



Appeal Decision

Hearing held on 9 August 2022

Site visits made on 2 and 9 August 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal Ref: APP/Z1585/W/22/3297769

Greenacres, Packards Lane, Wormingford, CO6 3AH

- 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 Colchester Skip Hire against the decision of Essex County Council.
- The application Ref ESS/11/21/COL, dated 25 January 2021, was refused by notice dated 3 November 2021.
- The application sought planning permission for Erection of Clean Materials Recycling Facility at Existing Established Recycling/Recovery Facility, Relocation of Existing Staff Welfare Facility, Provision of Additional Staff Parking, Culverting Section of Existing Swale, Additional Landscaping, Rainwater Harvesting together with amendments to site operating hours and HGV movement times to permit 24 HGV Movements between 07:00- 16:30 hours on Good Fridays without complying with a condition attached to planning permission Ref ESS/09/18/COL, dated 29 August 2019.
- The condition in dispute is No 11 which states that: *(i) The total numbers of Heavy Goods Vehicle (HGV) movements entering or leaving the site during any single day shall not exceed the following overall limits:
Mondays to Fridays: 150 (75 in/75 out) movements
Saturdays: 74 (37 in/37 out) movements
Sundays and Bank/Public Holidays: none (subject to (vi) below)*
*(ii) Outside the hours specified in Condition 10 above, any HGV movements associated with the site shall be limited to the following times and numbers:
Mondays - Saturdays: 06.00- 07.00: 6 (3 in/3 out) movements 07.00- 07.30: 6 (3 in/3 out) movements
Sundays and Bank/Public Holidays: none (subject to (vi) below)*
For the avoidance of doubt, all movements permitted under Condition 11(i) shall count towards the daily limit for that day as set out under Condition 11 (ii).
(iii) All movements before 07.30 on any day, permitted under Condition 11 (ii) above shall be limited to out-bound movements only.
(iv) All movements between 06.00 - 07.00 on any day, permitted under Condition 11 (i) above shall exit the site by turning right only, towards the B1508.
(v) No HGV movements of any kind shall take place prior to 06.00 on any day, or after 18.30 on Mondays to Fridays, or 13.30 on Saturdays.
(vi) For the purposes of this condition, and for the Good Friday Bank Holiday only, 12 refuse vehicles shall be allowed to leave the site between the hours of 0700 - 07:30 hours and return no later than 16:30 hours making a total of 24 movements. Upon return the 12 refuse vehicles shall park up on the access road in the area coloured red on Drwg No: 120 entitled "Recycling and Recovery Facility Variation of Conditions 03 and 04 Bank Holiday Working" dated Feb 2018.
For the purpose of this condition, each vehicle entering the site shall constitute one movement, and each vehicle leaving the site shall constitute a separate movement.

- The reason given for the condition is: *For clarity and to control the vehicle movements against which the application was determined and in the interests of limiting the effects on local amenity, to control the impacts of the development and having regard to The Essex and Southend Waste Local Plan (adopted July 2017) Policy 10.*
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Colchester Borough Council adopted their Section 2 Local Plan following determination of the application the subject of this appeal. I have determined this appeal accordingly.

Background and Main Issues

3. The appeal site is occupied by a waste management facility. It lies at the edge of the settlement of Wormingford, with an access at its north-east corner onto Packards Lane. The character of the area is mixed, with both residential and commercial properties nearby, including a commercial estate against one site boundary. The wider area is rural and during my site visits, which occurred in the early morning at the time for which permission is sought to begin operations, mid-morning and mid-afternoon, I found that the area was generally quiet. Most of the heavy goods vehicle (HGV) traffic observed during my visits was associated with the site, identifiable as such by the Colchester Skip Hire livery.
4. Planning permission is sought to vary condition 11 on permission ref: ESS/09/18/COL which limits the number of HGV movements occurring in the early morning at the appeal site, and to extend the hours at which HGV movements can occur to earlier in the day. Presently the relevant section of that condition restricts HGV movements to no more than 6 between 0600 and 0700 and up to a further 6 between 0700 and 0730 Monday to Saturday, with no HGV movements on Sundays or public holidays other than a separate clause in the condition relating to Good Friday.
5. The proposal seeks to vary this condition to allow 6 outbound movements between 0530-0600, 10 outbound movements between 0600-0700 and 10 inbound or outbound movements between 0700 and 0730, these only to occur from Monday to Saturday with no HGV movements on Sundays or public holidays other than retaining the existing clause relating to Good Friday.
6. The main issues are therefore:
 - The effect of the proposed extension of operating hours on the living conditions of nearby residents; and,
 - The effect on the character of the area, with particular regard to the effect of site lighting.

Reasons

Living conditions

7. The present condition allows 12 HGV movements to occur at the site between 0600 and 0730. The proposed variation would increase this to 26 before 0730, with movements beginning from 0530. This is a significant increase in the total

- number of movements before 0730, as well as extending the duration of operations further into the night.
8. During my site visits I found that the surrounding area was generally quiet. However, during my early morning site visit the noise of machinery and the striking of metal on metal was audible on Packards Lane outside of the appeal site from 0545 before the departure of HGVs from the site beginning at 0600. During the hearing the appellants stated that vehicles must be tested for operational and road worthiness each day, including the testing of compactors on refuse lorries. These tests take 15 to 20 minutes before the HGV departs. This is consistent with the duration of the noises I heard during my visit.
 9. Evidence provided by the appellants includes noise assessment of a trial operation of HGV movements at the times and number of movements sought in this appeal. This suggests that the operation would not cause disruption to the nearest neighbouring property, Rees Farm, using a 5 minute average sound level.
 10. However, loud noises can cause significant disturbance even if of short duration that would not significantly affect an average sound level. This is particularly true at night, when generally sound levels are low and people are asleep. Submissions from local residents attest to ongoing disturbance from operations at the site and as a result of HGV movements from it. These submissions include awareness among residents of operations at the site from 0500, indicating that residents would be aware of the earlier operating time for which permission is sought.
 11. I am also aware that perceived disturbance can have a cumulative effect. The disturbance experienced by local residents would be increased by the greater number of vehicle movements occurring before 0730, as well as the earlier start of operations. The extended operating hours would also mean potential disturbance occurring before 0530 from the daily operational checks required before the HGVs can leave the site.
 12. The appellants have proposed that the vehicles leaving the site between 0530 and 0600 be parked on the access road the previous working day, with acoustic fencing to provide screening. This would provide some mitigation at that time of day but would not affect the disturbance resulting from the vehicles leaving the site and travelling past nearby dwellings. As all vehicles leaving the site before 0700 must turn right towards the B1508, this would mean up to 26 HGVs passing houses along the road between 0530 and 0730, some of which are sited close to the front site boundary. Otherwise, up to 10 HGVs could turn left from the site between 0700 and 0730 and travel through Wormingford, an increase from the 6 currently permitted at this time, with an attendant potential increase in disturbance to occupiers of properties in the settlement.
 13. The vehicles leaving between 0600 and 0730 would be parked elsewhere in the site overnight, and noise resulting from their preparation and movements would not be affected by the proposed acoustic fencing along the access road. I note the ongoing construction of the clean materials recycling facility to the west of the site along the boundary with the closest dwelling, Rees Farm, and that there will also be acoustic fencing installed along this boundary. However, I am not convinced that this would entirely prevent disturbance to neighbouring occupiers, given that noise from the existing smaller number of vehicle movements was audible from Packards Lane during my site visits.

14. The cumulative effect of the increased number of movements before 0730 and earlier starts six days a week would therefore result in increased disturbance to nearby residents, and significant harm to their living conditions.
15. It is necessary to balance this identified harm against the benefits of the proposed development. The appellants suggest that the HGVs leaving earlier in the day would be able to complete their journeys collecting waste more quickly, returning to the site significantly earlier. This would allow more time for recycling of the collected waste. In addition, by travelling earlier these HGVs would not be operating in urban centres at times of significant congestion, reducing emissions. From the evidence submitted HGVs leaving the site at 0530 could complete their journeys substantially more quickly than those leaving at 0600, although as this was based on a single test it is not clear if this would routinely be the case, nor if similar benefits would apply to the increased departures between 0600 and 0730. While there would be benefits to the appellants and the operation of the facility from the proposed variation of condition 11, I do not consider that these would outweigh the harm to the living conditions of nearby residents.
16. The appeal proposal consequently conflicts with Policies 10 and 12 of the Essex and Southend on Sea Waste Local Plan 2017 (the WLP), Policy SP 1 of the North Essex Authorities' Shared Strategic Section 1 Plan 2021 (the SSSP) and Policies ENV5 and DM15 of the Colchester Borough Local Plan Section 2 2022 (the CBLP). These policies require, amongst other criteria, that development protect residential amenity with regard to noise and disturbance, including cumulative impact in combination with other existing or permitted development.

Character of the area

17. The appeal site is in a rural area, albeit on the edge of the settlement of Wormingford, which comprises a mix of residential and commercial properties. The site is large, with lighting columns throughout, as well as lights attached to the buildings.
18. Due to the site's operating hours there is potential for illumination outside of these time to impact on the character of the area. However, a revised scheme of lighting is proposed that addresses light spillage and pollution. All lights would be focused inward to the site and timer controlled, with the earliest illumination focused on the access road and staff car park, at the farthest point of the site from any nearby properties. This revised lighting scheme would not result in an unacceptable impact to the character of the area, having regard to the existing lighting arrangements at the site. I note as well that the proposed lighting scheme was reviewed and found to be acceptable by the County Council's ecological consultee and I see no reason to disagree with these findings.
19. Had I otherwise been minded to allow this appeal, I am satisfied that the revised lighting scheme could have been secured by an appropriately worded condition. The proposed development therefore accords with Policy 10 of the WLP, Policy SP 1 of the SSSP and Policy DM15 of the CBLP which, when taken together, require that development not have an unacceptable impact on the character and quality of the area in which the development is situated.

Other Matters

20. The Grade II listed Rochfords lies a short distance from the site. The main parties agree that there would be no harm to the significance of this designated heritage asset from the proposed development. Given the separation distance, and my findings in regard to the effect on the character of the area, I see no reason to disagree.

Conclusion

21. The proposed variation of the existing condition would result in unacceptable harm to the living conditions of residents. There are no material considerations, including the identified benefits, that lead me to find otherwise than in accordance with the development plan.

22. Therefore, the appeal fails.

M Chalk

INSPECTOR

Appearances

SPEAKING FOR THE APPELLANT

Mr Michael Bedford KC	Cornerstone Barristers
Mr John Sim	Applied Acoustic Design
Mr Paul Calder	Real8 Group
Ms Jo Wild	Arborterra Ltd
Mr Daniel Cox	Colchester Skip Hire
Mr Darren Read	Create Consulting Engineers
Ms Gemma Holmes	Hybrid Ecology

SPEAKING FOR THE COUNCIL

Mr Terry Burns	Principal Planning Officer
Mr Robert Mansfield	County Noise Consultant