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## Appeal Decision

Site visit made on 7 November 2016

**by R C Kirby BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 29 November 2016**

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**Appeal Ref: APP/P0430/W/16/3148503**

**Land adjacent Chiltern View Nursery, Wendover Road, Stoke Mandeville, Buckinghamshire HP22 5GX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr James Bone, Enterprise Skip Hire against the decision of Buckinghamshire County Council.
  - The application Ref CM/63/15, dated 21 October 2015, was refused by notice dated 22 February 2016.
  - The application sought planning permission for the erection of operational and storage shed to serve waste transfer station and siting of shipping containers without complying with a condition attached to planning permission Ref CM/69/14, dated 2 December 2014.
  - The condition in dispute is No 10 which states that: *The Waste Recycling Process and Storage operation shall be undertaken solely under cover within the Operational & Storage Sheds and not elsewhere within open areas of the site.*
  - The reason given for the condition is: *In the interests of local amenity and air quality and to comply with policies 28 and 36 of the Buckinghamshire Minerals and Waste Local Plan, policy CS23 of the Buckinghamshire Minerals and Waste Core Strategy and policy GP35 of the Aylesbury Vale District Local Plan.*
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of an operational and storage shed to serve waste transfer station and siting of shipping containers at land adjacent Chiltern View Nursery, Wendover Road, Stoke Mandeville, Buckinghamshire HP22 5GX in accordance with the terms of application Ref CM/63/15 made on 21 October 2015 without compliance with condition number 10 previously imposed on planning permission Ref CM/69/14, dated 2 December 2014, subject to the 20 conditions in the attached Schedule.

### Procedural Matter

2. On my site visit I observed that the recycling process shed had been constructed, albeit with a smaller footprint than that approved. A detached building had also been constructed adjoining the railway line, in a similar position to, but with a smaller footprint than the storage shed approved under application Ref CM/69/14. From what I saw on site and based on all of the information before me I am not satisfied that the details of the submitted drawings reflect the buildings constructed on site. Therefore, for the avoidance of doubt my deliberations are based upon the drawings as submitted and not what has been built.
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## Background and Main Issue

3. The condition in dispute prevents both the waste recycling process undertaken upon the site and storage of materials from occurring outside of the approved buildings. The appellant considers that the prevention of storage of materials within the open parts of the site is unduly restrictive, particularly given that earlier planning permissions on the site<sup>1</sup> included no such condition. The appellant is requesting that the wording of the condition is amended to: *'The waste recycling process shall be undertaken solely within the existing and proposed buildings and not on open areas of the site'*.
4. The main issue in the case is whether the condition is reasonable and necessary in the interest of the character and appearance of the area, living conditions and air quality.

## Reasons

5. The appeal site comprises a waste transfer and recycling facility for the processing of up to 25,000 tonnes of waste per annum. The site is set back from Wendover Road, behind the garden centre at Chiltern View Nursery. There are a number of buildings upon the site, including a recently constructed recycling process shed, which was granted planning permission in February 2014. I observed on my site visit that there were several areas upon the site where materials and containers were stored, including stacked skips adjoining the railway line. The site is bounded by the main Aylesbury to London railway to the north west, which is largely screened by mature landscaping from the operational part of the site. To the south is the Triangle Business Park.
6. Policy 35 of the Buckinghamshire Minerals and Waste Local Plan (LP) states that planning permission for waste developments will only be granted when the need for the proposed development and the benefits it would generate, outweigh any environmental, economic or community harm that the development and its operation may cause. Policy 28 of the LP states that the amenity of all those who may be affected by mineral and waste development proposals will be protected. The safeguarding of local amenities and the wider environment is one of the objectives of LP Policy 36. Policy CS23 of the Buckinghamshire Minerals and Waste Core Strategy has similar objectives, requiring the design and layout of development to integrate positively with the landscape or townscape. Amongst other matters, Aylesbury Vale District Local Plan, Policy GP.35 requires the design of new development to respect and compliment the physical characteristics of the site and surroundings, and important public views and skylines.
7. In terms of national planning policy, the National Planning Policy for Waste (NPPW) requires waste planning authorities to consider, amongst other matters, the likely impact on the local environment and on amenity; and ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located. In assessing the suitability of sites when determining planning applications, Appendix B of the NPPW provides guidance. Amongst other matters, development should respect landscape character; and the amenity of sensitive receptors should be taken into account, particularly in respect of air emissions, dust, odours, noise and vibration.

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<sup>1</sup> Refs 11/20001/AWD; 11/20006/AWD; 12/20003/AWD; 13/20003/AWD

8. The core planning principles of the National Planning Policy Framework (the Framework) include the support that should be given to sustainable economic development, the securing of high quality design and a good standard of amenity for all existing and future occupants of land and buildings and the account that should be given to the different roles and character of different areas.
9. The area within the vicinity of the appeal site is characterised by a mixture of uses, including the Chiltern View Nursery which has extensive areas of open storage to the front, side and rear, as observed on my site visit; business units upon the Triangle Business Park and linear residential development along the Wendover Road.
10. The Council considers that the justification for the new recycling process and storage shed was, amongst other matters to reduce from views, stockpiles of waste material, to reduce dust, potential smells and contamination and use the site more efficiently and effectively. In determining the application at that time, the Council considered that the visual impact of the large building proposed would be outweighed by the environmental benefits of the waste processing and storage taking place within the building.
11. The appellant submits that whilst there are clearly advantages of storing items undercover, the loss of the current outdoor storage that is permitted under previous planning permissions would render the operation unworkable and economically unsustainable. Although I have not been provided with substantive evidence to demonstrate these concerns, I am in no doubt that the removal of all open storage, including shipping containers, would be likely to have an adverse effect upon the operation of the business.
12. There is no dispute between the parties that the sorting and processing of waste under cover is of benefit, in that it reduces noise and other sources of nuisance from sensitive receptors, including nearby residential properties. I therefore find that a condition that prevents the processing of waste, including waste picking and sorting conveyor operations, concrete crushing/screening and soil sorting/screening, other than within the permitted building is reasonable and necessary to protect the living conditions of nearby residents and the character of the area. This accords with the comments received from the District Council's Environmental Health Officer in the consultation response to the planning application.
13. In terms of outside storage, it is clear from the description of development of the 2014 planning application that the storage of shipping containers was sought. The storage of these containers was shown to be to the side of the approved storage shed, in a position considered by the case office to be acceptable, as set out in the report to committee. Whilst the siting of these containers was approved by way of reference to the approved drawings, the disputed condition would effectively preclude the containers being stored in this location, in the open, outside of the operational and storage sheds, given that they are used for amongst other things, storage purposes connected with the waste and recycling process upon the site. In this regard, the storage element of the disputed condition is not reasonable.
14. Furthermore, whilst I have no reason to doubt the benefits of storing material undercover, I am not convinced that having regard to the distance of the site to Wendover Road, and the intervening buildings at Chiltern View Nursery that

the storage of material in the open would be so harmful to the character and appearance of the area or the living conditions of nearby residents to make this element of the scheme unacceptable. I concur with the case officer that the appeal site is viewed from the residential properties in Wendover Road in the context of existing buildings on both the Triangle Business Park and at the Chiltern View Nursery at a distance in excess of 200 metres.

15. It is also viewed in the context of outside storage associated with the adjoining garden centre. Within its committee report, the Council considered that the Chiltern View Nursery building is by far the most dominant feature in the landscape. This accords with my observations. Moreover, the outside storage associated with the site would not be prominent from the adjoining railway line as a result of the built development on the site and the landscaping along the rear boundary.
16. I have not been provided with substantive evidence to demonstrate that the external storage of materials, whether processed or unprocessed would be harmful to air quality. However, I note that the District Council's Environmental Health Officer did not raise concern in this regard. There is therefore no reason to dismiss the appeal proposal on this ground.
17. I therefore conclude that outside storage upon the site would not be prominent in the wider landscape, and the height of such material could in any event be controlled by a condition restricting the height of stockpiles as set out in condition No 11 attached to the 2014 planning permission. I note the Council state that this condition was attached in error, however I have not been provided with a copy of a revised decision notice and I have therefore based this assessment on the decision notice issued on 2 December 2014. There would be no conflict with Policies 28, 35 and 36 of the LP, Policy CS23 of the Buckinghamshire Minerals and Waste Core Strategy or Policy GP.35 of the Aylesbury Vale District Local Plan.

### **Other Matters**

18. Concerns have been raised by local residents in respect of various matters including local highway conditions, the size of the sheds, absence of fencing and landscaping around the site and waste blowing into residential gardens.
19. In terms of the effect of the new buildings on the capacity of the highway network and highway safety, I note that the scheme would not increase the amount of material processed on the site nor would it result in an increase in vehicle movements. The Council previously found the effect of the proposal on highway safety to be acceptable and I have not been provided with substantive evidence to demonstrate that this is not the case.
20. Although large, the buildings are viewed in the context of existing buildings in the area, particularly from Wendover Road. They are of a similar height to neighbouring buildings, are viewed at a distance from the highway and have previously been found to be acceptable to the Council. Having regard to the evidence before me, I have no reason to reach a different conclusion to the Council in this respect.
21. Whilst noting the concerns in respect of waste being blown from the site, it is reasonable to assume that this could come from various sources. On the

basis of the evidence before me, I am not satisfied that the source of litter is necessarily from the appeal site. In terms of landscaping, I noted on my site visit that a landscaping scheme was being undertaken. This is time would serve to reduce the impact of the buildings and operations upon the site on the character and appearance of the area.

22. Concerns have also been raised about lighting at the Chiltern View Nursery. This relates to a different site to the appeal site and falls outside of the scope of the appeal proposal. It is a matter that should be taken up with the District Council in the first instance.
23. The Council has drawn my attention to the enforcement history upon the site. Whilst this is noted, past breaches of planning control upon a site do not necessarily infer future breaches. I have attached limited weight to this matter in my overall conclusion. In any event, if such breaches occurred in the future, the Council would be in a position to decide whether or not to take necessary action.

### **Conclusion**

24. In light of my findings, I consider that the prevention of outside storage on the site is not reasonable or necessary in the interests of protecting the character and appearance of the area, the living conditions of nearby occupiers or air quality. The proposal would not result in conflict with the development plan taken as a whole or national planning policy as contained within the NPPW and the Framework. I have therefore altered the wording of the disputed condition to remove reference to storage operation.
25. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
26. For the above reasons and having regard to all other matters, the appeal is allowed. I shall vary the planning permission by deleting the disputed condition and substitute it with an amended condition No 10 as indicated in my decision.

*R C Kirby*

INSPECTOR

## **SCHEDULE**

### **CONDITIONS**

1. The development shall commence no later than three years from 2 December 2014. No later than seven days before the date of commencement, written notification of the date of commencement shall be provided to the County Planning Authority.
2. The development hereby permitted shall not be carried out other than in complete accordance with the following plans, drawings and written submissions: Design & Access Statement, dated 11/08/2014; CVN.SHED 3.SP1250 – Location Plan scale 1:1250; CVN.SHED 3 SP500/2 – Site Plan, Scale 1:1250; W.CVN.PLAN 1 – Storage Shed Plan, Scale 1:300; W.CVN.PLAN/2 – Shed Elevations; W.CVN 600- Street View from Wendover Road; Phase I Habitat Survey, dated November 2013 and prepared by Bernwood Environmental Services; Great Crested Newt Ecological Pre-start Method Statement, prepared by Bernwood Environmental Services; Written Statement, dated 10th November 2014.
3. Prior to the commencement of the development hereby permitted, details of the external cladding material to be used in the construction of the shed buildings, including the colour finish, shall be submitted to and approved in writing by the County Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
4. The development hereby permitted shall not be used other than between the hours of 8:00am and 6:00pm Mondays to Fridays, 8:00am and 1:00pm Saturdays and not at all on Sundays or Public Holidays.
5. The combined maximum total number of heavy goods vehicle movements (vehicles over 3.5 tonnes unladen weight) from this planning permission shall not exceed 40 (20 in, 20 out) per day.
6. A record of the number of daily vehicle movements and the tonnage of waste being imported to the site shall be maintained for the duration of the development hereby permitted and shall be made available to the County Planning Authority no later than one week after any request to view them has been made.
7. No loaded heavy goods or skip vehicle shall exit the site without being securely sheeted.
8. No wastes other than construction, demolition and excavation and commercial and industrial wastes shall be imported to and deposited at the site.
9. The combined maximum annual waste throughput from this planning permission shall not exceed 25,000 tonnes per annum.
10. The waste recycling process shall be undertaken solely within the existing and proposed buildings and not on open areas of the site.
11. Stockpiles stored in the open shall consist solely of processed or unprocessed waste materials for recycling and shall not exceed 2 metres in height.
12. No burning of waste materials shall take place at any time.

13. Prior to the commencement of the development, details of external illumination to be used within the site shall be submitted to and approved in writing by the Local Planning Authority. The approved lighting scheme shall be in place and in operation prior to the first use of the shed buildings.
14. Noise from the operations shall not exceed 55 dB LAeq, 1h (free field) as measured at the facades of the nearest residential properties.
15. All plant and machinery used at the site shall be properly silenced and maintained in accordance with the manufacturers' specifications.
16. Crushing and screening operations shall be restricted to once per calendar month, with any one period of use not exceeding 5 days.
17. All vegetation clearance shall be undertaken outside of the bird nesting season (1 March to 30 August inclusive).
18. Prior to the commencement of the development hereby permitted, details of the discharge of water run-off from the shed buildings and external hard surfaces shall be submitted to and approved in writing by the County Planning Authority. The approved details shall incorporate attenuation in accordance with the principles of Sustainable Drainage Systems (SuDS) and shall be implemented prior to the first use of the buildings and thereafter maintained for the duration of the development in a manner which results in no surface water discharge onto surrounding land.
19. The detailed methods & mitigation measures for the avoidance of harm to European Protected Species, as specified in the Ecological Method Statement, submitted in support of this application shall be implemented fully during the implementation of the development and the precautionary mitigation provisions indicated in the Ecological Method Statement shall thereafter be maintained for the duration of the operation of the site as a waste transfer station.
20. Prior to the commencement of the development, a detailed landscaping scheme shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include details of landscape treatment as broadly indicated on the approved plans and should include:
  - (i) Details of the locations, size, species and stem spacing of trees and shrubs to be planted, removed and retained;
  - (ii) Details of the protection measures to be provided for all new trees and shrubs;
  - (iii) A three year programme of maintenance to include the replanting of any new trees or shrubs which die or become diseased.

For the avoidance of doubt, appropriate species in this location should include, but are not limited to blackthorn, hawthorn and beech.

The approved scheme shall be implemented in the first planting season following the completion of the development and maintained in accordance with the requirements of this condition and the approved details.