



Appeal Decision

Site visit made on 16 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 25 November 2021

Appeal Ref: APP/Z5060/C/20/3257684

Land and premises at Shed A, Barking Logistics Centre, Box Lane, Barking IG11 0SQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Scales (Titan Waste Solutions Limited) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 16 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use to a waste processing site (Use Class Sui Generis).
 - The requirements of the notice are:
 - i) Cease the use of the land at the property as a waste processing site.
 - ii) Remove all alterations and fixtures related to unauthorised use for a waste processing site.
 - iii) Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the words "edged red" and the substitution of the words "edged and hatched black" in section 2 of the notice; by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use to a waste processing site (Use Class Sui Generis) on the land shown edged and hatched black on the plan annexed to this decision, subject to the conditions in the schedule at Annex A.

The s174 appeal on ground (a) and the deemed planning application

Procedural matters

2. Barking Logistics Centre (BLC) is a large area of land enclosed to the north, east and the south by railway lines. There are a range of activities which take place in the open. Towards the eastern end are two buildings, one of which (Shed A) is very large. The Council has drawn the red edge identifying the

land to which the notice relates around the whole of Shed A. However, as the appellant points out and I observed during my site inspection, Titan Waste Solutions (TWS) occupies only the small annex at the far end of the building. The remainder of Shed A is in a storage use totally unrelated to the activities of TWS.

3. The appellant proposes an amendment to the notice plan to reflect the land used by TWS when the notice was issued. This includes land outside of the notice red-edged land accommodating the weighbridge, some offices and vehicle circulation space around the building.
4. Using the powers available under s176(1) of the Act, I shall amend the notice plan accordingly since there can be no injustice to the appellant in so doing. Indeed, not to do so would cause injustice to the Council since success on the ground (a) appeal would result in a planning permission for a waste processing site for the whole of Shed A. This was clearly not the intention of the Council in issuing the notice.
5. The terms of the deemed planning application are set by the breach of planning control alleged. Planning permission is sought therefore for the use as it existed at the issue date in July 2020. In this case that is important since the appellant's noise assessment, dated 13 August 2020, has studied the effects of the development as it was at that time. That is the basis on which my conclusions on the main issue must be drawn although, as I will come to, that is not quite how the enterprise now operates. Inevitably, my observations during the inspection of the site and the surrounding area were made on the basis of the current circumstances.

Main Issue

6. Having reviewed the evidence and inspected the site and the surrounding area, I consider the main issue to be the effect of the development on the living conditions of the residents of the Scrattons Farm Estate (SFE) with regard to disturbance from noise and dust.

Reasons

7. Important to the determination of this appeal is a proper understanding of the environment within which the SFE lies. On any measure, it is one that is dominated by transport infrastructure, business enterprises, associated 24/7 vehicle movements and the noise associated with all of this.
8. Immediately to the north of the SFE is the A13, one of the main highway routes serving East London. To the east is a very large Eddie Stobart distribution depot. To the west is an industrial estate comprising a variety of businesses, including a Biffa Waste Management facility. To the south and between Shed A and the housing estate is a rail line and a strategic freight terminal. To the west of Shed A and also within BLC there is a large open air metal recycling facility. As far as I am aware, most of the facilities described above have 24/7 vehicular access and the whole BLC is a Strategic Industrial Location as defined in the London Plan. Finally, the area lies beneath the flight path to London City airport, a few kilometres to the west.
9. TWS began operations sometime in 2019 and an Environmental Permit (no. EPR/HB3202MM) was issued by the Environment Agency on 28 May 2019. It is a 'standard rules' Permit with the activities permitted described as

'Treatment consisting only of manual sorting, separation, screening, baling, shredding, crushing or compaction of waste into different components for disposal, (no more than 50 tonnes per day) or recovery'.

10. Dust control would, I believe, fall within condition 3.1. In essence, the operator is required to control emissions such that pollution shall not be caused. At TWS this is achieved by a sprinkler system. During my site inspection this was working and it generates a curtain of spray at each of the openings to the building. Noise (and vibration) is subject to condition 3.3. This requires *'emissions from the activities shall be free from noise and vibration at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved noise and vibration management plan, to prevent or where that is not practicable, to minimise, the noise and vibration (emphasis added).'*
11. In evidence the appellant has provided three EPR Compliance Assessment Reports. These relate to visits dated June 2019, September 2019 and February 2020. The first two describe the site as being a fully enclosed building. This is not strictly accurate as for most of the time the roller shutter door in the northern elevation is permanently open to allow waste vehicles to enter and exit the building. This elevation directly faces residential properties within SFE. The building is also described as being 'away from residential properties'. That is a matter of opinion.
12. As the appellant correctly notes, it was only as a result of the final visit that remedial actions were required. These did not relate to the main issue for the determination of this appeal. However, also of note, in my view, is that the dust suppression system was demonstrated rather than operating and there is no evidence that the Agency officers went outside the site to perceive the noise and/or vibration levels.
13. The operation described to and assessed by the appellant's noise consultants is as follows. Skip lorries arrive at the building and, having registered at and used the weighbridge, reverse fully into the building through the opening in the northern elevation before tipping the waste onto the building floor. The lorry then departs. At the time of the assessment, the roller shutter door was broken and could not be closed. The tipped material is then picked both by a mechanical claw on a 360° machine and by hand, with the resulting segregated material stockpiled separately. Further separation of materials is achieved using a trommel screen and shredder. Materials are then loaded into larger bulk carriers within the building later in the day for transfer off-site to other processors. The internal and external layout is shown on drawing TWS-BL-LAY-01 dated August 2020.
14. Hours of operation assessed were 06.00 to 18.00 Monday to Friday, 06.00 to 16.00 Saturday and no working on Sundays or Bank Holidays. Further assumptions were that the trommel and shredder would be located as close as possible to the southern end of the building (and thus as far away as possible from the opening in the northern elevation) and that any bulk vehicle loading and processing after 18.00 (or 16.00 Saturday) would take place within the building and with the roller shutter door closed. Assessments of the effects from the trommel and shredder were calculated rather than measured as they were not positioned as intended at that time. Similarly, calculations were made for the roller shutter door being closed.

15. The conclusion of the appellant's noise assessment is that in the context of nationally recognised standards and planning guidance, sound levels from operations associated with the waste processing facility would not be expected to give rise to a significant adverse impact. A low impact is forecast for the range of operations observed at the site. The Council has made no assessments of its own and has provided no comments upon the assessment submitted by the appellant. I therefore have no contrary technical evidence before me to cause me to disagree with the conclusions of the appellant.
16. However, on the day of my site visit, I spent about 45 minutes within the SFE prior to going to the pre-arranged visit at the site itself. I stood for some time near the children's play area and, for a shorter time, in Levine Gardens. I acknowledge that this could do no more than capture a snapshot of the operation on a particular day.
17. My overriding impression was one of noise from various sources. A significant element was what I find the obtrusive warning sound made when plant and vehicles are reversing. While I could see that some of this emanated from a piece of mobile plant operating at the appeal site, the same sound was clearly coming from elsewhere within the BLC area. Also visible was a further piece of plant, probably a 360° machine, moving materials around. This too was not within the appeal site. It did however seem to me that the dominant sound that could be heard from this part of SFE was generated from within the appeal site.
18. During that period, at least two articulated waste vehicles arrived. One reversed into the building, the other entered in forward gear. If they unloaded waste I did not hear anything that resembled waste being tipped onto a solid floor. Alternatively, if they were loaded with waste to be taken elsewhere, that activity was not audible either. From where I was standing, I could not see them depart as there is a one-way route. However, they must have done as I later saw that both could not have been accommodated at the same time within the building.
19. I could see and hear the mobile plant referred to above reversing out of the building with what initially seemed to be waste in a trailer. It then disappeared from view to be followed by what was the unmistakable sound of solid waste material, probably including metal, being tipped into a container. When I moved to Levine Gardens and observed the site from the highway but looking between two houses, I saw that the 'trailer' was in fact a large bucket/shovel on the front of the mobile plant. The arm was then extended upwards before the waste material was off-loaded into a bulk carrier parked against the side of Shed A outside the appeal site as defined by the appellant. In my judgement, the volume and particularly the nature of the sound made by this activity is harmful to the living conditions of the residents of Levine Gardens.
20. I would add that, whether or not the dust suppression equipment was turned on at this time, I saw no evidence of the dust that local residents have referred to in representations.
21. On arriving at BLC for the pre-arranged site inspection, the scale and nature of the other operations within the area was clear. In particular, there was a great deal of activity and associated noise at Ward's, a metal recycling enterprise. While I was there a freight train also arrived at the siding between the appeal site and SFE to be loaded with materials into the open waggons.

22. Equally striking was the extent to which TWS had expanded. Land at the western end of Shed A was largely used for storage of skips of the capacity typically used by builders at residential properties. It was here too that TWS had the main site office. Along the southern flank of Shed A were a significant number of Titan lorries and vehicle maintenance areas but I understand this is a separate company to TWS and therefore not subject of the appeal application.
23. At the appeal building itself, the roller shutter doors in the above-ground-level openings in the southern elevation were all raised although the appellant's planning statement says that they are kept closed. I understand that the noise assessment was conducted on the basis that they would be closed. One of the doors had a type of waste processing machine protruding through the opening. Although not working at the time, it appears that processed material would be either deposited on the ground or loaded into containers outside of the building. This is not referred to in the appellant's evidence.
24. While the tipping area and most of the material storage bays were as indicated on drawing TWS-BL-LAY-01, the current layout would not permit the trommel and shredder, if used, to be positioned hard against the southern wall and therefore at the furthest point from SFE assumed in the noise assessment.
25. Finally, by the pre-arranged time, the mobile plant referred to above was parked up and the bulk carrier into which it had been off-loading waste had gone. As already stated, the dust suppression system was in operation at each opening in both the northern and southern elevations. I could not judge its effectiveness as the only activity going on, some low-level hand picking of materials, was not generating any noticeable dust.
26. To conclude on this issue therefore, the evidence demonstrates that, subject to the assumptions underpinning the appellant's noise assessment being secured by condition and adhered to, the development carried out and alleged as the breach of planning control will not generate harmful levels of noise or dust, especially when the context of the area within which the SFE lies is taken into account. The development does not therefore conflict with policies BP8 and BR13 of the Borough Wide Development Policies Development Plan Document (DPD), adopted in March 2011 in this regard.
27. The Council also cites DPD policies BP10 and BP11 in the reasons for issuing the notice. Policy BP10 concerns housing density. Policy BP11 is a general design policy, the second part of which addresses the public realm. In the single paragraph of its short appeal statement devoted to supporting its position, the Council has not explained why either policy is of any relevance to this appeal which concerns the material change of use of an existing building with no alteration to its external appearance. I can see no conflict with either policy.
28. For the above reasons, the appeal on ground (a) shall succeed and planning permission for the deemed application shall be granted. However, as I have made clear, the development that is the subject of the deemed application and the development as it existed at the date of my site inspection are somewhat different. To be absolutely clear, my decision and the conditions discussed below and imposed relate to the deemed application. It will be for the appellant and the Council to resolve any matters raised by that in due course.

Conditions

29. The Council has suggested two conditions in the event of planning permission being granted, the appellant has suggested three. The appellant has also made comment on the conditions suggested by the Council. I have considered all of this in the light of the advice in the relevant part of the Planning Practice Guidance (PPG).
30. Both parties propose a condition restricting the hours of operation. The Council proposes a limit of 09.00 to 18.00 Monday to Friday for the site to be open to the public with no operating on weekends or public holidays. Firstly, the site is not open to the public as such. Second, while I appreciate that the suggested hours are probably intended to mitigate the effects of the development on the residents of the SFE (the Council has not, in fact, explained why either condition is put forward), this is not necessary as other controls and conditions achieve this objective.
31. Turning to the appellant's suggested condition, the hours reflect those assessed by the appellant's noise consultant and found to be acceptable. However, as worded, it relates only to the treatment of waste. It also needs to control the receipt of waste and it being tipped inside the building. In my view, given the 24/7 nature of vehicle movements in the wider area, an hours restriction on the movement of recovered materials away from the site would not be justified.
32. The appellant's suggested hours condition also includes an allowance for waste treatment to continue for an extended period of two hours Monday to Friday and three hours on Saturday as long as the access door is shut. I consider that this should be the subject of a separate condition. On the basis of my site inspection, which identified the loading of waste into the bulk carriers external to the building as the most intrusive and harmful element of the operation to the living conditions of local residents a condition needs to ensure that this activity also takes place inside the building with the door shut.
33. It is not necessary to include a location plan as an approved plan since the corrected notice plan achieves the same result. It is important to include the site layout plan TWS/BL/LAY/01 in an approved plans condition since this reflects the layout assessed by the noise consultants. However, both parties will need to address the fact that this is not how the building is now laid out.
34. The appellant also suggests a condition restricting the annual throughput of material to the 75,000 tonnes allowed by the Environmental Permit and requiring records to be kept for inspection by the Council as required. Although this duplicates a requirement of the Permit, it gives a measure of control to the Council and does not require any further work on the part of the appellant since these records are required by the Environment Agency. I agree that this suggested condition meets the tests set out in the PPG.
35. On the basis of my site inspection I consider a condition is required to prevent any waste treatment activity in the open alongside the northern and eastern elevations of the building. Such activity has not been assessed or found to be acceptable by the noise consultants and, in my judgement, may prove detrimental to the living conditions of local residents in SFE in terms of noise and, possibly, dust. I do not believe the same concerns arise from external activity at the southern elevation since the building itself should provide sufficient attenuation and mitigation.

36. For similar reasons, I consider a condition is required to ensure that the dust suppression measures (the curtain of spray currently) operate while received waste is tipped and processed by machinery. It is unlikely, in my view, that hand picking at the level I observed would generate dust at a level which would escape the building and migrate to the SFE.
37. Finally, the Council suggests a temporary condition be imposed for a period of up to a year although no reason for doing so is given. The PPG explains the circumstances in which such a condition could be imposed. The Council has not explained that there would be any change in planning circumstances after a year so the reason for the condition could only be that a trial run is needed to assess the effects of the development on the area. However, in an enforcement case, by issuing the notice, the Council has already deemed the development to be unacceptable. In that sense, the trial run has already occurred. Where, on appeal, the development is found acceptable and permission is granted, a time limit condition does not meet the tests set out in the PPG.

Conclusion

38. It is clear from the representations, and from my inspection of the site, that the plan attached to the enforcement notice is incorrect in that it relates to the whole of Shed A rather than the annex at the eastern end where the material change of use alleged as the breach of planning control was taking place. It is open to me to correct the plan. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
39. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected land identified in the notice. The appeal on grounds (f) and (g) does not therefore need to be considered.

Brian Cook

Inspector

Annex A: Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: TWS/BL/LAY/01.
- 2) Deliveries of waste materials shall be taken at the site only between 06.00 and 18.00 on Monday to Friday; 06.00 to 13.00 on Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 3) Waste materials delivered between the hours specified in condition 2 shall be unloaded/tipped only within the building in the 'waste reception' area shown on approved drawing TWS/BL/LAY/01.
- 4) Machinery shall be operated and waste treatment processes shall be carried out only between 06.00 and 18.00 on Monday to Friday; 06.00 to 13.00 on Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 5) Machinery may also be operated and waste treatment processes may also be carried out between 18.00 and 20.00 on Monday to Friday; 13.00 to 16.00 on Saturday but only with the roller shutter door at the opening in the northern elevation of the building closed.
- 6) Loading of recovered and segregated waste materials into vehicles for removal from the site shall take place only within the building and only with the roller shutter door at the opening in the northern elevation of the building closed and not outside the hours of 06.00 and 20.00 on Monday to Friday; 06.00 to 16.00 on Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 7) No waste management activity other than the necessary circulation of vehicles and use of the weighbridge shall take place on land shown on approved drawing TWS/BL/LAY/01 between the eastern elevation of the building and the approved site boundary and the northern elevation of the building and the approved site boundary.
- 8) Within 3 months of the date of this decision a scheme for the suppression of dust arising from the treatment, processing and movement of waste materials within the building, shall be submitted in writing to the local planning authority for approval. The scheme shall be implemented as approved and shall thereafter remain in use as specified in the approved scheme.
- 9) The development hereby permitted shall not exceed a total annual throughput of 75,000 tonnes per annum. Such records as may be required to permit the local planning authority to determine compliance or otherwise with this condition shall be kept, and those records shall be made available to the local planning authority on request.

End of conditions schedule



Plan

This is the plan referred to in my decision dated: 25 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

Land at: Land and premises at Shed A, Barking Logistics Centre, Box Lane, Barking IG11 0SQ

Reference: APP/Z5060/C/20/3257684

Scale: not to scale

