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## Appeal Decision

Site visit made on 13 May 2021

**by Steven Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> May 2021**

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**Appeal Ref: APP/X1545/W/20/3263085**

**The Commodity Centre, Braxted Park Road, Great Braxted, Essex CM8 3EW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Routebuy Ltd against the decision of Maldon District Council.
- The application Ref FUL/MAL/20/00587, dated 10 June 2020, was approved by notice dated 25 August 2020.
- The development permitted is the change of use of land to a lorry marshalling area, additional car parking and associated landscaping.
- The conditions in dispute are Nos 3 and 4 which state that:  
*3. The use of land hereby permitted shall cease and all hardstanding and stored items shall be removed within six months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-*  
*(i) within three 3 months of the date of this decision a scheme detailing the means of preventing oil and other such liquid pollutants leaking/seeping into the land or controlling such leaking/seeping shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation*  
*(ii) if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State*  
*(iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.*  
*4. Any containers used for the storage of oil and other chemicals shall be stored in areas which do not drain to any watercourse, surface water sewer or soakaway.*
- The reasons given for the conditions are: *3. To ensure the provision of suitable pollution control measures in accordance with policies S8, D1 and D2 of the Maldon District Local Development Plan. 4. To ensure the provision of suitable pollution control measures in accordance with policies S8, D1 and D2 of the Maldon District Local Development Plan.*

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### Decision

1. The appeal is allowed and the planning permission Ref FUL/MAL/20/00587 for the change of use of land to a lorry marshalling area, additional car parking and associated landscaping at The Commodity Centre, Braxted Park Road, Great

Braxted, Essex CM8 3EW granted on 25 August 2020 by Maldon District Council is varied by deleting condition No 3.

### **Application for Costs**

2. An application for costs was made by Routebuy Ltd against Maldon District Council and by Maldon District Council against Routebuy Ltd. These applications are the subject of separate decisions.

### **Procedural Matter**

3. The appellant submitted application Ref FUL/MAL/20/00587 to vary or remove conditions 4,5 and 8 of approved application Ref number FUL/MAL/19/00561. The local planning authority (LPA) determined the application and issued an approval notice whereby the previous condition Nos 4,5 and 8 become condition Nos 3, 4 and 6.
4. The appeal form refers to conditions 4,5 and 8 of the original approval Ref FUL/MAL/19/00561, but which have now become conditions 3,4 and 6 of application FUL/MAL/20/00587. When determining the latter application, the LPA has varied condition no 6 (condition no 8 on the original approval) so that the appellant no longer objects to it and the appeal is therefore restricted to conditions 3 and 4 of planning permission ref: FUL/MAL/20/00578. For the avoidance of doubt, I am therefore determining the appeal in respect of planning permission ref FUL/MAL/20/00587 and as stated on the appeal form and concerning conditions 3 and 4. The appellant's appeal statement of case, at paragraph 1.4, states that *'the conditions the Appellant wishes to oppose are numbers 3 and 4.'*
5. I have afforded the parties an opportunity to comment on the above matter and both agree that the appeal relates to conditions 3 and 4 of application ref FUL/MAL/20/00587.

### **Main Issues**

6. The main issues are (i) whether condition no 3 is necessary in respect of the submission of a scheme for the prevention of the leakage or seepage of oil or other liquid pollutants into the land and (ii) whether condition no 4 is required to require the storage of oil and other pollutants in areas which do not drain to any watercourse, surface water sewer or soakaway.

### **Reasons**

#### *Condition 3 - Leakage/seepage into the land*

7. The marshalling and parking area abuts the existing commercial buildings but is otherwise surrounded by open land. It has a porous surface. The purpose of the condition is to prevent any possible pollutant spillage from seeping into the land.
8. However, the evidence is such that HGVs do not park for any great length of time on the site before moving into the adjoining area of commercial buildings, after which they leave the site. On my site visit, I saw no evidence of oil or any pollutants being stored on the appeal site and the only possible source of pollution therefore would be from the HGVs and cars parked on the site. I consider that spillages from those vehicles would be extremely rare and even if a spillage occurred, it would unlikely be significant in extent.

9. Therefore, I conclude that when considering the condition against the six tests of the National Planning Policy Framework 2019 (the Framework) it would not be necessary or reasonable. I conclude that in the absence of the condition the proposed development would not conflict with the requirements of policies D1 and D2 of the Maldon District Local Development Plan 2017 (MLP) in so far as they seek to protect the environment from pollution by the use of sustainable construction methods. I do not consider that the Council's reference to policy S8 of the MLP is relevant, being more concerned with land use planning strategy.

*Condition 4 - Storage of oil and other pollutants*

10. Condition no 4 requires that *'any containers used for the storage of oil and other chemicals shall be stored in areas which do not drain to any watercourse, surface water sewer or soakaway'*.
11. While the appellant considers that the condition is not necessary because there are no plans for any such storage, there is a possibility that this could change in the future. On this basis, the condition is reasonable and necessary in so far that it seeks to mitigate any potential harm from a pollution point of view. The imposition of such a condition therefore meets the requirements of policies D1 and D2 of the MLP.

**Conclusion**

12. For the reasons outlined above, I find that the condition No 4 is reasonable and necessary and should therefore remain. However, condition No 3 is not necessary and should therefore be deleted. To this extent, I conclude that the appeal should be allowed and the planning permission varied by deleting condition No 3.

*Steven Hartley*

INSPECTOR