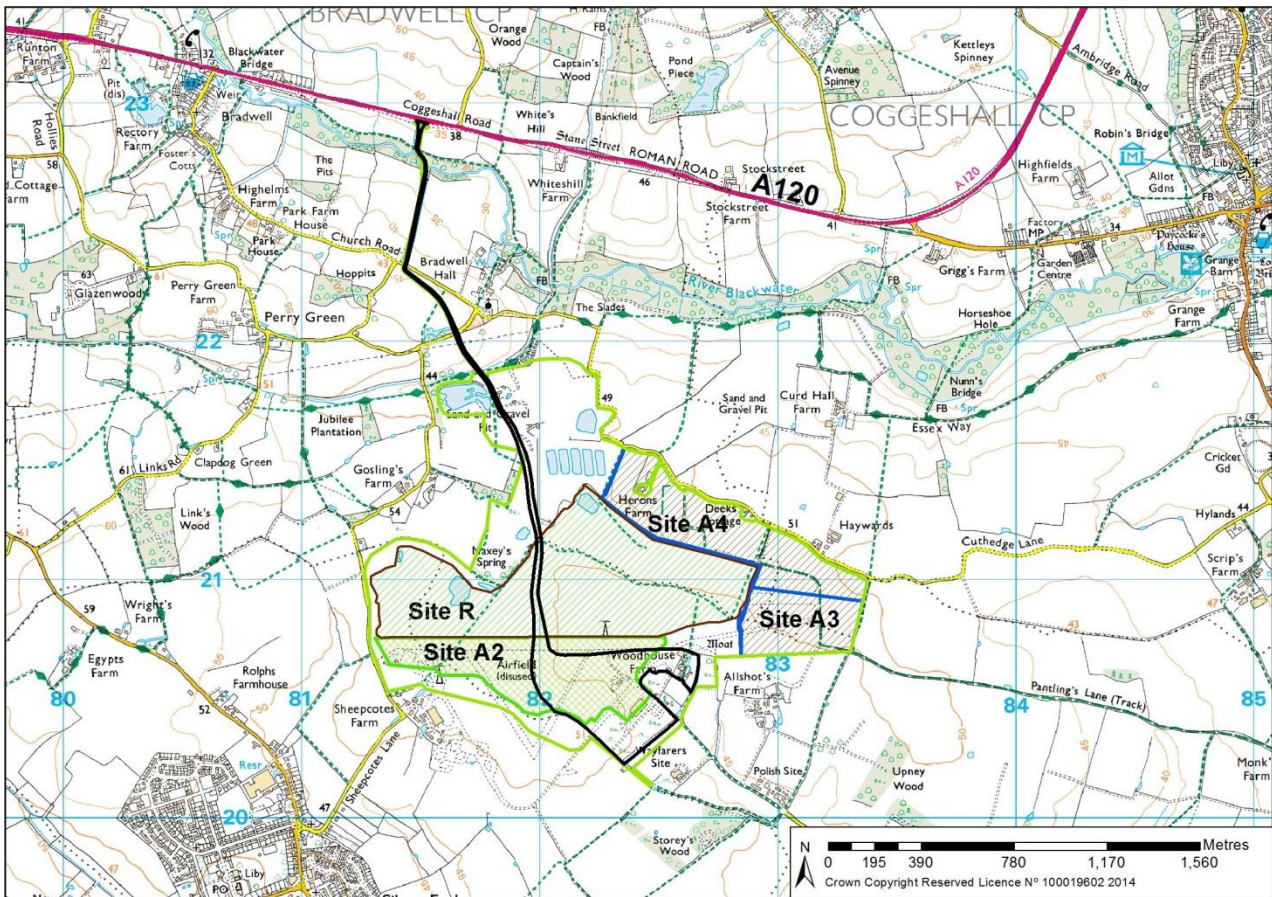
Applicant: **Gent Fairhead & Co Ltd**

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Report by Director of Operations: Environment and Economy

Enquiries to: Claire Tomalin Tel: 03330 136821

The full application can be viewed at [www.essex.gov.uk/viewplanning](http://www.essex.gov.uk/viewplanning)



## 1. BACKGROUND

The original planning application for the Rivenhall Integrated Waste Management Facility (IWMF) was submitted in August 2008 and was accompanied by an Environmental Statement. The application was “called-in” for determination by the Secretary of State (SoS). The Committee nonetheless considered the application in April 2009 and resolved that, that had the decision been left to the Waste Planning Authority, the development would have been approved subject to conditions and a legal agreement.

The Call-In Public Inquiry was held in Sept/Oct 2009 and the Secretary of State issued the Inspectors report and decision on 2 March 2010, granting planning permission subject to 63 conditions and a legal agreement.

To date the planning permission has not been implemented.

Members will recall in October 2014 they considered a planning application to amend the original planning permission to allow an extension of time to the period of implementation for the planning permission. Planning permission was granted such that the planning is required to be implemented by 2 March 2016 and the planning permission now controlling the development is referenced ESS/41/14/BTE.

A summary of the original application details for the IWMF are set out in Appendix A.

The current application seeks to delete two conditions of the planning permission for

the IWMF.

## **2. SITE**

The site is located east of Braintree, approximately 3km south east of Bradwell village, approximately 1km to the north east of Silver End and approximately 3km south west of Coggeshall. The application site totals 25.3 hectares and includes the access road from Coggeshall Road (A120 trunk road).

The area for development of the IWMF lies on the southern part of the former Rivenhall airfield, now largely removed following mineral extraction as part of Bradwell Quarry. The site is located approximately 1.7km south of Coggeshall Road and includes the Grade II Listed Woodhouse Farm and its buildings and includes the 6ha area identified as a “preferred location for waste management” (WM1) in the Waste Local Plan. The site also includes TPO woodland

The site for the IWMF overlaps with Bradwell Quarry where sand and gravel extraction with low level restoration to agriculture/biodiversity/water and woodland is anticipated to be completed by 2018, however further preferred/reserved sites are allocated in the MLP which would extend the life of the quarry if granted. The location plan above shows the extent of previous and current mineral extraction areas, Site R permitted in 2001, site A2 permitted in 2011 which included extraction in part of the site for the IWMF and site A3 and A4 which was resolved to be granted in September 2014 and is awaiting completion of a legal agreement.

The site is set within a predominantly rural character area, consisting of arable crops in large fields, often without boundaries resulting in an open landscape. Located on the old airfield to the west of the site is a 48m (above natural ground level) radar mast positioned next to Hangar No. 1, approximately 370m west of the site. The landform around the site forms a flat plateau at about 50m AOD. There are limited elevated viewpoints from which to oversee the site, but there are some views from higher ground to the north east.

The nearest residential properties not including Woodhouse Farm (not occupied), include The Lodge and Allshots Farm located to the east of the site at 400m and 450m respectively from the proposed waste management facility. To the north east on Cuthedge Lane lies Haywards 950m from the proposed waste management facility, Deeks Cottage at 860m and Herron’s Farm at 720m from the proposed waste management facility and 460m from the site access road. To the west of the site on Sheepcotes Lane lies Sheepcotes Farm 470m from the site boundary, Gosling’s Cottage at 900m from the site boundary, Gosling’s Farm 900m north west of the site boundary, Goslings Barn 880m from the site boundary and Greenpastures 470m north west of the site boundary. Properties to the southwest within Silver End village lie over 1km from the site boundary. Parkgate Farm lies south of the site approximately 1km from the site boundary. 200m to the east of the haul road lies Bradwell Hall.

The permitted access route utilises the existing junction with the A120 and the access road which currently provides access to Bradwell quarry. The access route crosses the River Blackwater and crosses Church Road and Ash Lane (a Protected Lane as defined in Braintree District Local Plan 2005 - BDLP). The access road is two way from the A120 to Church Road, then single lane with passing bays between Church

Road and Ash Lane and then two south of Ash Lane. The crossing points on Church Road and Ash Lane are both single width only.

Apart from the access road the land the subject application site has no designations within the BDLP.

There are three County Wildlife Sites within 3 km of the site at Maxeys Spring, Storeys Wood and Blackwater Plantation.

There are a seven Grade II Listed properties in the vicinity of the site, including, Allshots Farm (400m away) and Sheepcotes Farm (470m away) located to the east and west of the airfield respectively. To the south west Bower Hall (1.2km away) and to the south east Porter's Farm (1.3km away) and to the north west Goslings Farm (900m away), to the north east Curd Hall (1.3km away) and finally to the east of the haul road Bradwell Hall (200m away from haul road).

Three footpaths (FP's 19, 57, 58), including the Essex Way, are crossed by the existing quarry access road and the extended access route would cross the FP35. There is also a public footpath No. 8 routed through the eastern part of Woodhouse Farm.

### **3. PROPOSAL**

The application seeks to delete two planning conditions, namely conditions 28 and condition 30. These conditions restrict the geographical source of SRF (Solid Recovered Fuel) and the geographical source of paper and card to be imported to the facility. The full wording of the conditions is set out below.

#### **Condition 28**

*(i) SRF [solid recovered fuel] shall be sourced internally from the IWMF or within the administrative boundaries of Essex and Southend-on-Sea.*

*(ii) If the Waste Planning Authority is satisfied that the operator has used its reasonable endeavours to source SRF from these sources and there remains capacity within the IWMF, then SRF arising from elsewhere within the East of England may be used up to the available capacity for a period up to three years from the date of the agreement of the Waste Planning Authority.*

*(iii) No development shall commence until a scheme giving effect to the requirement of clause (i) above of this condition is submitted to and approved in writing by the Waste Planning Authority. The approved scheme shall be implemented as approved.*

#### **Condition 30**

*(i) No more than 50% of the imported waste paper and card (based on a nominal imported tonnage of pre-sorted waste paper and card of 360,000 tpa) shall be sourced from outside the administrative boundaries of the East of England Region.*

*(ii) If the Waste Planning Authority is satisfied that the operator has used its*

*reasonable endeavours to source 50% of the imported pre-sorted waste paper and card from within the East of England region, then the imported pre-sorted waste paper and card may be sourced from outside the East of England Region for a period of up to 5 years from the date of written agreement of the Waste Planning Authority.*

*(iii) No development shall commence until a scheme giving effect to the requirement of clause (i) above of this condition is submitted to and approved in writing by the Waste Planning Authority. The approved scheme shall be implemented as approved.*

Condition 28 relates to the geographical source of SRF that can be utilised at the facility. The IWMF would generate SRF being the residue from the Mechanical Biological Treatment and also waste from the De-Ink Paper Pulp Facility which both form part of the permitted IWMF. However, the capacity of the Combined Heat and Power (CHP) plant would not be met by these sources alone and thus SRF was also permitted to be imported to the site.

Condition 28 has the effect of requiring SRF to be sourced from within Essex unless it has been demonstrated that such SRF is not available within Essex in which case for a period of 3 years SRF may be sourced outside Essex, but within the East of England Region. Thereafter every 3 years it would be necessary for the operator to re-demonstrate that SRF was still unavailable within Essex to allow continued import from outside Essex, but within the East of England. The East of England does not formally exist anymore since the abolition of the regional tier of government, but consisted of Essex and Southend-on-Sea Cambridgeshire, Suffolk, Norfolk, Bedfordshire, Hertfordshire, Thurrock and Peterborough. In addition the condition required a scheme to be submitted to demonstrate how imports would be constrained to the prescribed geographical source.

The application seeks to delete this condition which would allow SRF to be imported to the facility without constraint as to its source.

Condition 30 relates to the geographical source of paper and card to imported for reprocessing in the de-ink paper pulp facility. A limited amount of paper and card would be recovered by the Materials Recycling Facility permitted as part of the IWMF, but the majority of waste paper and card would need to be imported. Condition 30 has the effect of requiring 50% of the imported paper and card to be sourced from the East of England Region unless it has been demonstrated that such paper and card is not available within the East Of England Region in which case for a period of 5 years paper and card may be sourced outside the East Of England Region. In addition the condition required a scheme to be submitted to demonstrate how imports would be constrained to the prescribed geographical source.

The application seeks to delete this condition which would allow paper and card to be imported to the facility without constraint as to its source.

Application ref ESS/37/08/BTE was accompanied by an Environmental Statement. This application ref ESS/55/14/BTE has been screened for EIA and a formal opinion has been issued to state that an EIA was not required.



No other changes are proposed to the currently permitted development.

#### 4. POLICIES

The following policies of the Essex and Southend Waste Local Plan (WLP) adopted 2001, Mineral Local Plan (MLP) adopted 2014, Review 2005 (BDLP) provide the development framework for this application. The following policies are of relevance to this application:

|                              |            |
|------------------------------|------------|
|                              | <u>WLP</u> |
| Waste strategy               | W3A        |
| Receipt of Essex wastes only | W3C        |

There are no particular policies of relevance within the Braintree District Council Local Development Framework Core Strategy 2011 or and Braintree District Local Plan.

The original application was determined against the Waste Local Plan 2001, Braintree District Local Plan 2005, the Minerals Local Plan 1996 and PSS10 as published in 1999.

The National Planning Policy Framework (Framework) was published on 27 March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. Planning policy with respect to waste is set out in the National Planning Policy for Waste (NPPW published on 16 October 2014). Additionally the National Waste Management Plan for England (NWMPE) is the overarching National Plan for Waste Management. All decisions must comply with the NPPF and NPPW, while the NWMPE is a material consideration in planning decisions.

The Framework highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that there are three dimensions to sustainable development: economic, social and environmental. The Framework places a presumption in favour of sustainable development. However, paragraph 11 states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

For decision-taking the Framework states that this means; approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). It is considered this is applicable to the WLP. A draft appraisal of the consistency of WLP policies with respect to the NPPF and NPPW is



set out in Appendix B

With regard to updates/replacements or additions to the above, the Framework (Annex 1, paragraph 216) states from the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given), and;
- The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Braintree District Council originally intended to create a Local Development Framework which it was envisaged would supersede the Local Plan Review in its entirety. In this regard, the BCS was adopted on 19 September 2011 and it was anticipated that the remaining BLP policies would be replaced by those to be contained in a Site Allocations and Development Management Plan. During a meeting on 30 June 2014 it was however resolved not to proceed with the Draft Site Allocation and Development Management Plan. Work has now instead commenced on a new Local Plan, which will set out the Council's strategy for future development and growth up to 2033. The new Local Plan will ultimately replace the BLP and BCS however at the current time it is not considered at a sufficient stage to have significant weight in the determination of this application.

The Essex and Southend Replacement Waste Development Document Preferred Approach was published in 2011. However there have been significant changes to national policy statements, guidance and legislation, as well as changes in local circumstances (including the need to re-assess the existing, permitted and operational capacity of waste facilities in Essex to meet future objective needs) and thus a further Preferred Approach Document is planned to be published later this year. Due to legislative changes the document will be called the Essex and Southend Replacement Waste Local Plan. As the Replacement Waste Local Plan is at an early stage of preparation and has not been submitted to the Secretary of State its policies are not considered to have any weight.

## **5. CONSULTATIONS**

**BRAINTREE DISTRICT COUNCIL – Comments as follows**

- The recent appeal decisions highlighted by the applicant appear to suggest that the market is given greater prominence in determining where waste/materials are reprocessed, even if this means that it could be travelling significant distances. Although this would have been contrary to a waste strategy based on regional self-sufficiency, no such strategy now applies and it could, therefore, be difficult to resist the proposals on such grounds. Moreover, as there is not a proposed change to other restrictions (e.g. controls on numbers of vehicle movements/per day) there does not appear to be any amenity or other planning grounds to resist the proposed lifting of restrictions on the source of waste materials. This does appear to create the risk either that

there is an oversupply of capacity or that individual reprocessing facilities effect a monopoly.

- There could even be the risk that the facility would encourage the importation of SRF, waste paper and card from abroad, given the site's proximity to East Anglian Ports.

ENVIRONMENT AGENCY: No comments to make

HIGHWAYS AGENCY: No objection

DEPARTMENT OF LOCAL GOVERNMENT & COMMUNITIES (National Planning Casework Unit):

CPRE: Object on the following grounds

- The applicants have made no progress with building the plant recently a year's extension has been granted. There is therefore evidence of serious procrastination on the part of the applicants. Meanwhile, major waste sites have been built in Basildon and Halstead.
- Information revealed in this application leads us to conclude that the applicants are seeking to ensure greater financial return for the plant. They are applying for changes to the existing permission. This makes it clear that they are concerned about the future commercial viability of the operation.
- The original proposals were based on the ECC 'Proximity Principle' as part of their Waste Strategy. The waste plant was to serve the needs of Essex; there would be composting, recycling, paper pulping and the added process of incineration of unrecyclable waste. The operations would be linked in to the existing waste collection process in Essex.
- At the time of the Inquiry we warned that the addition of an incinerator would have the effect of generating waste, of removing it from the recycling process. We foresaw that it would be far more difficult to control what was to be burnt with frightening consequences for toxic emissions. Now the applicants state their intention to focus in future on commercial and industrial waste of all kinds from anywhere. This application seems to vindicate our earlier concerns.
- The removal of conditions 28 and 30 restricting the area from which waste can be sourced would have major adverse environmental effects. It would be likely to increase the number of vehicle movements and therefore increase emissions. It would add greatly to the pressure on the local road network especially on the A120 which is already congested. The Highways Agency has confirmed that there are no funds to dual the A120 between Braintree and Marks Tey until after 2021 and nothing after that length of time can be certain. Our roads simply cannot take any more pressure.
- The removal of these conditions would, in our opinion, mean that control over the treatment of waste at this site would be much more difficult.
- Essex County Council must continue to determine the overall waste strategy and maintain control over how waste is sourced and what type of waste is incinerated. The council should stick to their principle of 'providing treatment centres for Essex waste and not give carte blanche to a commercial business enterprise.

ESSEX RAMBLERS ASSOCIATION (ERA): No comments received

BRITISH HORSE SOCIETY: No comments received

HIGHWAY AUTHORITY: No objection

HIGHWAY AUTHORITY (Public Rights of Way): No comments received

WASTE DISPOSAL AUTHORITY: No comments to make.

THE COMMUNITY GROUP (the group was formed in response to original IWMMF application and consists of the heritage societies of Coggeshall, Kelvedon and Feering and Witham, CPREssex, The Ramblers Association and the “Stop the Incinerator” Campaign Group): Objection on the following grounds: The facility was originally proposed as a facility to handle Essex’s waste and reduce the need for landfill. The conditions removal would mean the facility would likely become a national/international facility and the impacts such as road traffic access and environmental impact of such go beyond what was considered at the Public Inquiry and thus this application should not be determined until the whole project is reviewed from scratch.

BRADWELL PARISH COUNCIL: Object on the following grounds

- The conditions were not appealed following the decision in 2010.
- Proposal takes the facility away from its original intention to provide “recycling for Essex”
- If SRF and paper and card are to be sourced from anywhere then the plant need not be in Essex.
- Sourcing from greater distances could result in more HGVs going off-route passing through villages such as Bradwell, due to use of sat navs.
- A120 while described in the application as “Strategic continental route”, while a trunk road it is a single carriageway with high peak volumes and frequent delays.
- If permitted the large facility could be treating waste mostly sourced outside Essex, contrary to the proximity principle which is ironic in a district which has high recycling rates.

KELVEDON PARISH COUNCIL: Object for the following reasons

- Conditions 28 & 30 were initially agreed/imposed to ensure that this plant (if ever commissioned) dealt with local waste. This change if allowed would allow waste to be imported into the UK or brought from the far reaches of the UK, to this site.
- This application smacks of a company desperately trying to justify the existence of a plant which is not needed in Essex as the amount of waste to process had drastically reduced since the original application was made.
- Object to the continual chipping away at previously agreed conditions, which only benefits the applicant and not the surrounding communities.

SILVER END PARISH COUNCIL: Objection on the following grounds

- At the Inquiry the Inspector was very careful with his wording of the conditions and the applicant accepted them at the time. No appeal was lodged and it is only now that they are being challenged.
- Without the plant being operative how can it be known whether or not

- conditions 28 or 30 need to be removed as they have not yet been tested?
- The increased amount of waste that could be expected on site will have an even greater detrimental effect on the surrounding villages and countryside. This will include larger lorries being used to bring larger quantities from farther afield, along country roads that were not designed for the purpose. In turn emissions will increase from the lorries themselves but even more importantly from the site itself as it disposes of more waste.
  - There appears to be more reliance placed on the incineration of waste and if new types of waste are to be burnt then consideration would surely need to be given to the chimney height, its emissions and the impact on the countryside around it.
  - Particularly relating to the proposed removal of condition 30. Mention is made to the fact that a region's name has changed but this does not mean that the area has simply disappeared. At the time of the Inquiry the region 'East of England' did exist.
  - The applicants continually attempt to change the goalposts by applying to make the site bigger, to burn more and to be allowed to source waste from further afield and has carried on as such for years. This latest application takes us even further away from the original proposal of a 'recycling plant for Essex.'

RIVENHALL PARISH COUNCIL (adjacent): Object on the following grounds:

- The 2 conditions requested to be deleted were agreed by the applicants and all other parties at the Public Inquiry and were not appealed by the applicant subsequent to the decision being issued.
- Consider this is a fundamental change for commercial reasons, because as permitted the plant is unviable
- The conditions were imposed to meet the strategic needs of Essex, if it is not to deal with Essex waste why locate in Essex.
- SRF and paper and card make up a large proportion of the 800,000+ tpa to be handled at the site, removal of the conditions would potentially see the majority of waste coming from outside Essex or the East of England, contrary to the proximity principle.
- Waste could be imported long distances even from abroad
- HGVs from further afield will not necessarily be familiar with area with a greater chance of vehicles trying to access the site not from the A120 eg through Rivenhall
- A120 while described in the application as "Strategic continental route", while a trunk road it is a single carriageway with high peak volumes and frequent delays
- The application refers to the need for the Energy from Waste facility to burn residual waste, it is unclear how much processing of residual waste would occur prior to use in the EfW facility.
- There is a heavy emphasis within the application of EfW which appears to move waste management down the waste hierarchy, there is a little reference to key recycling elements Anaerobic Digestion and Materials Recycling Facility.
- The application documents also indicate a broader range of materials might be used in the EfW plant including chemical wastes, healthcare wastes and discarded equipment, which may have higher toxicity emissions.
- The certainty that the height of the chimney is adequate remains uncertain.
- The conditions to be deleted require "reasonable endeavours" to source waste

in Essex or the Region they cannot be tested until the plant is operational.

COGGESHALL PARISH COUNCIL (adjacent): No comments received.

FEERING PARISH COUNCIL (adjacent): Object. The removal of the conditions would mean that waste could be imported to and trucked from ports from anywhere in the UK/world. The economic case for this plant was based on taking waste from Essex only, which Councillors agreed if it is no longer a proposition, then the plant should not be constructed.

LOCAL MEMBER – BRAINTREE – Witham North: Comments as follows

- Requests the application be considered at Committee.
- Consideration of the catchment for the waste was a fundamental part of the Planning Inquiry held in 2009 and the subsequent conditions set out by the Inspector in his Report, which were accepted by the Secretary of State. These conditions were agreed by the applicant, were not appealed and 5 years have passed. The applicant now considers the conditions to be unenforceable; no such claim has been made before.
- The proposed changes in the conditions would have the potential to largely remove the geographical justification for the site in terms of dealing with Essex waste - the majority of waste could come from outside Essex and indeed outside the region. This would be contrary to the proximity principle, to the agreed basis on which planning permission was given and to the Adopted Waste Local Plan.
- If conditions 28 and 30 are deleted, what is there to stop the applicant applying to remove the condition that other waste (other than SRF and paper/card) to be imported to the site need not be sourced from Essex. The site would lose its link with its location and the applicants argument that it is on route to UK ports, applies to many locations.
- If waste is sourced across long distances there would be a consequential potential to unnecessarily increase CO2 emissions, contrary to Government & European Policy.
- The further distances that HGV travel to the site the higher risk of drivers not knowing the route and trying to access the site through local villages.
- The application refers to the A120 as a “strategic continental route” in reality it is a single carriageway road either side of the site access, along which there are homes and businesses and subject to high peak volumes and frequent crashes and delays.
- As the facility is now referred to be the applicant as a “Merchant facility for C & I waste, coupled with wider catchment, it is questionable whether the transport modelling supporting the original application is still valid.
- The wider catchment area would mean a lower ability to co-ordinate HGV capacity to ensure back loads and a great chance of a wider variety of vehicle sizes both tending to higher vehicle numbers.
- The application refers to the need for EfW facilities to burn residual waste and it is unclear how much sorting of waste prior to incineration would take place. Burning waste without recovery of recyclables is mass burn incineration which ECC has always opposed.
- The application argues that Refuse Derived Fuel (RDF) is a suitable material to be utilised in the CHP/EfW facility, the permission is for Solid Recovered Fuel not RDF.

- The application makes little reference to other elements of the IWMF, namely Anaerobic Digestion, Materials Recovery Facility and Mechanical Biological Treatment, the first two being higher on the waste hierarchy, the current application has a greater emphasis on burning waste, moving waste management down the waste hierarchy.
- The appeal decisions submitted to support the application are mainly for EfW plants rather than fully integrated facilities.
- The applicant has stated that SRF and RDF could be sourced from many places. The original application was a closed loop system utilising residuals from the MRF, MBT and paper and card reprocessing to feed the EfW/CHP, thus there is unlikely to be limited capacity to import from other sources, especially if SRF from Courtauld Road was brought to the facility.
- In seeking to delete conditions 28 and 30 could negate the integrated nature of the facility as the site could utilise waste from outside. Clauses of the conditions required it to be demonstrated that no waste was available within Essex/East of England region before going outside, no evidence has been provided that waste couldn't be sourced within Essex/East of England.
- The conditions were included for a number of reasons including to satisfy the proximity principle, deleting the conditions would undermine this
- Government guidance to planning authorities on implementing the EU Waste Framework Directive stresses "in meeting the requirement of the proximity principle, there is no expectation that each waste planning authority will deal solely with its own waste". This in no way suggests that waste could come from anywhere, as the applicant now seeks. It merely states that it is not expected that each authority would deal with all waste arising within its boundaries.
- Paragraph 3 of Article 16 of the rWFD requires that member states ensure that the network of facilities shall enable waste to be disposed of or waste referred to in paragraph 1 to be "recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health".
- Government guidance to planning authorities on implementing the Waste Framework Directive stresses that "there could also be significant economies of scale for local authorities working together to assist with the development of a network of waste management facilities to enable waste to be handled effectively". The current application would clearly have the potential to harm the ability of Essex to meet its Duty to Cooperate with neighbouring authorities as the applicants are seeking to remove any geographical boundaries and related requirements as set out in the current conditions. Essex and its neighbouring authorities could have little or no ability to cooperate in respect of the 2 major input materials of SRF and paper/card as the facility could source them from anywhere.
- The application is in breach of Waste Local Plan policies W3A – unsustainable and a breach of the proximity principle. W3C – has strong potential not to meet Essex need and no specific cross boundary benefits have been demonstrated, W8A – has strong potential not meet Essex need, W10B
- NPPW In Section 2, the new Government policy states "ensure that the need for waste management facilities is considered alongside other spatial planning concerns, recognising the positive contribution that waste management can bring to the development of sustainable communities." As the plant moves ever

further from a local needs basis, the ability to be of benefit to the local community diminishes. There is little to commend the proposal in terms of the development of the local community or its consideration alongside other spatial planning concerns. The plant offers no district heat benefit.

- NPPW in Section 3 "drive waste management up the waste hierarchy, recognising the need for a mix of types and scale of facilities, and that adequate provision must be made for waste disposal;". The increased focus on waste burning moves down the hierarchy.
- NPPW in Section 5 "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". The plant would rely 100% on road traffic, using an over capacity single carriageway access road but also with an increasing risk of local roads being used as the catchment widens. Deleting conditions 28 and 30 is a move clearly designed to allow for longer distances of waste movement by road. This is unsustainable and wholly against the proximity principle.
- NPPW in section 7 "recognise that proposals for waste management facilities such as incinerators that cut across up-to- date Local Plans reflecting the vision and aspiration of local communities can give rise to justifiable frustration, and expect applicants to demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy". The proposal to refocus on waste burning clearly has the potential to move waste down the hierarchy. The aspirations of the local community in wanting to see ever higher levels of recycling are negated by the move towards a focus on importing C&I waste from an ever wider catchment, reducing the Essex needs basis.
- The application documentation would indicate a broader range of waste might be disposed of within the EfW/CHP facility, which raises concerns as to the toxicities in the emissions from the facility and the appropriateness of the a35M stack height.
- The current application is a commercial case not a planning case.
- Other facilities have been built and commissioned since the Rivenhall consent including Courtauld Road MBT and ECC Waste Management are seeking additional AD capacity in the County. An AD facility exists at Halstead and an EfW facility is in the commissioning phase in Suffolk. In addition recycling rates have risen.
- The on-going uncertainty as to when and what the facility will be is wholly contrary to the expectation in the NPPF that developers, LPAs and the community work together to deliver sustainable development.

LOCAL MEMBER – BRAINTREE – Braintree Eastern: Any comments will be reported verbally.

## **6. REPRESENTATIONS**

2 properties were directly notified of the application. 18 letters of representation have been received. The details of the comments are set out in Appendix C. The main points are summarised below:

- The proposed changes are significant and the whole development should be

reconsidered

- The site has a long history of waste proposals over 22 years and there appears to be planning “creep”
- The original application was proposed on the basis of providing a waste facility for waste largely arising in Essex, removal of the conditions would allow waste from anywhere to be imported.
- Importation from outside Essex and the region would be contrary to the proximity principle, set out in both European and National legislation/guidance.
- If the facility cannot operate without importing waste from outside and Essex then the facility should not be developed.
- The application is justified on commercial grounds not planning grounds. The plant has not been built despite having planning permission for 5 years.
- The conditions to be deleted were proposed and accepted by all at the Inquiry and the applicant did not appeal these conditions after the inquiry and have not been queried until now.
- The removal of the conditions would mean the plant loses much of its “Essex needs basis”, reducing its role in meeting the Essex waste treatment capacity requirements as set out in plans and strategies.
- The conditions require the operator to use there “reasonable endeavours” to source waste from Essex & the region, this doesn’t seem to onerous. Until the plant is operational these conditions cannot be tested.
- The application strongly expresses moving to a market based system of contracts which would undermine the requirement for Local Authorities “Duty to Cooperate”
- The application emphasis the EfW element of the proposals which is pushing waste management down the Hierarchy and does not refer to the recycling elements of the proposals AD and MRF
- Increase in geographical catchment is likely to lead to an increase in the plants capacity.
- Concerns regarding potential changes in the nature of the waste, including medical waste and animal waste giving rise to different emissions.
- Braintree District has a high recycling rate in Essex, the facility is likely to discourage recycling.
- Removing geographical restrictions means drivers not familiar with area may try to access the facility via village roads.
- A120 may be designated a Trans-European Network, but it is inadequate to



cope with additional traffic and if blocked HGV may use country lanes.

- Longer vehicle distances with increase waste miles and reduce efficiency of the national network
- Long traveling miles will increase vehicle emissions
- An incinerator should not be located local residents and in a valued area for wildlife.
- Emphasis on EfW discourages recycling
- As a merchant facility that would be much less opportunity to ensure maximum back hauling of materials and pressure to increase maximum vehicle numbers.

## **7. APPRAISAL**

The key issues for consideration are:

- Determination of the application & Principle of the development
- Justification for the removal of conditions restricting the source of Solid Recovered Fuel and waste paper and card.
- Highway issues, Environmental Impact and Impact on local amenity
- Nature of Solid Recovered Fuel
- Recycling
- Future Planning Applications

### **A DETERMINATION OF THE APPLICATION & PRINCIPLE OF THE DEVELOPMENT**

The application is for the deletion of two planning conditions attached to the existing planning permission. The authority has to consider the application and can:

- approve the application i.e. delete the conditions issuing a new planning permission subject to all other previous conditions and associated legal obligations;
- refuse the application, in which case Planning Permission ESS/41/14/BTE could still be implemented with the conditions remaining in force, or;
- grant permission subject to amended conditions, however amendments to conditions can only relate to the application i.e. matters arising from deletion of conditions 28 and 30.

It is important to note that the authority cannot revisit the principle of the Integrated Waste Management Facility. Various comments have been made in representations as to the overall need for the facility, location of the facility, proximity to residential properties and potential environmental impacts arising from the IWMF. These issues do not relate to the removal of the conditions subject of the application. The WPA is not in a position to be able to refuse planning permission that would result in there being no planning permission for the IWMF. The IWMF has an extant planning permission which is required to be implemented before 2 March 2016, before which time all prior to commencement conditions and obligations are required to be discharged. In addition before the IWMF can operate it would require an

Environmental Permit from the Environment Agency which would control the pollution aspects of the IWMF. The environmental impact of the IWMF was considered in detail at the Public Inquiry in Sept/Oct 2009 and following this the Secretary of State agreed with the recommendation of the Planning Inspector and granted planning permission in March 2010.

**B JUSTIFICATION FOR THE REMOVAL OF CONDITIONS RESTRICTING THE SOURCE OF SOLID RECOVERED FUEL AND WASTE PAPER AND CARD.**

Changes in policy and management of Municipal Solid Waste in Essex since determination of the original application in 2010

The consideration of the Rivenhall IWMF was undertaken in late 2009/early 2010 and conditions were imposed at that time when waste planning applications were considered against the WLP (particularly relevant W3C – see appendix B), PPS10 and the RSS, these documents particularly the WLP & RSS placed an emphasis on each local authority and region to be net self-sufficient in managing its waste. Hence conditions were imposed on the Rivenhall IWMF planning permission to seek to constrain the geographical source of the different streams of waste to be imported to the site, such that the facility assisted Essex in being net self-sufficient and contributed to net self-sufficiency for the then East of England Region.

3 separate conditions were imposed to control the source of waste to be imported at the site.

SRF would be generated from the on-site MBT facility and from the de-ink paper pulp plant, but there would be spare capacity within the CHP/EfW facility for importation of SRF. Condition 28 constrained the source of SRF to within Essex & Southend, unless it could be reasonably demonstrated to the Waste Planning Authority that SRF was not available within Essex & Southend in which case it could be imported from the East of England Region. Condition 27 (not proposed to be deleted as part of the current application) requires imports of waste not including SRF and paper and card to be sourced from within Essex & Southend. Finally condition 30 required 50% of paper and card to be sourced from the Region unless it could be demonstrated that paper and card was not available in the Region in which case it could be imported from outside the East Of England.

At the time of determination of the application the IWMF could have been developed and utilised to serve as a facility for Essex County Council Waste Disposal Authority to deal with Municipal Solid Waste (MSW) from Essex & Southend with some importation of Commercial & Industrial Waste (C & I waste i.e. waste generated by businesses), including waste paper and card or alternatively solely as a merchant facility for C & I waste.

Since determination of the application a Mechanical Biological Treatment facility at Courtauld Road, Basildon has been developed to deal with Essex & Southend's MSW. The facility is currently in its commissioning phase. A number of waste transfer stations have been developed by the Waste Disposal Authority which bulk up waste from Waste Collection Authority's (City/District/Borough) which is then taken to the MBT. The output (RDF - Refused Derived Fuel) of approximately 200,000tpa from the MBT has been contracted by the Waste Disposal Authority for the first 3

years to be dealt with by a private waste management company and the output is likely to be exported to the Netherlands for use in EfW facilities. Originally it had been thought that 2 or even 3 facilities of the scale of Courtauld Road would be needed to treat MSW, but the effect of household recycling schemes has reduced the volume of waste now requiring pre-treatment and disposal, such that only one facility that at Courtauld Road is needed for MSW, but this does not address the treatment and disposal of C & I Waste in Essex for which the WPA must also plan and make provision for.

Due to the Courtauld Road facility, if the Rivenhall IWMF were developed it would be as a Merchant facility for C & I waste, but has the potential in 3 years time when the existing contract for disposal of the output from Courtauld Road ends to seek to obtain the contract for disposal of the RDF produced by the Courtauld Road facility.

In addition to these changes in the management of waste within Essex there have been significant changes in waste policy.

The revised European Directive on Waste was published in 2008 and transposed into UK in law 2011. Paragraph 1 of Article 16 of the revised Waste Framework Directive (rWFD) (2008) requires that member states ensure that the network of facilities shall enable waste to be *“recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health”*. Paragraph 2 of the rWFD requires member states to develop a network of disposal and recovery installations for the Community as a whole to become self-sufficient in waste disposal and recover and indicates the network of facilities be established *“to move towards that aim (i.e. self-sufficiency) individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.”* In addition Government guidance<sup>1</sup> to planning authorities on implementing the Waste Framework Directive stresses *“in meeting the requirement of the proximity principle, there is no expectation that each waste planning authority will deal solely with its own waste”*.

The Waste Regulations 2011 sets the following objectives to

- Obtain self-sufficiency at the national level
- Establish a network of facilities from which value can be recovered from municipal waste or waste that is collected together with municipal waste.

In response to the revised Waste Directive PPS10 was revised in 2011 (now replaced by NPPW) amending the waste hierarchy recognising the importance of waste prevention at the top of the hierarchy but also recognising that energy from waste was a recovery process, as it allowed the generation of energy from the waste, (seeing waste a resource) and was more sustainable than landfill, and therefore above landfill in the waste hierarchy.

In addition since imposition of the conditions there have been other significant national planning policy changes including the publication of the NPPF (2012) and more recently the NPPW (2014). Also of significance is the abolition of the Regions & East of England Regional Spatial Strategy, such that there is no specific policy

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<sup>1</sup> Guidance for local planning authorities on implementing requirements of the European Waste Framework Directive (2008/98/EC)

which requires each waste planning authority to be net self-sufficient and to assist in regional self-sufficiency, as there are now no regions. The NPPW does not require local self-sufficiency, but requires communities and businesses are engaged with and take more responsibility for their own waste in line with the proximity principle i.e. the nearest appropriate installation. As a result it is acknowledged that now in part Essex's Waste Local Plan is not in conformity with the NPPW, particularly as W3C seeks to retain waste treatment/disposal capacity within Essex & Southend for waste arising in Essex & Southend only (see appendix B for consideration of consistency of WLP policy with NPPF & NNPW). While aspirationally each Waste Planning Authority should seek to be self-sufficient and through the Duty to Co-operate agree trans movement of waste across local authority boundaries, it has to recognised that the movement of waste is largely controlled through commercial contracts, often relatively short in length (2 to 3 years) over which Waste Planning Authorities have little influence.

The NPPF requires a *presumption in favour of sustainable development and granting permission unless there are specific policies in this Framework that indicate development should be restricted*. The NPPF sets out the 3 dimensions of sustainable development including an economic role, social role and environmental, included within the economic role is "contributing to building a strong, responsive and competitive economy" and as such is National Government support for not unnecessarily inhibiting business. The NPPW in considering identification of new waste sites recognises "*that new facilities will need to serve catchments areas large enough to secure the economic viability of the plant*".

The current application is therefore being considered against a different background of legislation/guidance, one where there is an aim for national self-sufficiency, but not a requirement for local self-sufficiency and recognition that certain facilities to be viable may need to serve wider catchments.

#### Availability of SRF for the facility

The applicant has reviewed the availability of waste suitable as feed stock for the Rivenhall CHP/EfW to demonstrate that even if the constraint as to the source of the RDF were removed the facility would still ensure waste was disposed as high up the hierarchy as possible i.e. waste imported to the facility might have otherwise have gone to landfill or that it would attract SRF that is currently being transported further distances to facilities within the UK or on the continent.

The applicant has reviewed the latest data held by the EA, that being for 2012<sup>2</sup>. Within England 21.3mt of non-hazardous waste was landfilled in England of which approximately 10.1mt was non-hazardous C & I waste. Whilst not all this waste would have been suitable for energy recover it does give a scale to the amount of waste available for recovery within England.

Analysis of EA data collected for the Region (the EA still use these areas for collection purposes) and DEFRA data shows that in 2012 1.34 million tonnes of non-hazardous C & I waste was landfilled in the East of England Region and within the East of England, South East and East Midlands and London a total of 5.32 million

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<sup>2</sup> Landfill deposits by site type, waste type and sub-region 2001 to 2012, Environment Agency

tonnes. Based on compositional information from DEFRA<sup>3</sup> about 2.2mt of this was non-metallic waste (similar to the composition of MSW) and suitable for use in an energy recovery facility.

The WPA Waste Capacity Reports of 2013<sup>4</sup> and 2014<sup>5</sup> indicate there is likely to be 2.11 million tonnes to 2.38 million tonnes of non-hazardous waste arising in Essex, although the MSW element of this tonnage will reduce with the utilisation of the Courtauld Road facility, but would still leave a significant quantity treatment/disposal. It is also acknowledged in the Waste Capacity Gap report 2014 that if the two other major waste facilities permitted at Stanway and Rivenhall do not become operational other waste facilities will be required. An update<sup>6</sup> has been provided to the 2014 report which would indicate the tonnage of C & I may not be as great as estimated under the 2014 report, but without one of either Stanway or Rivenhall, there is likely to be need for additional facilities. An application to extend the life of Pitsea Landfill (to complete the existing void capacity) is currently with the WPA for determination which would provide landfill capacity for C & I waste, other facilities could come forward to meet the shortfall, but may not provide treatment disposal capacity as high up the waste hierarchy as the capacity that would be provided by either Rivenhall or Stanway (The Stanway permission is due to expire in May 2015). However, it should be emphasised that little weight can be attributed to these document as they have not been tested at examination.

#### Export of SRF/RDF for Energy Recovery

One of the consequences of the increase in landfill tax is that considerable volumes of residual waste, waste which has been pre-treated, are now being exported from the UK to the continent for energy recovery. As much as 2.4 million tonnes<sup>7</sup> was exported from the UK in the first half of 2014. This has been stimulated by a surplus of EfW capacity on the continent and the high cost of landfilling in the UK, such it has become cost effective to export to the continent. The applicant states that if the geographical constraint on SRF were removed it would allow the Rivenhall facility to utilise some of this material being exported to generate renewable energy in the UK. National government has confirmed that it is happy to see RDF/SRF to be traded as a commodity and does intend to ban or tax exports of SRF/RDF in order to encourage UK based energy recovery facilities. The applicant therefore argues that it is necessary for such effective and efficient domestic facilities to be unburdened by fuel sourcing restrictions.

Rivenhall is considered by the applicant to be well located on the A20 to “intercept” flows of RDF/SRF that are currently being exported from Tilbury, Harwich and Felixstowe, in the first half of 2014 this amounted to 275,000+tonnes<sup>8</sup> exported from Harwich & Felixstowe. With the RDF from the Courtauld Road facility to be added shortly to the exports already being undertaken from Tilbury, this could amount to 750,000tpa of SRF/RDF being exported from Harwich, Felixstowe & Tilbury.

Against this background of RDF/SRF being traded internationally the maintenance of

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<sup>3</sup> Commercial and Industrial Waste Survey 2009, Final Report, Jacobs, on behalf of Defra, May 2011

<sup>4</sup> Waste Capacity Gap Report 2013 Update - July 2013

<sup>5</sup> Waste Capacity Gap Report – September 2014

<sup>6</sup> Local Waste Arisings - Addendum to the Waste Capacity Gap Report 2014

<sup>7</sup> Data from [www.letsrecycle.com](http://www.letsrecycle.com) compiled from data obtained from EA.

<sup>8</sup> Data from [www.letsrecycle.com](http://www.letsrecycle.com) compiled from data obtained from EA

a strict waste derived fuel sourcing condition on the Rivenhall permission is not logical and does not assist in the UK's commitment to increasing the contribution of renewables fuels to overall energy supply.

#### Current Energy from Waste capacity within the East Of England

The applicant has reviewed the current availability of EfW facilities in the East Of England. Currently the only operational EfW facility is that at Great Blakenham, Suffolk which is in its commissioning phase. A further local authority contracted EfW facility is to be developed at Peterborough these would provide a combined capacity of 354,000 tpa. An EfW facility to be developed in Norfolk has currently been abandoned, but with no alternative for disposal of the waste.

The applicant considers the constraint on the source of waste to fuel the CHP/EfW facility will be a disincentive to investors. The government indicates that it intends to “put significant resources into overcoming barriers to delivering further market driven investment, aimed at optimising the role of energy from waste in the hierarchy and as a source of low carbon energy”<sup>9</sup>

#### Fuel sourcing restrictions on other EfW facilities

The applicant has undertaken a review of other similar planning permissions for EfW to see what if any conditions have been imposed with respect to source of waste, the facilities reviewed include:

1. Ardley EfW Facility, Ardley, Oxfordshire ( 2010)
2. Lostock Energy from Waste Facility, Lostock, Cheshire (2012)
3. Rookery Resource Recovery Facility, Bedfordshire (2013)
4. Ferrybridge Multifuel facility, South Yorkshire (2011);
5. Avonmouth Energy from Waste Facility (2011); and
6. Ince Marsh Resource Recovery Facility, Cheshire (2009).

In all cases no catchment condition has been imposed. The Ferrybridge and Rookery facilities were not dealt with through the planning system, being dealt with by the Infrastructure Planning Commission and Electricity Act respectively. However, the other facilities were all following Public Inquiries and the Oxfordshire case the suggested wording of the condition was substantively the same as that imposed under condition 30 and the Planning Inspector stated “*I do not accept that condition 18 suggested by OCC would be enforceable or reasonable*” noting that “*the source of C&I waste could not be ascertained with any degree of certainty given the likely variability of the origins of waste from transfer stations*”.

In the Avonmouth case the authority wished to limit the source of waste from the Avon and surrounding authorities to seek to achieve self-sufficiency in the sub-region. The Inspector concluded “*in circumstances where the capacity for the resource recovery remains less than the quantity of the waste needing to be managed, the market is likely to ensure that the majority of the waste closest to the recovery capacity will be managed there*”.

Comment has been made if the applicant did not agree with the conditions why were

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<sup>9</sup> Energy from Waste. A guide to the debate. DEFRA Feb 14

they not appealed at the time. The conditions were accepted by all at the public inquiry and were considered enforceable based on the policy background on which they were justified. The policy background has changed since 2010 and the decisions above indicate that it is unlikely such conditions would be imposed if they were being considered with respect to current policy and practice. Overall it is considered against the current policy framework which does not require local self-sufficiency and based on the analysis of similar cases, the likelihood of successful appeal if planning permission were to be refused for removal of the condition would be high.

The applicant also argues that there has been significant structural changes to the waste market since the planning application was submitted in 2008, particularly the rapid growth in an export market for waste derived fuels such as SRF and that a more flexible approach to fuel and waste paper and card sourcing would have economic and environmental benefits improving the feasibility of the scheme and this would be consistent with comparable facilities in the UK.

Economic viability issues associated with transport costs and the costs of treatment will naturally constrain the area from which waste will be drawn to the IWMPF.

#### Source of Waste Paper and card

The De-Ink Paper pulp plant would reprocess paper and card recovered from the waste stream and would be made into paper pulp board for use in the paper industry, higher in the waste hierarchy than energy recovery or landfill. Condition 30 requires 50% of waste paper and card to supply the De-Ink Paper Pulp Plant to come from within the East Of England. This was justified with respect to policies within the now abolished RSS to ensure specialist waste facilities sort to achieve self-sufficiency for the Region. The paper pulp facility would be aimed at higher quality paper and card recycle and as such would not be competing with the Palm Paper Facility at Kings Lynn which largely reprocesses newspaper print. The applicant has reviewed other paper processing facilities in England which include a container board facility at Partington in Manchester and another at Snodland in Kent. None of these three facilities are constrained as to the source of the recycled paper they utilise.

The applicant has also identified that approximately 50%<sup>10</sup> of paper recovered in 2013 in the UK was exported for reprocessing and evidence<sup>11</sup> also indicates that Waste paper is even being exported beyond the EU for reprocessing.

Without the RSS policy and with no other facilities constrained as to where feed stock is sourced, it is now considered unjustified to constrain the Rivenhall paper pulp facility in such a way and make it less competitive.

## **C HIGHWAY ISSUES, ENVIRONMENTAL IMPACT AND IMPACT ON LOCAL AMENITY**

As mentioned previously the authority can only consider the merits of the current application, the principle of the IWMPF has already been established and the

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<sup>10</sup> Annual statistics European Pulp and Paper Industry 2013. Confederation of European Paper Industries 2013

<sup>11</sup> Eurostat

environmental impact of the IWMF were considered in detail at the Public Inquiry in 2009.

Concern has been raised that the removal of geographical constraints might increase traffic movements and or the capacity of the facility. The total movements per day are controlled by condition such that there would be no more than 404 movements a day Monday to Friday and 202 on Saturday mornings, no changes are proposed to this condition. No objection has been raised to the application by the Highways Agency, responsible for the A120 or the Highway Authority responsible for the crossings with Ash Lane and Church Road. In addition the total inputs to the site are controlled by condition and may not exceed in total 835,000 tpa and are not proposed to be changed as part of the current planning application. Any increase in vehicle movements or total capacity would require a separate planning application and would need to be considered on its individual merits.

Concern has been raised that the potential longer journeys would increase waste miles and lead to consequential increase in traffic pollution. Evidence already presented earlier in the report would indicate that some of this waste is already travelling through Essex to ports and that some of the waste is being taken on long journeys to the continent. If the facility at Rivenhall were available, there is potential for these wastes to be “intercepted” such that overall waste miles might in total be reduced with consequential reduction in pollution. In any event the transport costs of moving wastes are likely to limit the distance over which waste will travel.

Concern has been raised that in view of the sites proximity to ports the site might encourage waste from overseas for treatment at the facility. As explained previously with respect to fuel for the CHP/EfW facility, there is currently a shortfall in RDF on the continent which is leading to UK RDF being exported, it is unlikely with a good market for RDF on the continent that with the additional transport costs of shipping to the UK that RDF from the continent would be attracted to the UK. Similarly waste paper and card is being exported to the continent for reprocessing such that it is unlikely that it would be imported to the UK when stock is available within the UK.

Concern has been raised that by sourcing waste from further afield drivers may not be familiar with the road network and try to approach via minor roads. Access by HGV would only be possible from the A120 and obligations with the existing S106 require all drivers to be advised of the preferred routes to the site.

#### **D SOLID RECOVERED FUEL AND REFUSED DERIVED FUEL & POLLUTION CONTROL**

British Standards identify classes of SRF based on the waste’s calorific value and its mercury and chlorine contents. A review by the applicant of typical quality of RDF being produced in various regions in England has indicated that RDF would comply with the SRF specification criteria. In addition to composition of residual C & I waste i.e. that after treatment, it has been shown by the applicant to be similar in properties to residual MSW. Thus while the current planning permission and the supporting application documentation to the original planning application largely referred to Solid Recovered Fuel for planning purposes the use of the term RDF in relation to the Rivenhal facility is also acceptable.



The applicant in analysing the properties of C & I waste has made reference to C & I waste containing “non-metallic waste”, “animal and vegetable waste”, “chemical wastes” “healthcare wastes” and “discarded equipment”, this has been done in order to be able to assess the likely tonnages of C & I waste to be available within England and the East of England. These types of waste are contained within both C & I and MSW. As facilities are developed such as the AD at Rivenhall it is likely producers of C & I waste will seek to separate and send animal and vegetable wastes to AD for energy recovery, but it will be the cost benefit of such changes that would drive producers to do this.

Concern has been raised that if the wastes mentioned above are to be utilised in the facility as SRF/RDF this would give rise to greater pollution. The exact nature of waste permitted to be imported to the site and consequential pollution controls are matters that would be addressed through the Environmental Permit. As set out in national planning guidance<sup>12</sup> it should be emphasised that Planning Authorities/Planning Inspectorate are required to assume that the pollution control regime administered by the Environment Agency would operate effectively. As further set out, waste planning authorities should not be concerned *with the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced.* The Environment Agency is the responsible body for regulating the pollution control regime and would be responsible for regulating the operation of the facility under an Environmental Permit. Discharges and emissions to air would be required to meet specific standards under this permit, so not to have an adverse impact on human health. This includes ensuring discharges and emissions are acceptable with the currently permitted chimney height.

## E RECYCLING

Concern has been expressed that the application largely discusses matters with respect to the imports to the CHP/EfW facility and De-Ink Paper Pulp facility not mentioning other elements of the facility which would see the recovery of resources either the separation of recyclate through the Materials Recycling Facility or energy recovery through the Anaerobic Digestion facility. The application relates to the removal of conditions with respect the SRF and paper and card and does not propose changes to other elements of the IWMF hence they have not been referenced. Residual waste that can be imported as SRF/RDF is by its definition the residual having previously undergone some kind of pre-treatment which includes sorting to recover recyclables, shedding, or some kind of volume reduction, such as MBT. With respect to the De-Ink Paper Pulp facility it would provide a facility reprocessing recovered/recycled paper producing paper pulp board that can then be used in the manufacture of new paper.

As the MBT at Courtauld Road would deal with the Essex’s MSW, the recyclables having been partly removed through the local Waste Collection authority recycling schemes, and further recovered by the Material Recycling Facility at Courtauld Road, the Rivenhall Facility would not have a direct impact on the amount of material

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<sup>12</sup> National planning policy for waste, Department for Communities and Local Government, First published:16 October 2014  
<https://www.gov.uk/government/publications/national-planning-policy-for-waste>

recycled from Essex's MSW.

## **F FUTURE PLANNING APPLICATIONS**

Concern has been expressed that the current application is one of a number of planning applications for waste development at the Rivenhall site over 22 years, of bigger and more controversial waste developments, that planning creep is occurring and in the case of this application an erosion of conditions previously imposed on the Rivenhall IWMF which made it acceptable in planning terms. The WPA cannot decline to determine planning applications or control an applicant as to how planning applications are submitted. The planning authority must consider each application on its individual merits, but can and will take account of the cumulative effect of any future changes to the planning permission.

## **8. CONCLUSION**

The planning policy justification for the imposition of conditions 28 and 30 relied upon national and regional planning policy that has now either been changed or abolished, namely that while nationally there is an objective to be self-sufficient (Waste Regulations 2011) with respect to waste disposal and recovery and that waste should be treated or disposed of at the nearest appropriate facility (rWFD).

The applicant has shown through a review of planning permissions for similar EfW facilities and paper reprocessing facilities that no other similar facilities are constrained as to the source of their materials, such that it would be unreasonable to impose such constraints on the Rivenhall Facility and would potentially undermine the viability of the facility contrary to policy with the NPPW.

The applicant has shown through analysis of waste data that there is C & I waste suitable for use as SRF/RDF in the CHP/EfW facility arising within the East of England and surroundings areas, such that the Rivenhall facility would likely reduce the amount of waste going to landfill pushing waste management up the Waste Hierarchy in accordance with the NPPW. In addition, it has been shown that currently RDF is passing through Essex to Essex ports, RDF which could potentially be intercepted/redirected (subject to contracts) to the IWMF at Rivenhall reducing waste miles and seeing the RDF generate renewable energy within the UK rather than being exported for use on the Continent and there by contributing to achieving the aim of national self-sufficiency with respect to waste management and increased renewable energy generation. This is also consistent with the Waste Regulations as geographic circumstances have been taken into account.

The applicant has evidenced that there would not be over provision of EfW capacity in the East of England and the WPAs own evidence being complied to inform the emerging Replacement Waste Local Plan indicates that if the Rivenhall and/or Stanway major waste management facilities are not developed other waste management facilities would be likely to be required.

Similarly it has been shown that waste paper and card is currently being exported for reprocessing which could be reprocessed at Rivenhall and the facility would not be competing with existing waste paper reprocessing facilities, as the Rivenhall facility is aimed at a higher quality paper production than the currently being manufactured in

the south and east of England.

The NPPF requires that there is a presumption in favour of sustainable development, the Rivenhall facility would result in the diversion of waste away from landfill and see reprocessing of recovered paper and card pushing waste management up the waste hierarchy in accordance with the NPPW.

It is also recognised within the NPPW that new facilities may need to serve larger catchment areas to be economic viable. It is therefore concluded that the proposals would still give rise to sustainable development and there is now is no planning policy justification to withhold planning permission and the conditions should be deleted.

## 9. RECOMMENDED

That planning permission be **granted** and conditions 28 and 30 be deleted from the planning permission subject to:

- 1) All other conditions of ESS/41/14/BTE being re-imposed
- 2) An informative to be added to the permission clarifying that references to Solid Recovered Fuel (SRF) are considered to be the same as Refuse Derived Fuel (RDF) for the purposes of the planning permission.
- 3) A deed of variation to ensure the new planning permission remains subject of the obligations of the original s106 associated with Ref. APP/Z1585/V/09/2104804 (ECC ref ESS/37/08/BTE) and ESS/41/14/BTE.

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## BACKGROUND PAPERS

Consultation replies  
Representations

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## THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (as amended)

The proposed development would not be located adjacent to a European site. Therefore, it is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required.

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**EQUALITIES IMPACT ASSESSMENT:** This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

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

The Minerals and Waste Planning Authority has engaged with the applicant over several months prior to submission of the application, advising on the validation

requirements and likely issues.

Throughout the determination of the application, the applicant has been kept informed of comments made on the application and general progress. Additionally, the applicant has been given the opportunity to address any issues with the aim of providing a timely decision.

#### **LOCAL MEMBER NOTIFICATION**

BRAINTREE – Witham North

BRAINTREE – Braintree Eastern

### Description of IWMF proposals

Anaerobic digestion (AD) plant would treat mixed organic waste (MOW) either food and/or green waste at approximately 85,000 tonnes per annum (tpa), producing biogas converted to electricity through biogas generators and a compost suitable for use in agricultural and horticultural uses.

Materials Recovery Facility (MRF) for mixed dry recyclable waste e.g. paper, plastic, glass, metals. These dry recyclables would be from kerbside collections (100,000 tpa) and/or recovered from the dried waste following treatment in the MBT. The collected dry recyclables may arrive in various mixes depending on the District Councils'/businesses particular recycling schemes and therefore would require sorting which would be achieved using machinery such as trommel screens, ballistic separators and density sorters. The recyclable materials would then be bulked up for export for further reprocessing. The MRF would also process output from the MBT to recover any recyclables.

Mechanical Biological Treatment (MBT) facility for the treatment of 250,000 tpa of municipal and/or commercial and industrial wastes to produce a solid recovered fuel (SRF). Within the MBT waste would be shredded and dried. The MBT would consist of 5 "Biodrying halls" each with a 50,000 tpa capacity. The shredded waste would be laid in windrows within the halls and continuously moved by cranes down the halls with air flow being created via perforated concrete floor. The process would take about 12 -15 days and would reduce the waste in mass by about 25%.

De-inking and pulping paper recycling facility to reclaim up to 360,000 tpa of paper and card received from within East of England Region and London and that recovered at the MRF. The paper and card would initially be treated with steam to create a "floc". The floc would be passed through pulping machinery and through processes of flotation and de-inking to emerge as wet pulp before being dewatered and dried. Once dried the de-inked paper pulp would be formed into boards and bulked up and transported off site for manufacture of graphic or tissue paper. It is anticipated a maximum of 199,500 tpa would be exported from the site.

Combined Heat and Power (CHP) Plant utilising a total up to 360,000 tpa solid recovered fuel (SRF). The total would include SRF produced by the MBT (up to 109,500 tpa), rejects from the MRF (up to 10,000 tpa) and SRF imported from the Waste Management Facility within Essex which could include SRF from the Courtauld Road, Basildon, plus pulp process waste sludge (up to 165,000 tpa). The CHP plant would consist of four 90,000 tpa boiler lines. The CHP would produce electricity, heat and steam. The energy generated would be used to provide electricity for use within the IWMF and export to the national grid and the heat and steam would be used directly in the paper pulp facility.

Extraction of minerals – in the original proposals in order to enable the buildings to be partially sunken below ground level, it was proposed that 760,000m<sup>3</sup> of Boulder Clay, 415,000m<sup>3</sup> of sand and gravel and 314,000m<sup>3</sup> of London Clay would be extracted. A large proportion of this extraction has taken place as part of working site A2, but there still remains, a quantity of clays and sand and gravel (100,000 tonnes) minerals to be

extracted. Where possible the minerals would be utilised in construction of the facility or exported from the site. Sand and gravel could be processed at Bradwell Quarry, subject to a further planning permission related to that site.

Visitor and Education Centre – the Listed Woodhouse Farm house and associated buildings would be refurbished and used as a visitor and education centre, providing an education facility in connection with operation and products of the Waste Management Facility. It is also proposed to provide an area for a local heritage and airfield museum.

Extension to existing access road – the existing access road to Bradwell Quarry would be extended approximately 1km south through the quarry workings to the proposed facility. All traffic would only use the A120 to access the site, utilising the existing junction for Bradwell Quarry. The haul road would be an 8m wide metalled road located into an existing and extended cutting. The crossing points with Church Road and Ash Lane would be improved with additional speed ramps, lighting and signing, but would remain single lane.

Provision of offices and vehicle parking – offices would be provided within the IWMPF. A staff and visitors car park would be developed west of Woodhouse Farm and would not be used by HGV traffic.

Energy Production – 36-43MW per annum of electricity would be generated on site from a combination of energy generated from biogas from the AD process (3MW per annum) and between 33-40MW per annum spare energy from the CHP plant. Approximately half the energy would be utilised on site enabling approximately 21MW per annum to be exported to the National Grid.

#### Buildings and Plant

The facility would comprise 63,583 m<sup>2</sup> of partially sunken buildings and treatment plant situated on the south-eastern edge of Rivenhall Airfield providing employment for around 50 people.

The proposed building to house the Materials Recycling Facility (MRF), Mechanical Biological Treatment (MBT) and Pulp Production Facility consists of two arch roofed buildings adjacent to each other, each measuring 109m wide x 254m long x 20.75m to their ridges. Both buildings would have “green” roofs, reducing their visual impact and providing a new area of habitat to enhance bio-diversity.

To the south of the main buildings there would be:

- A water treatment building 40m x 72m x 21m;
- A Combined Heat and Power Plant 78m x 44m x 31m high with a stack of 35m above original ground levels;
- A Turbine hall and Electrical Distribution hall 23m x 44m 10m, plus electrical distribution gear on the roof;
- Flue gas and exhaust air clean up complex 33m to 45m x 72m x 24m;
- 3 Anaerobic Digestion (AD) tanks approx. 28m in height and approximately 25 m in diameter;
- A gasometer 30m diameter and 28 metres in height.

The extracted air from all the processes on site would be used as combustion air for the

CHP, so that the CHP stack would be the only stack.

The main structures, except the stack at 35m, would be no higher above surrounding ground level than the hangar that was previously located on the site (approximately 12.5m maximum height).

#### Existing and Proposed Habitats, Planting & Screening

Approximately 1.6 hectares of woodland in the south eastern part of the site would be removed involving the loss of 2 trees (G1 & G4) covered by Tree Preservation Orders (TPO), 2 trees were removed as part of extraction with site A2 and 2 TPO groups of trees (W2 & W3) leaving a strip of woodland approximately 20m around the void. The 'American Oaks' on site which would be felled have been authenticated as native English Oaks. The remaining woodland around the IWMF would be managed to improve both its ability to screen the development as well enhance the biodiversity value. In addition 19.1ha of open habitats would be lost, including areas of grassland, arable land, bare ground, mitigation proposed includes approximately 1.2ha of new species rich grassland and the management of 1ha of existing grassland south of Woodhouse Farm to improve its species richness. In addition to that proposed in the application the applicant has now committed to provide an additional area of new species rich grassland of approximately 0.6ha east of Woodhouse Farm.

The Waste Management Facility would be sunken below natural ground within the void created by the extraction of the mineral and overburden. In order to maximise the void space the sides of the void would be constructed with a retaining wall. The void would be approximately 16m deep, such that the ridge of the arched buildings would be approximately 10m above natural ground levels and the tops of the AD and gasometer tanks would be 12m above ground levels. The CHP stack would be 35m above original ground levels. Cladding materials would be dark in colour to ensure that they generally blend into the existing landscape, woodland backdrop, distant horizon and immediate surroundings.

New planting at existing ground levels is proposed on the south west and north east side of the two main buildings, approximately 20m wide. New hedging (2km in total) on either side of the extended haul road is proposed as well as enhanced planting between the car park and Woodhouse Farm buildings. An additional block of woodland planting is also proposed northeast side of the site along with long term management of existing woodland to enhance its screening and ecological value. In addition a 45m wide belt (approximately 1.2ha) of trees adjacent to the woodland on the south side of the proposal. The applicant has also committed to implement the proposed planting and woodland management within the first available season following issue of any planning permission.

#### Lighting

The proposal is situated within a light sensitive area and therefore low level lighting with timers and solar sensitive detectors would be fitted to the exterior of the plant and installed at a low level to prevent light pollution. Internal lighting levels would be reduced to approximately 5 lux. For security purposes at the end of the working day or 23:00 hours whichever occurs first.

#### Waste type and throughput

The facility has been designed to import and recycle or dispose of up to 853,500 tonnes

waste annually comprising the following.

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|---|-------------|
| Mixed dry recyclables (MSW or similar C & I ) | 100,000 tpa |
| Mixed organic waste (MSW or similar C & I)    | 85,000 tpa  |
| Residual MSW and/or C & I                     | 250,000 tpa |
| Waste paper and card                          | 331,000 tpa |
| Imported SRF                                  | 87,500 tpa  |
|   | -----       |
| Totals imports                                | 853,500 tpa |

The through put capacity of each element of the waste management facility and therefore the total treatment capacity is as follows

|   |                     |
|---|---------------------|
| Materials Recycling Facility                | up to 287,500 tpa   |
| Anaerobic Digestion                         | up to 85,000 tpa    |
| Mechanical Biological Treatment (MBT) Plant | up to 250,000 tpa   |
| Paper pulp facility                         | up to 360,000 tpa   |
| CHP   | up to 360,000 tpa   |
|   | -----               |
|   | up to 1,342,500 tpa |

In reviewing the importation of waste figures against those of processing capacity it must be remembered that some of the imported waste would pass through one or more processes within the facility. For instance the output of the MBT plant would also be passed through the MRF, allowing recovery of recyclables. The remaining un-recyclable output from the MBT plant would then provide up to 109,500 tpa of SRF utilised in the CHP plant. Similarly the MRF is anticipated to provide an additional 29,000 tpa of paper and card for the paper pulp facility. The 360,000 tpa of card and paper processed through the de-ink paper pulp facility is anticipated to provide approximately 110,000 to 165,000 tpa of waste by products suitable as SRF for the CHP plant.

#### Traffic Generation

The waste management facility would generate up to 404 daily Heavy Goods Vehicle (HGV) movements comprising 202 into and 202 out of the site a day, with approximately 90 Light Goods Vehicle (LGV) or car movements associated with staff, deliveries and visitors (including approximately 2 coach movements a day). During the construction phase the IWMF would generate 195 HGV movements in and 195 HGV movements out.

#### Environmental Control

Waste would be delivered in enclosed vehicles or containers and all waste treatment and recycling operations would take place indoors under negative air pressure and within controlled air movement regimes, minimising potential for nuisances such as odours, dust and litter which could otherwise attract insects, vermin and birds. Regular monitoring for emissions, dust, vermin, litter or other nuisances would be carried out by the operator to meet the requirements of the Environmental Permit that would be required by the Environment Agency.

#### Hours of operation

Proposed hours of operation for the receipt of incoming waste and departure of outgoing recycled, composted materials and treated waste would be 07:00 to 18:30 Monday to Friday and 07:00 to 13:00 Saturday with no normal deliveries on Sundays, Bank and Public Holidays. The only exception would be, if required by any contract with the Waste



Disposal Authority that the site is expected to accept and receive clearances from local Household Waste Recycling Centres on Sundays, Bank and Public Holidays (although this is unlikely as these are now contracted to be taken to Courtauld Road). Due to the continuous operational nature of the waste treatment processes, the waste management facility would operate on a 24 hour basis but not involve external activity for large scale plant or vehicle movements outside the normal operating hours for the receipt of waste.

During the construction period of 18 to 24 months the proposed hours of operation would be 7:00 to 19:00 seven days a week.

#### Water management

The IWWMF includes a water treatment facility. All surface water outside the buildings would be kept separate from drainage systems within the buildings. External surface water from roofs and hardstandings and from groundwater pumped during construction would be collected and stored within the upper lagoon proposed to the north of the buildings, which would be below natural ground levels. All drainage and water collected within the buildings and used in the paper pulp process facility would be purified through an on site water treatment facility. It is anticipated that the IWWMF would be largely self-sufficient, by utilising rain/surface water, only requiring some importation of water which could be sourced from New Field Lagoon, which is part of the drainage system for the restored mineral working to the north or from abstraction points (subject to the appropriate licences), or obtained from the mains.

#### Other details

The tipping areas and internal reception bunker would provide a form of buffer storage of approximately 2 days of imported waste within an internal reception bunker to ensure that waste processing and treatment operations run continuously and that there is spare capacity in the event of temporary shutdown of the waste management facility.

An archaeological investigation on those parts of the site to be stripped or excavated would be carried out prior to stripping of soils. A retaining wall would be created prior to the extraction of minerals to create the void. These materials would be removed over or utilised in the restoration of Bradwell Quarry.

Draft Consideration of consistency of WLP Policies with the NPPF and NPPW  
Waste Local Plan

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| W3A | Sustainable Development, National Waste Hierarchy & Proximity Principle | <p>The WPAs will:</p> <ol style="list-style-type: none"> <li>1. In determining planning applications and in all consideration of waste management proposals, have regard to the following principles: <ul style="list-style-type: none"> <li>• Consistency with the goals and principles of sustainable development;</li> <li>• Whether the proposal represents the best practicable environmental option for the particular waste stream and at that location;</li> <li>• Whether the proposal would conflict with other options further up the waste hierarchy;</li> <li>• Conformity with the proximity principle.</li> </ul> </li> <li>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 disposal in that order of priority.</li> <li>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</li> </ol> | <p>Sustainable Development</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>Sustainable waste management is a goal that has been fed through to the NPPW via the Waste Management Plan for England, which sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management.</p> <p>The NPPW states that positive planning plays a pivotal role in delivering this country's waste ambitions through the delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy.</p> <p>BPEO</p> <p>The term 'Best Practicable Environmental Option' is no longer used in waste planning.</p> <p>The protection of the environment remains a key consideration within the NPPW, balanced with</p> |
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|  |  | <p>Essex, Southend and regional waste management needs as defined in policies W3B and W3C.</p> | <p>consideration of amenity and health impacts.</p> <p>The waste hierarchy</p> <p>The NPPW sets out a waste hierarchy which is slightly different to that within the WLP, but the overall objective of discouraging disposal and ensuring resource recovery is adhered to.</p> <p>Conformity with the Proximity Principle</p> <p>The proximity principle continues to be a consideration within the NPPW, whereby waste must be able to be disposed of, and mixed municipal waste be able to be recovered in one of, the nearest appropriate installations.</p> <p>Further, the Planning Policy Guidance for Waste states that 'nor does the proximity principle require using the absolute closest facility to the exclusion of all other considerations.'</p> <p>However, the NPPW recognises that new facilities will need to serve catchment areas large enough to secure the economic viability of the plant.</p> <p>See also the reasoning for Policy W8A.</p> <p>With regard to Essex, Southend and regional waste management, the NPPW requires that waste arising across neighbouring WPA areas are accounted</p> |
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|     |                            |   | <p>for (note this does not relate only to those authorities inside of the East of England region, as was), that the need for additional waste management capacity of more than local significance is considered and that the need for waste management and disposal of waste arising in more than one WPA area is accounted for.</p> <p>Therefore, Policy W3A is considered to be consistent with the Framework and the NPPW, with the exception of the requirement for consideration of BPEO.</p>   |
| W3C | Need for waste development | <p>Subject to policy W3B, in the case of landfill and to policy W5A in the case of special wastes, significant waste management developments (with a capacity over 25,000 tonnes per annum) will only be permitted when a need for the facility (in accordance with the principles established in policy W3A) has been demonstrated for waste arising in Essex and Southend. In the case of non-landfill proposals with an annual capacity over 50,000 tonnes per annum, restrictions will be imposed, as part of any planning permission granted, to restrict the source of waste to that arising in the Plan area. Exceptions may be made in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the proposal would achieve other benefits that would outweigh any harm caused;</li> <li>• Where meeting a cross-boundary need would satisfy the proximity</li> </ul> | <p>The NPPW has been updated to take account of the abolition of the Regional Spatial Strategy for the East of England. The NPPW requires WPAs to plan collaboratively through duty to cooperate, to provide a suitable network of facilities and to consider the need for facilities of more than local significance.</p> <p>Waste planning authorities should ensure that waste disposal facilities and facilities for the recovery of mixed municipal waste collected from households are appropriately sited to ensure compliance with the proximity principle. This may include joint working with other planning authorities to develop an extensive network of sites to enable effective waste management.</p> <p>The concept of the proximity principle is therefore</p> |

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|  |  | <p>principle and be mutually acceptable to both WPAs;</p> <ul style="list-style-type: none"> <li>• In the case of landfill, where it is shown to be necessary to achieve satisfactory restoration.</li> </ul> | <p>supported by the NPPW, as stated in the reasoning for Policy W3A. However, it is acknowledged that the NPPW recognises that new facilities will need to serve catchment areas large enough to secure the economic viability of the plant.</p> <p>Therefore, Policy W3C is considered to be partially consistent with the NPPW, acknowledging that the requirement for a restriction on the source of waste to that arising within the Plan area is no longer supported as the standard approach.</p> |
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## Summary of representations

| <b><u>Observation</u></b>   | <b><u>Comment</u></b>   |
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| The applicant keeps changing the development, the current changes are significant and this application should be withdrawn and resubmitted to the planning inspector to allow all stakeholders an opportunity to reassess this proposal in its entirety.  | The application is of a scale that can be determined by the WPA. If the application was refused, the applicant could appeal to the planning Inspectorate. The Secretary Of State also has the right to Call-In the application, but due to the nature of the application this is unlikely.                                |
| The development keeps changing, there appears to be planning “creep”. Entire development should be reconsidered as waste markets and the general economic environment have changed since the original application was granted and the local infrastructure is still not sufficient to meet existing needs. There are also other development proposals - not yet applications - that should be considered as part of the wider questions about development at Rivenhall and the surrounding areas. | The planning permission was given a 5 year life by the Planning Inspectorate recently extended to 6 years by the WPA. Currently there is no requirement to reconsider the whole application. In any event only development with planning permission or allocated within a submitted plan can be taken into consideration. |
| The original proposal for this plant was a ‘recycling plant for Essex’, with the request to remove the conditions 28 and 30 would open the plant up to the whole of England, and the possibilities to import waste. The facility is also able to take commercial and industrial waste, all of which would be sent for incineration.   | See Appraisal   |
| If geographical restrictions are removed the facility, the facility is likely to import the majority of its waste from outside our region, contrary to the proximity principle.   | See appraisal   |
| If the facility cannot be operated as permitted, i.e. without the need to import waste outside Essex/East of England, then the facility should not be developed.  | See appraisal   |
| The site has a 22 year history of waste applications and the local community has had to go through numerous planning applications,  | Each application has to be dealt with on its individual merits.   |

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| consultations and Inquiries with no apparent end in sight. If the applicant cannot build and operate the plant with the existing planning permission, then the development should not go ahead.  |               |
| The facility should operate for Essex needs alone, as originally agreed. Any increase in size of sourcing area would be contrary to the proximity principle.   | See appraisal |
| The application is justified on commercial difficulties and not planning matters. The plant has not been built despite having had consent for nearly 5 years.  | See appraisal |
| The conditions 28 and 30 that the applicant seeks to delete were accepted by the applicant at the Inquiry, were not appealed following consent in 2010 and have never been challenged until now.   | See appraisal |
| If this latest change is allowed to remove all geographical sourcing of SRF and paper/card, the majority of waste entering the site could come from outside Essex. The plant would lose much of its “Essex needs basis” and could have a much reduced role in meeting the stated Essex waste treatment capacity requirement of ECC as set out in its plans and strategies.   | See appraisal |
| The attempt to delete conditions 28 and 30 negates their purpose in a key respect – which they were set out as requirements on the operators to use their “reasonable endeavours” to source waste within Essex or the region, with triggers to new scenarios for limited periods if they could not achieve those aims. There is no plant built, or even started. There are no operators. Therefore these conditions cannot be tested until the plant is operational. | See appraisal |
| It does not seem particularly onerous that the operator of the proposed facility at Rivenhall should demonstrate to the Waste Planning Authority that it has used “reasonable endeavours” to source Solid Recoverable Fuel from Essex and Southend and then from the East of England if there remains spare  | See appraisal |

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| capacity. Nor does it appear difficult for the operator to use “reasonable endeavours” to source 50% of wastepaper and card from within the East of England. If these amounts of waste are not being generated within the locality or region it is questionable why there should be a plant located at Rivenhall in the first place.  |   |
| To justify the removal of Conditions 28 and 30, the supporting document cites the “proximity principle” as set out in the revised Waste Development Framework as requiring municipal waste to be recycled in “one of the nearest appropriate installations, by means of the most appropriate methods and techniques”. It also refers to government guidance as stating that “there could ...be significant economies of scale for local authorities working together to assist with the development of a network of waste management facilities to enable waste to be handled effectively”. Yet at the same time the application strongly expresses a preference to move to a market based system of contracts which would remove the basis of any such co-operation. |   |
| Heavy reliance is placed by the applicants on “Energy from Waste” i.e. waste incineration, including residual waste and commercial and industrial wastes currently going to landfill with vague references to processing prior to burning. This has the potential to move waste down the Waste Hierarchy, against Government policy.  | See appraisal   |
| There is little or no discussion in the application of the actual consented recycling elements of the plant – especially the “mainstream” recycling elements of Anaerobic Digestion (AD) and Materials Recovery Facility (MRF). Indeed the application talks about burning vegetable waste instead of composting it via AD.   | The application only relates to the constraints on importation with respect to SRF and paper and card. No changes are proposed with respect to the AD and MRF and thus there is necessity for the applicant to refer to these elements. |
| Any increase in geographical catchment will further increase the capacity of the plant.   | No additional capacity is proposed the total waste capacity of the site and number of vehicle movements is limited by condition. Changes to the facilities total capacity and vehicle   |



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|  | numbers would need to be subject of a separate application dealt with on its/their individual merits.  |
| The applicant lists chemical wastes, medical wastes, discarded equipment and animal waste as potential types of incinerator fuel<br>With this revision on the original application we now have potentially higher toxicities and hence possible consequences on local people and wildlife.   | See appraisal  |
| Braintree District residents have an excellent recycling performance with Braintree being in the top three in the Essex  | See appraisal  |
| Removing geographical restrictions means HGV drivers not familiar with area may try to access the facility using village roads.  | The only permitted and accessible access to the site is via the A120 access. The legal agreement requires enforcement of the permitted routes to the site including banning offending HGV drivers. |
| A120 inadequate to cope with additional traffic  | No additional traffic movements are proposed and movements are limited by condition.   |
| The A120 is well known in the county to be both dangerous and over-capacity already. When the route is blocked many of the HGV's would detour down the country lanes, which all local road users know is very frequently the case.   | See above in addition the facility is not accessible by HGV apart from the access on the A120.   |
| The A120 may well be officially designated as a Trans European Network route but all local people, and I hope those considering this application, will be more than aware of its limitations and lack of ability to live up to its designation until dualled between Marks Tey and Braintree. The road simply cannot tolerate any increase in traffic. | No objection has been raised by the Highways Agency  |
| An incinerator should not be sited in close proximity to local residents and in beautiful area used for recreation and valued area for wildlife.   | The principle of the facility is already established, only changes to the source of SRF waste and paper and card are proposed  |
| SRF is an environmentally damaging source of emissions and pollution. The source of further waste from distances will make the plan even more unsustainable and cause  | See appraisal  |

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| even more pollution.  |   |
| The removal of Conditions 28 and 30 would be likely to have the effect of lengthening the distance travelled by waste to the Rivenhall facility resulting in a less efficient national network and a greater number of longer unnecessary road haulage journeys. It is argued by the sponsors of the amendment to the Planning Conditions that the location of the Rivenhall site close to the A120 is an advantage in terms of waste being transported to the site from outside the County and the region. But the A120 is insufficient to meet current demands as well as being dangerous and an accident black spot. There are no funded plans to improve it.  |   |
| The emphasis on burning waste would give fewer opportunities to recycle waste.  |   |
| The applicants state their intention is to develop a merchant facility with a focus on commercial and industrial wastes. This negates the development by ECC of waste transfer sites for bulking up municipal wastes for then sending on to treatment facilities – the stated aim being efficiency using larger vehicles. A merchant facility importing two of its main types of waste from anywhere will attract a wide range of vehicle types and sizes and with far less opportunity for good organisation of efficient use of vehicle capacity eg taking treated materials away in lorries that have brought in untreated waste. There could be pressure to increase the agreed cap on vehicle movements. |   |
| It is understood the bridges on the haul road are not adequate to take all HGV traffic.   | There bridges on the haul road are adequate to take HGV traffic, only abnormal size loads need to be managed to cross the bridges e.g. delivery of very heavy plant & machinery                           |
| Impact of the facility on Listed Buildings close to the site and in particular Woodhouse Farm   | The proposals would have no additional impact on Listed Building. Woodhouse Farm is currently empty and would be refurbished and utilised as part of the proposals including creation of a Heritage room. |

**DR/08/15**

committee DEVELOPMENT & REGULATION

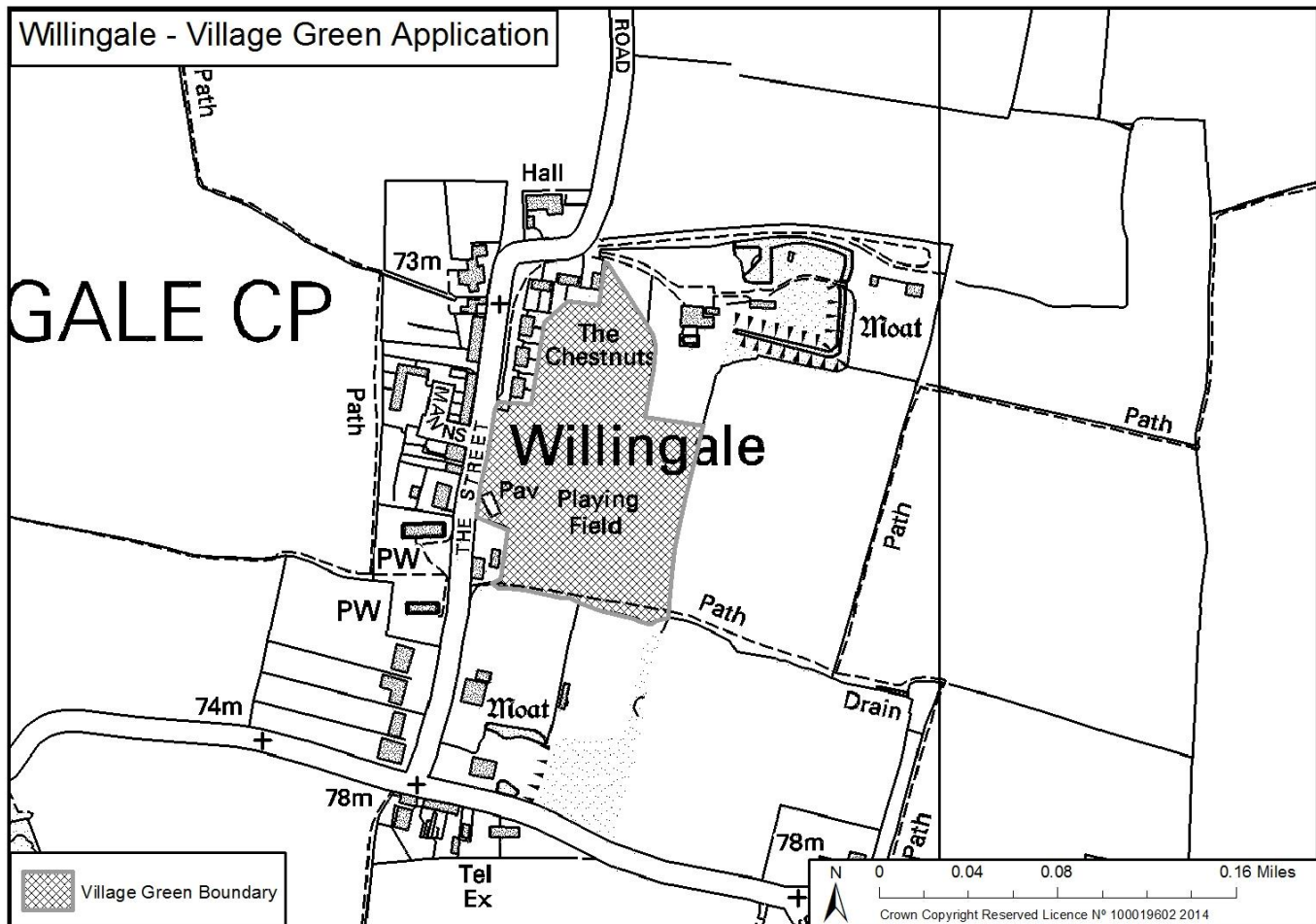
date 27 February 2015

## TOWN AND VILLAGE GREENS

### APPLICATION TO REGISTER LAND AT WILLINGALE GLEBE, WILLINGALE AS A TOWN OR VILLAGE GREEN

Report by Director for Essex Legal Services

Enquiries to Jacqueline Millward Tel: 033301 39671



## **1. PURPOSE OF REPORT**

To consider an application made by Willingale Parish Council under Section 15(2) of the Commons Act 2006 ("the 2006 Act") as amended, to register land at Willingale Glebe also known as Willingale Cricket Field as a Village Green.

## **2. BACKGROUND**

Essex County Council is the commons registration authority in relation the 2006 Act and has a duty to maintain the Registers of Commons and Town and Village Greens. Under Section 15 of the 2006 Act applications can be made to the Registration Authority to amend the Register.

The County Council has received an application dated 30 April 2013 made by Willingale Parish Council to register the application site as a Town or Village Green under the provisions of Section 15(2) of the 2006 Act.

The application was advertised in the local press and on site on 8 August 2013. Notice was also served on the identified landowner belatedly on 2<sup>nd</sup> October 2013. The County Council received one objection to the application, from the landowner.

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 as there is no prescribed procedure in the relevant legislation. 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".

The objection, as examined in further detail below, indicated there is a permission to use the land by the grant of a series of leases, the existence of which is not disputed. There are some cases where a "knock out blow" does arise i.e. it is possible to reject an application on legal grounds following a consideration of the papers. This potentially saves money and avoids an inquiry the outcome of which could be foregone conclusion before the hearing of any evidence. The objector's point, if maintained, may have fallen into this category but, as it has been withdrawn, this does not now have to be considered.

Arrangements had been put in hand for a non-statutory public inquiry and directions issued for the exchange of papers. On 1<sup>st</sup> October 2014 the landowner wrote to withdraw their objection.

The inquiry was cancelled and this decision now falls to be made on the untested evidence which is no longer challenged by the landowner.

In their letter of 1<sup>st</sup> October the landowner indicated that The Chelmsford Diocesan Board of Finance remained of the opinion that the use of the land has not been as of right given the permission under the leases. Their full comments are in section 6

below.

### **3. THE APPLICATION SITE**

The application form referred to a plan on which the application site is marked and is transposed onto a map of the area on the front page of this report. The applicant described the land as 'Willingale Glebe (also known as Wilingale Cricket Field)' located 'on the east side of The Street in the centre of the village of Willingale'. It lies to the east of the main village street called the Street and forms a green space partly fronting onto that road.

There is a pavilion, used by the cricket club, on the land and the applicant has agreed that this area should not be retained as part of the application area so the application area is amended to that extent. The pavilion is shaded in grey within the application area on the application plan and can be seen on the plan on the front of this report and falls outside the area now under consideration. The remaining application area is cross hatched.

There is pedestrian access across the land to the field beyond. Public Footpath 7 is recorded on the Definitive Map and crosses the application land.

### **4. DEFINITION OF A TOWN OR VILLAGE GREEN**

The burden of proving that the land has become a town or village green lies with the applicant and the standard of proof is the balance of probabilities. In order to add the application land to the Register of Town and Village Greens it needs to be established that "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years."

Because the applicant relies on s15 (2) of the 2006 Act it has to also be the case that the use continues at the time of the application.

### **5. THE APPLICATION**

In May 2013 an application was made to the County Council to register the land as town or village green based on use between 1947 - 2013. The application stated that the land had become a Village Green for the following reasons. "Indulgence by a significant number of inhabitants of Willingale as of right in lawful sports and pastimes for a period of at least 20 years under section 15(2) of the Common Act 2006 as witnessed by enclosed signed statements showing use for activities including children's play, dog-walking and watching cricket over a period extending from 1947 to the present day. Also as witnessed by evidence of community use of the land as of right for hosting the annual village fete for at least the last 20 years. This attached evidence of community use of the land is provided by our own Willingale Community Archive Project. Also as witnessed by photographic evidence of community volunteers maintaining the land (and hedge boundaries and pedestrian gate in written statements on questionnaires) as of right for use by the residents of Willingale." Under part 11 of the form entitled 'any other information relating to the application', the application was stated to be submitted by Stuart

Bosworth, chairman of the parish council, on behalf of the parish council and the residents of Willingale 'that we represent. News of this application and requests for evidence over the last 20 years was communicated to parish residents via the parish council funded quarterly publication of 'What's On in Willingale', our parish magazine. The community in Willingale are fully supportive of this application to preserve this important open green space in the heart of our village. I do not know of any person interested in challenging this application."

With the application a letter was provided from the Cricket Club identified as the 'relevant leaseholder' and stated to be 'consenting to this application ... to register Willingale Glebe for village green status under section 15(2).'

Additional documents were provided in relation to the proceeds of the Village day, the parish magazine, photographs of the site in use and being maintained, and 21 user questionnaires.

The applicant is aware of the leases of the land.

During the period 1992 to 1997 the first lease was to the parish council. The applicant contends that the uses for the Village day and regular uses for dog walking, watching cricket, children playing, cycling and fruit picking were not covered by the terms of the lease. Based on copies provided by the objector, the first lease was in fact from 1981. The area subject to the lease is the area shown on Appendix 1 and this did not include the northern part of the application area.

During the period 1997 to 2012 and thereafter the leases were to the Cricket Club. The Cricket Club is a private members club with a membership of 20 in 2013 drawing on 18 out of the parish. They say that the parish council and parishioners had no knowledge of the terms of the lease agreement before the objection was made. Specific permission had been given by the Cricket Club for swings to be placed on the land and for the annual Village Day. They viewed this as an invitation to use the land and reinforced the impression that local people were using the land 'as of right'. The area subject to the second lease is the area shown on Appendix 2 and differs from the parish council lease in the following respects - it applies to the entire application site except for small strip at south west corner and it includes land beyond the application area at the north east corner.

The applicant says there has been no specific consent for dog walking, cycling, casual games and pastimes and fruit picking. No action has been taken to obstruct casual uses of the Glebe which has open pedestrian access. There has never been any 'private land' or 'keep off' signs or other security or permissions. They suggest that if the leases had been to the parish council they should have had a statutory duty to inform residents that the rights to use the field had changed.

They also referred to an earlier lease in 1965 with the Trustees of the Willingale (Church Field) Playing Field Association for use of the Glebe for recreational purposes. This represented various local associations including the cricket club and the parish council. They suggested that when the committee could no longer be sustained, it fell to the parish council who later no longer wished the responsibility and the Cricket Club, as main user, became the leaseholder.

## **6. LOCALITY**

In part 6 of the application form the applicant stated this was 'within the parish of Willingale' and provided a further map. It is understood that the parish boundaries form the locality area for the application. This is a legally compliant locality for a village green application.

## **7. OBJECTION**

The landowner is the Chelmsford Diocesan Board of Finance. They previously objected to the registration on the basis that permission to use the land had been given under three leases. They set out the details of the various permissions they had granted to use the land in the leases which analysis is set out below. The objection has now been withdrawn.

A Lease dated 21 July 1981 of the southern part of the application site with access permitted over all or remaining parts of the application site to Willingale Parish Council. The Lease was granted for use as 'village playing field' and 'organised games only' and was for 20 years. This lease was surrendered at the time the Willingale Cricket Club was incorporated on 12 October 1995 and a new term commencing on 1 June 1996 entered into shortly thereafter.

The Lease dated 14 February 1997 was entered into with Willingale Cricket Club of the application site except for small strip at south west corner and with additional land at the north east corner and subject to access over a defined route across the southern part of site. The Lease term was 15 years. The use was specified as 'playing field and public open space'. It included provision for determination by notice and development was anticipated.

A Lease dated 7 June 2012 of the application site with additional land at the north east corner was granted to Willingale Cricket Club for 15 years from 1 June 2011. The use was stated to be as 'playing field and for a public open space'.

Both the 1981 and 1997 leases reserved rights of way for the landowner's adjoining tenants.

The landowner was not aware of any steps to ensure compliance with the terms of the leases. The pavilion is assumed to have been used as such from 1992 to 2012. The landowner's solicitors confirmed that the leases provide for the use of the land as public open space, not just as a cricket ground, and that the use demonstrated has been given permission since at least 1981. They reserved their right to object on other grounds and asked for the application to be rejected.

In withdrawing their objection the solicitors for the landowner made the following comments: - "The Chelmsford Diocesan Board of Finance are firmly of the opinion that in this instance the use of the land has not been as of right given the permission that subsists or subsisted under the leases to Willingale Parish Council and/or Willingale Cricket Club since 1981 and from their further investigation in their archives before this. However, in this instance the Board has decided for

pastoral reasons not to proceed further in this matter especially given its commitment to the land remaining a cricket pitch through its recent grant of a lease with the benefit of business security of tenure to the local cricket club. Accordingly the Board hereby withdraws their objection to the application.”

## **8. 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?

### **A. Has the Use Been for Lawful Sports and Pastimes?**

The onus is on the applicant to establish his case with sufficient certainty as to the nature, extent and time of the alleged activities and the locality of those who are claimed to benefit from the rights. The applicant set these out in their supporting information with the application. The uses indicated in Appendix 3 would be uses which could be termed lawful sports and pastimes.

Use of the recorded highway route (footpath 7, Willingale) across the site would be taken to be by virtue of those public rights but the users do not define their use of the land in those terms. To the extent that pedestrian use and dog-walking follows any definitive map footpath, that use can be attributed to the exercise of a right of way and as such is not relevant to the village green application.

The relevant test is: “how the matter would have appeared to the owner of the land”. It needs to be demonstrable that it was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right. As Lord Neuberger recently stated in the *Barkas* case (Supreme Court, 21 May 2014) ‘the persons claiming that right – ‘must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him.’ It follows that, in the cases of possible ambiguity, the conduct must bring home to the owner, not merely that ‘a right’ is being asserted, but that it is a village green right.” Applying this test, can it be concluded that the use was sufficient to bring to the notice of a reasonable landowner the fact that village green rights were being asserted? Here the landowner initially indicated that they viewed all use as being within the ambit of the lease permissions they had granted, which included a wider range of use than just use by the lessee but subsequently withdrew their objection to registration.

### **B. Has there been 20 years use?**

Use of the claimed land is continuing at the present date. The applicant has indicated that they rely on use from 1992 to 2012.



All the users completing questionnaires were continuing to use the land when they completed their forms in 2013. During the qualifying period 13 questionnaires demonstrate use in the earliest part of the period. Taken together there is evidence of use as set out in Appendix 3 over the claimed period of 20 years up to the date of the application.

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?

The applicant indicated that the use of the site was by residents of the Willingale parish area and the applicant provided 2 plans which indicated the addresses from which the users of the claimed green who had submitted evidence questionnaires derive. This indicated that 11 of the users lived on some part of The Street in Willingale which is the road to the immediate west of the playing field. The remaining 10 users live on Wood Lane (leading out of The Street to the south east), Quires Green (further to the east, just short of the parish boundary) and Dukes Farm off Dukes Lane (leading out of The Street to the north east). Users therefore come from a reasonable spread around the claimed locality.

D. Has the user by inhabitants been as of right?

The applicant indicates there has been no challenge to use by signage on the site.

The critical issue raised by the landowner was whether the use that has taken place can be said to fall wholly within the uses which were subject to the permissions issued by them.

The 1981 lease was granted for use as 'village playing field' and 'organised games only'. This did not apply to the northern part of the application. The lease of 1997 was for use as 'playing field and public open space'. This applied to the entire application site except for small strip at south west corner and with additional land at the north east corner. The lease of 2012, which relates to the very end of the user period claimed, was for use as 'playing field and for a public open space'. This applied to the application site with additional land at north east. Considering the terms of the three leases it may have been difficult for a landowner to discern a user which was within or without the lease as the uses would encompass a wide range of activities and users. Although the landowner has not taken steps to enforce the terms of the permissions contained in the lease, the landowner may be said to have acted in a way inconsistent with accepting that the land was village green when they granted these leases. However, the landowner has effectively conceded these points by not continuing their objection and there is no imperative for the commons registration authority to look behind this.

## **9. ASSESSMENT OF THE EVIDENCE**

The remaining issue to be decided is in relation to which parts of the application land has the applicant demonstrated use sufficient to establish the grounds for registration under the 2006 Act. As indicated above, not all the application site was

included in the 1981 lease and an area beyond the application site was included in the 1997 lease. The 1981 lease did not apply to the northern part of the application. This would mean that part of the land applied for did not have lease permission prior to 1997 but this is not entirely within the 20 year period claimed. By 1997, lease permission covered the entire application site except for a small strip at south west corner. So from 1997 to 2012 this small strip did not have lease permission, but by 2012 it was also covered.

The user evidence does not differentiate different uses on different parts of the land and the overall impression is that the land was used as one parcel... whilst it may be difficult to identify specific evidence of use over the part of the land that was not included in the 1981 leased area, as the landowner is no longer taking the permission point, the potential differences in use of the leased and not leased areas over the 20 year period appear more theoretical than real in terms of the grounds for registration.

#### **10. LOCAL MEMBER NOTIFICATION**

The local member has been consulted and any comments will be reported.

#### **11. CONCLUSION**

The user evidence is adequate to demonstrate lawful sports and pastimes. The locality claimed satisfies the various legal tests. In the absence of an objection that the leases should be persuasive evidence that use of the majority of the land applied for has been with permission from 1992 to 2012, such use and the quality of that use 'as of right' is in fact unchallenged by the landowner.

#### **12. RECOMMENDED**

That the application is accepted in relation to the land shown cross hatched on the plan at the front of this report, which comprises the application site as applied for but excluding the pavilion, and the land is registered as a town or village green.

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### **BACKGROUND PAPERS**

Application by Willingale Parish Council dated 30 April 2013 with supporting papers.

Objection by Chelmsford Diocesan Board of Finance.

Further comments by applicant and objector.

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### **Local Member Ongar and Rural**

Ref: Jacqueline Millward CAVG/81

# APPENDIX 1 – 1981 LEASE PLAN

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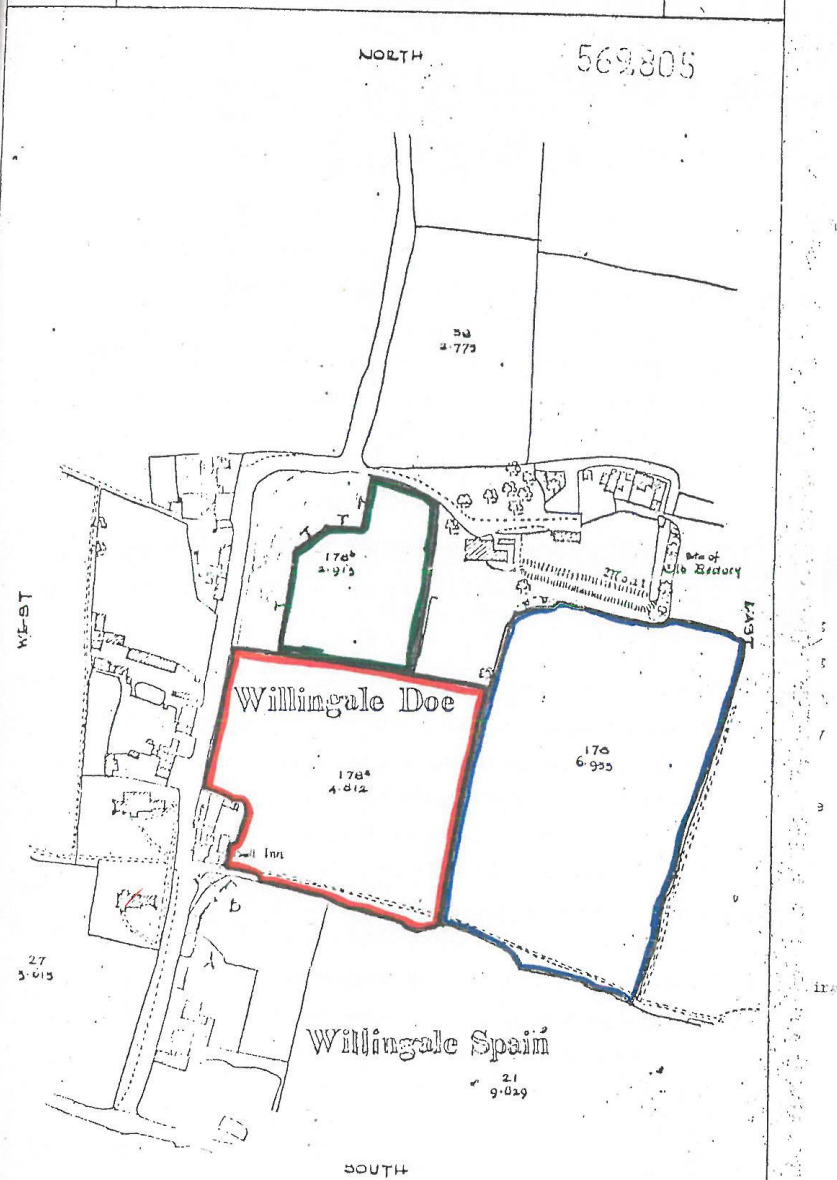
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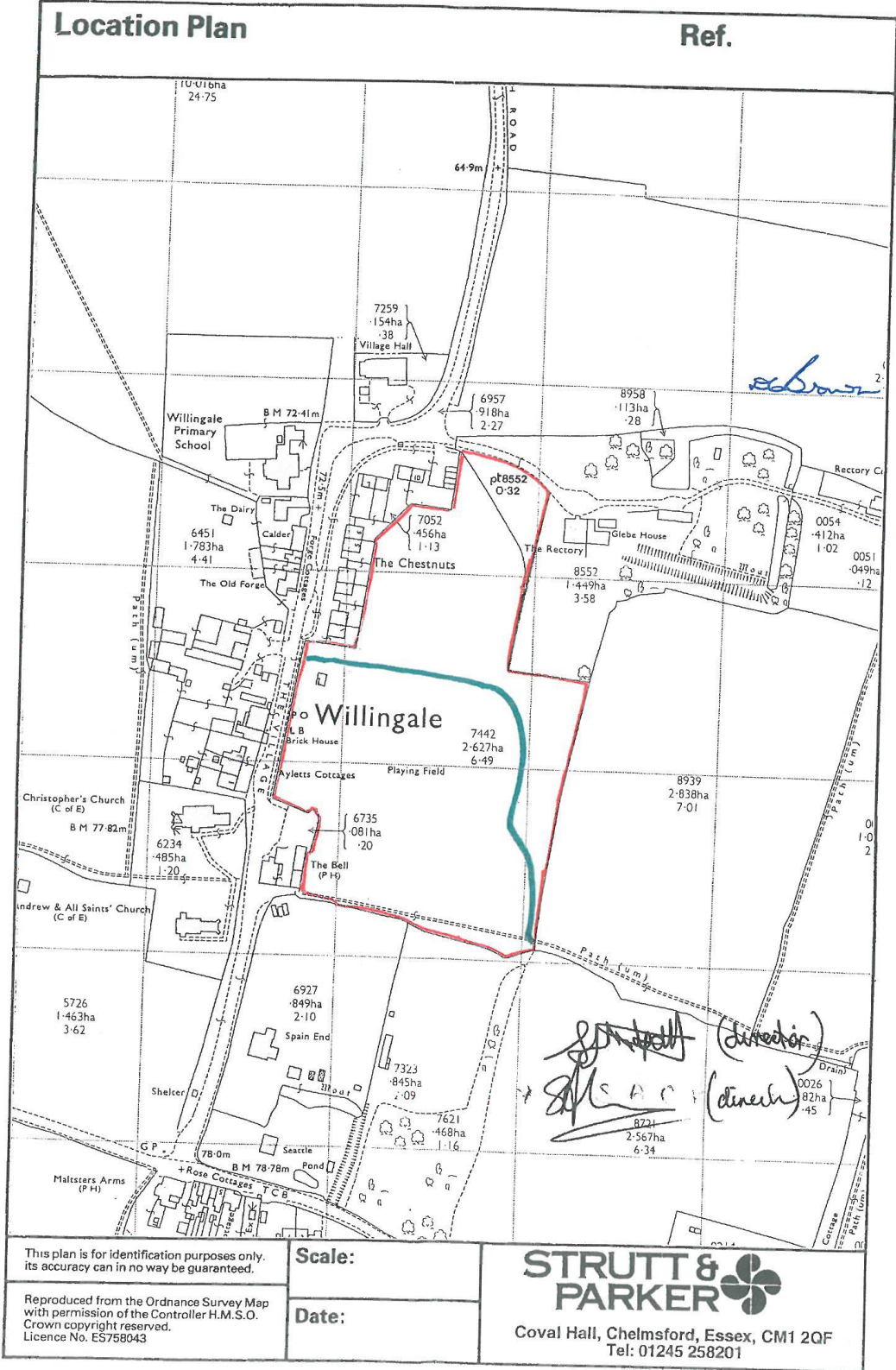
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LAND AT WILLINGALE  
SCALE 1/2500

703 A.  
FEBRUARY 1988









## APPENDIX 3 – Evidence in Support

### User questionnaires in Open Spaces Society format (2013)

|    | Name                   | Period of use                         |  |
|----|------------------------|---------------------------------------|--|
| 1  | <b>Caroline Allan</b>  | From 1987 to 2013.                    | Has used the land to walk, play with relatives, picnic, watch cricket matches and concerts and take part in village activities     |
| 2  | <b>Richard Allen</b>   | User since 1991.                      | Dog walking and walking generally, son playing football village days.  |
| 3  | <b>Iain Ballantyne</b> | 1999 to 2013.                         | Has used the land for rounders, dog walking, recreation, viewing cricket, supervising children in play area and village day.       |
| 4  | <b>Norman Campen</b>   | 1965 – 2013.                          | From 1965 played there as a child and subsequently used for sport and recreation, attending village activities and walking dogs.   |
| 5  | <b>Andrew Flesher</b>  | User from 2004 to present day (2013). | Playing football, cricket, rounders, kite flying, snowball fights and making snowmen in winter, attending summer fete and cycling. |
| 6  | <b>David Franklin</b>  | User since 1960's to 2013.            | Played football and cricket as a child and played with his children subsequently. Trained dogs on the field.                       |
| 7  | <b>Sarah Goodwin</b>   | 2000 – 2013.                          | Playing football cricket running/jogging, taking children to the play equipment watching cricket and village events since 2000.    |
| 8  | <b>Karen Gordon</b>    | 2002 – 2013.                          | Used since 2002 for dog walking, playing sport, meeting friends during the school holidays, taking children to the swings          |
| 9  | <b>Avril Hancock</b>   | User from 2000 to 2013.               | For dog walking, access to village hall, playing with grandchildren, watching cricket and attending the village fete.              |
| 10 | <b>Gillian Jaggard</b> | Has used the land from 1969 to 2013.  | Used land for the purposes of walking dogs, taking children to play area, watching cricket, summer fete and blackberrying.         |
| 11 | <b>David Kerwin</b>    | User from 1955 to                     | Recreational purposes such as  |

|    |                            |                                |   |
|----|----------------------------|--------------------------------|---|
|    |                            | 2013.                          | walking with grandchildren to play area, walking dogs, watching cricket matches, attending village day and celebratory occasions, playing cricket, rounders and football.   |
| 12 | <b>Elizabeth Kerwin</b>    | Has used it from 1947 to 2013. | Recreational purposes such as walking with grandchildren to play area, walking dogs, watching cricket matches, attending village day and celebratory occasions, playing cricket, rounders and football.                       |
| 13 | <b>Bernard Living</b>      | Used from 1964 to 2013.        | For walking and recreation, dog walking, games fetes and community celebrations.  |
| 14 | <b>Susan Lynn</b>          | User from 1985 to 2013.        | Walking dog, summer fete and any other functions held concerning the village.   |
| 15 | <b>Brian Patient</b>       | From 1989 to 2013.             | Has used the land for recreation with his children and community events (fetes, parties, sporting events, music events etc). Has also taken part in sporting activities (cricket, football, rugby, tennis, running, walking). |
| 16 | <b>Amanda Petheram</b>     | User for more than 20 years.   | General playing, ball games, kite flying, walking, picnics, sunbathing, used as a weekend garden when had no domestic garden.   |
| 17 | <b>Nick Rainbird</b>       | From 1976 to 2013.             | Used to hold a circuit class on the field with clients, uses for dog walking, attending village events and as a child playing with friends on the land.   |
| 18 | <b>Mrs Jill Skinner</b>    | User from 1977 to 2013.        | To play with grandchildren or for walking in a safe environment.  |
| 19 | <b>Mrs Claire Tilbrook</b> | Used land from 1997 – 2013.    | To walk the dog, use the playground, village functions and the annual village fete.   |
| 20 | <b>Mr Robin Tilbrook</b>   | Used Land from 1997 to 2013.   | To visit the playground, cricket club, playing fields, walk the dog, village functions and annual fete.   |
| 21 | <b>Mr Peter Tottman</b>    | During the years 1995 to 2013. | For children's play and dog walking and for sports fetes and concerts.  |



**DR/09/15**

committee DEVELOPMENT & REGULATION

date 27 February 2015

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**INFORMATION ITEM: Report on the programme of Periodic Reviews Of Mineral Planning Permissions**

Report by Director of Operations: Environment and Economy  
 Enquiries to Claire Tomalin – Tel: 03330 136821.

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**1. PURPOSE OF THE REPORT**

To update Members on the current status of the MPA's programme of Periodic Reviews of mineral planning permissions (also known as ROMPS).

**2. BACKGROUND**

The Environment Act 1995 introduced a requirement for periodic review of all mineral permissions when 15 years old. The review programme gives Mineral Planning Authorities the opportunity to ensure that conditions attached to mineral planning permissions remain up-to-date and relevant.

The Planning Practice Guidance outlines the manner in which Periodic Reviews are to be undertaken, replacing the previous guidance within Mineral Planning Guidance 14 (MPG 14).

In order to ensure Members are kept up to date it has been agreed previously that a report would be produced annually advising of sites needing review in the next year.

The provisions of the Environment Act 1995 were amended on the 23 June 2013 under new provisions within The Growth and Infrastructure Act 2013. The amendments give discretion to MPAs over when the initial review is undertaken. The MPA may chose a longer period than 15 years, if circumstances are appropriate, as long as it is not less than 15 years and also subject to a provision that the interval between any two reviews cannot be less than 15 years.

**3. PERIODIC REVIEWS**

Under the Environment Act 1995 the MPA is required to review mineral planning permission issued after 22 February 1982 that are 15 years old. The MPA must notify the operator at least 12 months prior to the permission being 15 years old.

This year the MPA must review permissions to be 15 years old between Feb 2016 and Feb 2017 i.e. permission issued from 22 February 2001 to 21 February 2002.

This ensures the Authority has the opportunity to notify the operator 1 year in advance as required by the regulations.

The Periodic Review process makes no distinction between active and dormant sites. An updated set of conditions must be submitted for both types of site. If no submission is received by the date stipulated by the MPA, the mineral permission ceases to have effect, although restoration and aftercare conditions still apply.

Review applications may be subject to Environmental Impact Assessment. Once a Periodic Review application is received, the MPA has three months (16 weeks if accompanied by an EIA) in which to make a decision on the application and if no decision is reached, the application is automatically approved. The applicant may however agree to extend the period for determination.

If the MPA imposes new conditions that unreasonably restrict working rights, a liability to compensation may arise. There must, therefore, be exceptional circumstances for such conditions to be imposed.

### **The Periodic Review programme in Essex**

#### **Mineral Permissions Previously Identified for Review**

In the report submitted to members in February 2013 Royal Oak Quarry was identified as requiring a ROMP in 2014. An application was submitted and has been approved. In March 2014 the planning permission at Brightlingsea Quarry (Moverons Farm) was identified as requiring review and the appropriate notifications have been issued and require an application to be submitted by January 2016.

In August 2011 permission (ESS/56/96/TEN) Martell's Quarry was identified for review. Initial discussions were held but due to changes in ownership these did not result in an application. Thus the planning permission has lapsed except for restoration and aftercare conditions. Negotiations are on-going with the new owner and an application to regularise the current unauthorised landfilling and restoration is expected shortly.

#### **Future permissions identified for Review**

The MPA has now considered all predominant planning permissions granted within the administrative area of Essex between 22 February 2001 and 21 February 2002 and assessed them for the need for Periodic Review. Full details are contained in Appendix 1 attached.

No sites have been identified as requiring notification of review in 2016

### **The future Periodic Review programme**

A further annual update report on the outcome of each year's Periodic Review exercise will be presented to the Development and Regulation Committee in early 2016.

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## **BACKGROUND PAPERS**

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70.421.50

Ref: P/DM/Claire Tomalin

**LOCAL MEMBER NOTIFICATION**

CHELMSFORD – Chelmer

MALDON – Maldon

TENDRING – Brightlingsea

Review of Mineral Planning Permissions

PERIODIC REVIEWS – Predominant Mineral Planning permissions issued between 22 February 2001 to 21 February 2002 identification of Planning Permissions granted 15+ years ago requiring Periodic Review between February 2016 and February 2017

| Site Ref. | Address  | Applic No.    | Description   | Decision Date | Periodic Review needed Y/N   |
|-----------|--|---------------|---|---------------|--|
| 11 421 33 | Little Easton Airfield,<br>Little Easton Airfield,<br>Little Easton,<br>Dunmow,<br>CM6 2BB | ESS/52/00/UTT | As Raised sand & Gravel extraction in the form of a borrow pit to provide fill materials for the proposed new A120 road contract scheduled to commence mid-2001 | 02/03/01      | N<br><br>Planning permission not implemented and extraction subsequently permitted under ESS/65/06/UTT |
| 34 421 16 | Land off Lower Road,<br>Bartons Farm,<br>Hockley   | ESS/02/01/ROC | Excavate clay minerals for use by Environment Agency contractors (only) to strengthen seawall & develop into conservation lake                                  | 26/04/01      |  |
| 32 421 03 | North Benfleet Hall,<br>North Benfleet,<br>Benfleet  | ESS/14/01/BAS | Construction of a borrow pit for engineering fill in connection with the A130 bypass, phase 2, and formation of new fishing lake                                | 01/06/01      |  |

|           |  |                   |   |          |   |
|-----------|--|-------------------|---|----------|---|
| 14 421 13 | Land at St Osyth Quarry,<br>Martins & Wellwick Farms<br>Colchester Rd,<br>St Osyth,<br>Clacton-on-Sea,<br>CO16 8HN | ESS/21/97/TEN/B/R | Review of Mineral Sites<br>TEN/03/49 and<br>TEN/308/64  | 10/07/01 |   |
| 13 421 13 | Birch Pit,<br>Maldon Road, Birch,<br>Roundbush Corner,<br>Birch Airfield,<br>Birch,<br>Colchester                  | ESS/15/00/COL     | Northern extension of<br>existing sand and gravel<br>workings and restoration<br>to agricultural and<br>amenity use                                   | 20/08/01 | N<br><br>Extraction and restoration<br>complete and in aftercare and<br>aftercare conditions<br>adequate. |
| 23 421 28 | Wheeler's Farm,<br>Little Waltham,<br>Chelmsford,<br>CM3 3LZ   | ESS/18/01/CHL     | Extraction of sand &<br>gravel as a borrow pit in<br>connection with A131<br>construction. Disposal<br>of surplus clay from A131<br>Gt Leighs by pass | 31/08/01 | N<br><br>Extraction, restoration and<br>aftercare complete.   |

|           |  |                 |   |          |  |
|-----------|--|-----------------|---|----------|--|
| 23 421 16 | Land at St Cleres Hall Farm,<br>St Clere's Hall Pit,<br>Main Road,<br>Danbury,<br>Chelmsford,<br>CM3 4AR | ESS/50/97/CHL/R | Review of Old Permissions CHR/628/54, CHR/265/62, CHL/595/74 & CHL/1333/84  | 10/10/01 | Y<br><br>Extraction is complete, but restoration has not been undertaken. Planning permission ESS/63/10/CHL gives planning permission to infill the void but this has not been implemented, due to the need to address ecological issues on the site, the permission will expire in June 2016. If planning permission ESS/63/10/CHL has not been implemented by October 2015 then it will be necessary to review ESS/50/97/CHL/R to ensure satisfactory restoration of the remaining void. |
| 23 421 05 | Essex Regiment Way,<br>Broomfield,<br>Chelmsford,<br>CM3 3PR   | ESS/28/01/CHL   | Excavation of boulder clay to provide engineering containment material for adjacent landfill cell and backfilling with inert mineral waste material from within the Belsteads Farm site | 15/10/01 | N<br><br>Extraction, restoration and aftercare complete.   |

|           |   |               |  |          |  |
|-----------|---|---------------|--|----------|--|
| 11 421 35 | Frogs Hall Farm,<br>Bambers Green,<br>Takeley,<br>Bishop's Stortford,<br>CM22 6PE | ESS/06/01/UTT | Extraction of sand & gravel as a borrow pit in connection with A120 construction. Installation of plant for processing. Disposal of surplus clay from A120 construction for use in restoration of site | 09/11/01 | N<br><br>Extraction and restoration complete. In aftercare |
| 12 421 31 | Land adjoining Bulmer Brickfields,<br>Bulmer,<br>Nr Sudbury,<br>CO10 7EF          | ESS/34/01/BTE | Stripping of topsoil & subsoil/overburden. Surface quarrying of clay to supply adjoining brickworks. Lower level restoration of the site as storage yard   | 18/02/02 |  |





**Review of Mineral Planning Permissions**

PERIODIC REVIEWS – Predominant Mineral Planning permissions issued between 22 February 2001 to 21 February 2002 identification of Planning Permissions granted 15+ years ago requiring Periodic Review between February 2016 and February 2017

| <b>Site Ref.</b> | <b>Address</b>   | <b>Applic No.</b> | <b>Description</b>  | <b>Decision Date</b> | <b>Periodic Review needed<br/>Y/N</b>  |
|------------------|--|-------------------|---|----------------------|--|
| 11 421 33        | Little Easton Airfield,<br>Little Easton Airfield,<br>Little Easton,<br>Dunmow,<br>CM6 2BB | ESS/52/00/UTT     | As Raised sand & Gravel extraction in the form of a borrow pit to provide fill materials for the proposed new A120 road contract scheduled to commence mid-2001 | 02/03/01             | N<br><br>Planning permission not implemented and extraction subsequently permitted under ESS/65/06/UTT |
| 34 421 16        | Land off Lower Road,<br>Bartons Farm,<br>Hockley   | ESS/02/01/ROC     | Excavate clay minerals for use by Environment Agency contractors (only) to strengthen seawall & develop into conservation lake                                  | 26/04/01             |  |
| 32 421 03        | North Benfleet Hall,<br>North Benfleet,<br>Benfleet  | ESS/14/01/BAS     | Construction of a borrow pit for engineering fill in connection with the A130 bypass, phase 2, and formation of new fishing lake                                | 01/06/01             |  |

|           |  |                   |   |          |   |
|-----------|--|-------------------|---|----------|---|
| 14 421 13 | Land at St Osyth Quarry,<br>Martins & Wellwick Farms<br>Colchester Rd,<br>St Osyth,<br>Clacton-on-Sea,<br>CO16 8HN | ESS/21/97/TEN/B/R | Review of Mineral Sites<br>TEN/03/49 and<br>TEN/308/64  | 10/07/01 |   |
| 13 421 13 | Birch Pit,<br>Maldon Road, Birch,<br>Roundbush Corner,<br>Birch Airfield,<br>Birch,<br>Colchester                  | ESS/15/00/COL     | Northern extension of<br>existing sand and gravel<br>workings and restoration<br>to agricultural and<br>amenity use                                   | 20/08/01 | N<br><br>Extraction and restoration<br>complete and in aftercare and<br>aftercare conditions<br>adequate. |
| 23 421 28 | Wheeler's Farm,<br>Little Waltham,<br>Chelmsford,<br>CM3 3LZ   | ESS/18/01/CHL     | Extraction of sand &<br>gravel as a borrow pit in<br>connection with A131<br>construction. Disposal<br>of surplus clay from A131<br>Gt Leighs by pass | 31/08/01 | N<br><br>Extraction, restoration and<br>aftercare complete.   |

|           |  |                 |   |          |  |
|-----------|--|-----------------|---|----------|--|
| 23 421 16 | Land at St Cleres Hall Farm,<br>St Clere's Hall Pit,<br>Main Road,<br>Danbury,<br>Chelmsford,<br>CM3 4AR | ESS/50/97/CHL/R | Review of Old Permissions CHR/628/54, CHR/265/62, CHL/595/74 & CHL/1333/84  | 10/10/01 | Y<br><br>Extraction is complete, but restoration has not been undertaken. Planning permission ESS/63/10/CHL gives planning permission to infill the void created through mineral extraction, but this has not been implemented, due to the need to address ecological issues on the site, the permission will expire in June 2016. If planning permission ESS/63/10/CHL has not been implemented by October 2015 then it will be necessary to review ESS/50/97/CHL/R to ensure satisfactory restoration of the remaining void. |
| 23 421 05 | Essex Regiment Way,<br>Broomfield,<br>Chelmsford,<br>CM3 3PR   | ESS/28/01/CHL   | Excavation of boulder clay to provide engineering containment material for adjacent landfill cell and backfilling with inert mineral waste material from within the Belsteads Farm site | 15/10/01 | N<br><br>Extraction, restoration and aftercare complete.   |

|           |   |   |  |          |  |
|-----------|---|---|--|----------|--|
| 11 421 35 | Frogs Hall Farm,<br>Bambers Green,<br>Takeley,<br>Bishop's Stortford,<br>CM22 6PE | ESS/06/01/UTT<br><br>(Varied by<br>ESS/06/11/UTT to<br>allow alternative<br>restoration scheme) | Extraction of sand &<br>gravel as a borrow pit in<br>connection with A120<br>construction. Installation<br>of plant for processing.<br>Disposal of surplus clay<br>from A120 construction<br>for use in restoration of<br>site | 09/11/01 | N<br><br>Extraction and restoration<br>complete. In aftercare and<br>aftercare conditions<br>adequate. |
| 12 421 31 | Land adjoining Bulmer<br>Brickfields,<br>Bulmer,<br>Nr Sudbury,<br>CO10 7EF       | ESS/34/01/BTE   | Stripping of topsoil &<br>subsoil/overburden.<br>Surface quarrying of clay<br>to supply adjoining<br>brickworks. Lower level<br>restoration of the site as<br>storage yard   | 18/02/02 |  |

**DR/10/15**

Committee DEVELOPMENT &amp; REGULATION

Date 27<sup>th</sup> February 2015**INFORMATION ITEM****Applications, Enforcement and Appeals Statistics**

Report by Director of Operations, Environment &amp; Economy

Enquiries to Robyn Chad – tel: 03330 136 811

or email: [robyn.chad@essex.gov.uk](mailto:robyn.chad@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/Robyn Chad/

**MEMBER NOTIFICATION**

Countywide.

**SCHEDULE****Major Planning Applications**

Nº. Pending at the end of November

**16**

Nº. Decisions issued in December

**3**

Nº. Decisions issued this financial year

**21**

Overall % in 13 weeks or in 16 weeks for EIA applications or applications agreed within the extensions of time this financial year (target 60%)

**86%**

Nº. Delegated Decisions issued in December

**1**

Nº. Section 106 Agreements pending at the end of December

**1**

### **Minor Applications**

% of minor applications in 8 weeks this financial year (Target 70%)

53%

Nº. Pending at the end of November

9

Nº. Decisions issued in December

3

Nº. Decisions issued this financial year

41

Nº. Delegated Decisions issued in December

3

### **All Applications**

Nº. Delegated Decisions issued in December

4

Nº. Committee determined applications issued in December

2

Nº. of Submission of Details dealt with this financial year

145

Nº. of Submission of Details pending at the end of December

84

Nº. of referrals to Secretary of State under delegated powers in December

1

### **Appeals**

Nº. of appeals outstanding at end of December

1

### **Enforcement**

Nº. of active cases at end of last quarter

26

Nº. of cases cleared last quarter

9

Nº. of enforcement notices issued in December

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

**DR/11/15**

Committee                      DEVELOPMENT & REGULATION

date                              27 February 2015

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**INFORMATION ITEM**

**Dates of Future Meetings**

Report by Clerk to the Committee

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Enquiries to Matthew Waldie – tel: 033301 34583

or email: [matthew.waldie@essex.gov.uk](mailto:matthew.waldie@essex.gov.uk)

**1.            PURPOSE OF THE ITEM**

To inform Members of the proposed meeting dates to end of April 2016.

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**2.            MEETING DATES**

**2015**

Friday 27 March

Friday 24 April

Friday 22 May

Friday 26 June

Friday 24 July

Friday 28 August

Friday 25 September

Friday 23 October

Friday 27 November

Friday 18 December \*

**2016**

Friday 22 January

Friday 26 February

Friday 1 April (*avoiding Good Friday on 25 March*)

Friday 29 April #

\* Third Friday

# Fifth Friday

All meetings scheduled for 10:30 am, with Members' training at 9:30 am.

