



Appeal Decision

Site visit made on 22 June 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal Ref: APP/Z1585/W/22/3301961

Auto Spares, Station Yard, Great Bentley Road, Thorrington CO7 8HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Wilburn against the decision of Essex County Council.
 - The application Ref ESS/65/21/TEN, dated 22 June 2021, was refused by notice dated 31 January 2022.
 - The development proposed is extension to existing metals recycling facility, including processing of end-of-life vehicles, new access, erection of new operational building, new internal road and turn area, parking and storage of vehicles & metals, landscaping, noise fencing, infrastructure and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for extension to existing metals recycling facility, including processing of end-of-life vehicles, new access, erection of new operational building, new internal road and turn area, parking and storage of vehicles & metals, landscaping, noise fencing, infrastructure and ancillary works at Auto Spares, Station Yard, Great Bentley Road, Thorrington CO7 8HY in accordance with the terms of the application, Ref ESS/65/21/TEN, dated 22 June 2021, subject to the schedule of conditions at the end of this decision.

Main Issues

2. The main issues are the effect of the proposed development on the landscape character of the area, and whether the benefits of the proposed development would outweigh any harm having regard to the requirement to meet the future needs of the plan area for waste management facilities and the locational criteria for such uses.

Reasons

Landscape Character

3. The appeal site consists of land currently used for the sale of cars, land used as a car breaker and a larger area of undeveloped countryside. It is approximately triangular shaped, and bounded by a railway line, Great Bentley Road and agricultural fields. Beyond the road and the railway line lie further agricultural fields, and dwellings on the approach into Thorrington. There is a level crossing in close proximity to the current access to the site.
4. The proposal would extend the use onto the adjacent undeveloped agricultural land. The majority of the site would be open with a new building proposed in

proximity to the railway line. It would also involve a crane and potentially lighting stands which due to their height would increase the visibility of the site from the surrounding countryside. The proposal includes a 0.5m landscaped bund around the site, other than to the railway line where an acoustic fence would be installed, and some of the existing planting within the site retained. The proposal would relocate the existing vehicular access to a location some 70m from the junction of Great Bentley Road and Station Road.

5. There would be a permanent urbanising effect on the currently undeveloped area of the site were the development to be carried out which would inevitably harm its existing rural character. In the short to medium term, this would be exacerbated by the loss of the existing mature roadside hedge to allow for the new access and visibility.
6. An updated landscape and visual impact assessment (LVIA) was submitted with the appeal. While this reached different conclusions to that submitted with the application, both acknowledge there would be an adverse effect on landscape character which would be most pronounced in close proximity to the site. However, and in the longer term, the landscaping scheme would mitigate these to a moderate adverse effect in proximity to the site and negligible to the landscape character areas as a whole. There is no substantive evidence to demonstrate how the development would be visible in the wider landscape or result in a substantial adverse impact. I therefore concur with the appellants findings with respect to the effect of the development on landscape character.
7. The updated LVIA set out the summary findings of both LVIAs with respect to the visual effects of the development. They conclude at worst major-moderate adverse effects at year 1 reducing to at worst moderate-minor adverse at year 15 when the proposed landscaping has matured. All of the identified receptor sites are locations in the surrounding area where the proposal would be most visible. While none of the viewpoints are taken directly from residential properties, the written assessments within the LVIAs do consider the effects on such as at Church Road and Great Bentley Road. The conclusions reached are a reasonable assessment as to the short, medium and long term effects of the development.
8. The site is in proximity to a main road, and I observed large vehicles using it at my site visit. The proposed development would result in a limited number of movements by particularly large vehicles so this would not exacerbate the identified landscape and visual effects.
9. The proposed development would give rise to an irreversible adverse effect on the site itself and adverse effects on landscape character and visual appearance. While the level of harm would decrease as the landscaping matured, there would nonetheless be moderate-adverse landscape effects and moderate-minor adverse visual effects. As such, the proposal would therefore be contrary to Essex and Southend-on-Sea Waste Local Plan adopted July 2017 (WLP) Policy 10 and Tendring District Local Plan 2013-2033 and Beyond Section 2 adopted 25 January 2022 (TDLP) Policy PPL 3 which, taken together and amongst other things, seek to protect the appearance, quality and character of the rural landscape and countryside. However, given the small scale of the proposed development in context, the position of the site in proximity to Thorrington and the lack of long-distance views, these harms would be localised and I therefore attach limited weight to the policy conflict.

Need for the Development and Locational Criteria

10. The proposed development is to allow for the relocation of an existing end of life vehicle (ELV) facility which is currently located at Hythe in Colchester. This site currently provides approximately 3% of the capacity for such disposal in Essex. The Hythe site forms part of a mixed use allocation in the Colchester Borough Council Local Plan and the appellant has been served notice to quit by Colchester Borough Council as the site owner. It is therefore realistic to consider that the use of the site for waste disposal will cease.
11. WLP Policy 1 confirms that there is a need for further non-hazardous and hazardous waste capacity over the plan period, and the Council does not dispute that there is a need to find an alternative site for the existing development. Although the Hythe site is in Colchester, and the Council's statement sets out their view that Colchester Borough Council should take responsibility for the reprovision of the facility, I have not been made aware of any policy requirement within the WLP for councils to maintain or replace capacity within their administrative area.
12. WLP Policies 5 and 6 set criteria for the siting of closed and open waste facilities respectively on unallocated sites and those outside the area of search. Points 1-3 are the same in each policy and each is to be met. The Council's statement confirms that there are no suitable or available sites within the allocations or areas of search. As set out above, there is no dispute that there is a need for the facility.
13. Both parties have confirmed the appeal site was put forward as part of the call for sites during the preparation of the WLP and was not selected. I have not been provided with any reasons as to why. The evidence before me does not demonstrate that the site is at least as suitable as the allocations or area of search with regard to the overall spatial strategy and site assessment methodology associated with the plan. The proposal therefore does not meet the initial requirements of WLP Policies 5 and 6. However, even if I were to find compliance with these requirements, the locational criteria of the policies do not provide any support for development on green field sites or adjacent to existing facilities. In such circumstances, both policies 5 and 6 set out that proposals should be assessed on their merits based on the other policies in the WLP. Policy 10 sets development management criteria.
14. The junction of Great Bentley Road and Station Road is approximately 10m from the Thorington level crossing. Network Rail has expressed concern that the submitted highways information does not adequately assess the ability of large goods vehicles to turn at this junction without blocking traffic looking to exit the level crossing. I have not been made aware of any restrictions on the use of either Great Bentley Road or Station Road by large vehicles. Furthermore, it is not in dispute that the proposal would give rise to a limited number of vehicle movements by large goods vehicles and this could be secured by condition.
15. The development would generate additional traffic on the surrounding road network however this would be for a limited number of trips, mostly by smaller goods vehicles. Despite concerns about climate change, it is not national policy to require development to reduce the number of trips. There is no evidence before me that the proposal would result in any air quality limits being breached. It would be a matter for the local highway authority if large vehicles

using smaller roads on the local network was having an adverse effect on highway safety. No evidence of accidents in the surrounding area has been placed before me. The proposal would therefore not result in an adverse effect on the safe operation of the highway.

16. The appeal was accompanied by a noise assessment which made a number of recommendations, including the provision of an acoustic fence to mitigate the effects of noise to the residential properties that lie on the opposite side of the railway line. These measures could be secured by condition. There is no substantive evidence before me that vibration would be an adverse effect arising from the development. A condition could control lighting to ensure its effects on the living conditions of surrounding occupiers would be acceptable.
17. I have no reason to think the development would have an adverse effect on water resources or drainage systems given the drainage details shown on the submitted plans. It has not been put to me that there would be a loss of best and most versatile agricultural land or an adverse effect on farming, horticulture or forestry. No other issues in relation to the criteria of WLP Policy 10 have been raised and I have no reason to find otherwise.
18. I have also been directed to TDLP Policies PP 7 and PP 13 which relate to employment development and the rural economy and with which the proposal does not accord. However, as there is no evidence before me to suggest that these policies took the specific needs for waste development into account in their formulation, I therefore attach greater weight to the policies of the WLP.
19. The proposal would therefore be in accordance with WLP Policy 1 which seeks to ensure that the future needs of the plan area for waste management facilities are met and WLP Policy 10 which sets out development management criteria. I attach significant weight to meeting this need.

Other Matters

20. The site would require an Environmental Permit. The Environment Agency, who would issue it, have not raised any concerns. However, they have not indicated the matters that would be controlled through this process, nor have the parties. I therefore have determined the appeal with respect to all relevant land use planning considerations. This application must be considered on its own planning merits. Decisions taken elsewhere do not necessarily indicate that the same decision should be reached elsewhere, particularly if that decision was taken under the auspices of a now superseded development plan. The effect of the development on property values would be a private matter.

Conditions

21. The Council has suggested a number of conditions should the appeal be allowed. I have had regard to these in light of the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework) and have made minor amendments where required to ensure compliance with those tests. I have imposed the standard condition relating to approved plans in the interests of certainty but have removed the reference to non-material amendments and amendments by other conditions as it is imprecise and the reference to the approved application as this is specified in my decision. I have also amended the plan numbers to those of the plan numbers shown on the drawings before me.

22. The noise assessment has been carried out on the assumption of specific hours of operation for the site. It is therefore reasonable and necessary for the site to only operate during those hours to ensure there would not be an adverse effect on the living conditions of surrounding residents. I have amended the wording of this condition in the interests of precision and enforceability to make clear it relates to the operational use of the site.
23. The National Planning Policy for Waste confirms monitoring and reporting are part of the responsibilities of the waste planning authority. It is therefore reasonable and necessary for provision to secure this. While I note the application form provides an indication of the expected throughput of the site, there is no evidence before me as to why it would be necessary to restrict the quantity of waste dealt with at the site. I have therefore not imposed this condition.
24. It is reasonable and necessary in the interests of highway safety to ensure there is safe and suitable access and parking, including for cycle and powered two wheel vehicles, prior to it being brought into use. It is similarly considered reasonable and necessary to ensure that mud and debris are not deposited on the highway. I have amended this condition to make clear this refers to both the construction and operational stages of the development. It is reasonable, necessary and related to the development proposed to limit the number of large vehicles to prevent an adverse effect on the operation of the level crossing. As vehicles smaller than 7.5 tonnes can be considered to be heavy goods vehicles, I have amended this condition to refer to the size of the vehicle. It is not necessary to specify compliance with other conditions. The approved plans provide for visibility, access and gates as sought by the local highways authority in its suggested conditions. It is not necessary for there to be a construction traffic management plan given the limited scale of the development and requirements related to road signage or traffic regulation orders are controlled via other legislation.
25. While a condition has not been suggested by the Council, it is reasonable and necessary to require the development to be carried out in accordance with the mitigation measures set out in the noise assessment. Given those comments, which identified that the noise assessment included assumptions about working practices at the proposed development, it is reasonable and necessary to require monitoring to ensure the measures are effective. I have amended the suggested condition to require this to commence with the operation of the site and for a mitigation scheme to be provided should the noise monitoring reveal unsatisfactory results to ensure that the condition would be effective. I have also limited the monitoring period to two years of assessments which do not show an adverse effect on the living conditions of surrounding occupiers. There is no justification before me for the imposition of an absolute noise limit condition, nor is there justification for controls over the noise from vehicle warning systems.
26. It is necessary for the height of any stockpiled materials to be controlled to mitigate the visual effects of the development and for this to be limited to the height specified in the LVIA as it is on that basis the development has been found to be acceptable. It is also reasonable and necessary for details of any illumination at the site to be controlled to ensure there would not be an adverse effect on the character and appearance of the surrounding area or the living conditions of neighbouring occupiers. I have added a requirement to

ensure there would not be an adverse effect on bird and bat boxes as requested by the Place Services ecologist.

27. The approved plans include full details of the proposed landscaping and its maintenance and no further detail is necessary. Notwithstanding, it is necessary and appropriate to ensure that the landscaping scheme is brought forward as soon as possible given its importance in making the development acceptable. Additionally, I consider it necessary to require the replacement of any planting which dies within the first fifteen years of the development being occupied to ensure that it would be adequately screened and for it to be retained in perpetuity. It is also necessary to ensure that no operations associated with the proposed use are carried out within this area.
28. The preliminary ecological appraisal sets out measures to mitigate the effects on biodiversity during construction and it is reasonable and necessary to secure these measures. This is with the exception of the measures in relation to bats as those can be secured through the proposed lighting scheme condition. There is no explanation as to why further mitigation measures should be sought, therefore that condition would not be necessary. It is reasonable and necessary to secure the tree protection measures set out in the arboricultural impact assessment in the interests of visual amenity and biodiversity.
29. It is reasonable and necessary for any works involving fuels or other liquids which could contaminate the surrounding area to take place in locations which will prevent such contamination in the event of spillage. I have made amendments where necessary to ensure the conditions are enforceable.
30. There is no substantive evidence before me to justify the imposition of a condition restricting the use of the site to metal recycling or recycling of end of life vehicles only, given the advice in the Planning Practice Guidance¹ that conditions restricting the future use of permitted development rights may not be reasonable or necessary. Furthermore, the suggested condition is not precisely defined and therefore does not pass the tests set out in paragraph 56 of the Framework.

Conclusion

31. The National Planning Policy for Waste confirms that local plans should identify sufficient opportunities to meet the identified needs of their area for the management of waste streams. While the WLP has sought to do that by identifying areas of search, there are no suitable sites available. I attach significant weight to the compliance of the proposal with the development plan in making adequate provision for managing waste in light of the identified shortfall over the plan period and the contribution made by the existing site.
32. While there would be inevitable adverse effects from the development of the site in terms of landscape and visual impacts, these effects would largely be experienced in proximity to the site and mitigated through time as the substantial landscaping scheme matures. Furthermore, part of the site is already developed, with a particularly industrial character due to the existing waste use and is in proximity to urbanising features associated with the railway line. No adverse effects with regard to the other locational criteria set out in

¹ Use of planning conditions Paragraph: 017 Reference ID: 21a-017-20190723 Revision date: 23 07 2019

the WLP have been identified. The conflict with the development plan is therefore limited.

33. As such, the proposed development would comply with the policies of the development plan when read as a whole. There are no material considerations of sufficient weight to indicate a decision should be taken otherwise. The appeal should therefore be allowed.

J Downs

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: JGRE 473/2 – 001 Rev N; JGRE 473/2 – 002 Rev Q; P01i rev 1i; P02e Rev 2e; P03b Rev 3b; and CC/001.
- 3) Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between 08:00 hours to 17:30 hours Monday to Friday, 08:00 hours to 16:00 hours Saturdays and at no other times, including on Sundays, Bank or Public Holidays.
- 4) From the date of this permission the operators shall maintain records of their quarterly throughput and shall make them available to the waste planning authority within 14 days, upon request.
- 5) The development hereby permitted shall not be brought into first use until the construction of the site access road, as shown on the approved plans has been completed. No other access shall be used by vehicles to enter or exit the site.
- 6) The development hereby permitted shall not be brought into first use until parking facilities have been provided in accordance with the approved plans. The vehicle parking area shall not be used for any purpose other than the parking of vehicles that are related to the use of the development and shall be retained for that purpose.
- 7) The development hereby permitted shall not be brought into first use until cycle and powered two-wheel vehicle parking facilities have been provided in accordance with a scheme to be submitted to and approved in writing by the waste planning authority. The submitted scheme shall provide for covered parking facilities. The approved parking facilities shall be retained for that purpose thereafter.
- 8) No commercial vehicle shall leave the site during the construction and operational stages of the development, unless its wheels and underside chassis have been cleaned to prevent materials, including mud and debris, being deposited on the public highway.
- 9) The total number of movements associated with the development hereby permitted by vehicles with a gross weight of 7.5 tonnes or more shall not exceed more than 2 movements (1 in and 1 out) per day.
- 10) The development hereby permitted shall be carried out in accordance with the recommendations set out in Section 2 of the Noise Impact Assessment dated 25th November 2020 reference dB/Thorrington/9003/ML/012.
- 11) Before the development commences, details of a scheme for the monitoring of noise levels from the site shall be submitted to and approved in writing by the waste planning authority. The submitted scheme shall include:
 - a timetable for monitoring and reporting to the waste planning authority to be carried out at not less than three monthly intervals from the date operation of the site commences;
 - provision for monitoring to be carried out for at least 2 separate durations of 30 minutes separated by at least 1 hour during the working day and the results shall be submitted to the waste planning authority within 1 month of the monitoring being carried out;

- locations for monitoring;
- details of the monitoring to be carried out and results submitted, to include LA90 and LAeq noise levels, the prevailing weather conditions, details and calibration of the equipment used for measurement, and comments on other sources of noise which affect the noise climate;
- details of the provision to be made for the submission and implementation of further mitigation measures should the results of monitoring demonstrate the noise from the development would have an adverse effect on the living conditions of surrounding residents.

The development shall be carried out in accordance with the approved scheme until there has been two years of monitoring with no evidence of adverse effects on the living conditions of surrounding residents.

12) No materials shall be stockpiled or stored at a height greater than 3.65 metres when measured from the adjacent ground level and shall then only be in the locations identified as 'Storage' on Drawing No. P02e Rev 2e.

13) No fixed lighting shall be erected or installed on-site until a lighting scheme has been submitted to and approved in writing by the waste planning authority. The submitted scheme shall include:

- an overview of the lighting design including the maintenance factor and lighting standard applied with a justification as why these are considered appropriate;
- details of the location, height, design, luminance and hours of operation of any external lighting;
- a lighting drawing showing the lux levels on the ground, angles of tilt and the average lux (minimum and uniformity) for all external lighting units proposed;
- a contour plan detailing the likely spill light, from the proposed lighting, in context of the adjacent site levels.
- demonstrate the lighting has been designed to minimise levels of light spillage to adjoining properties and highways.
- demonstrate that there would not be an adverse effect on the bird and bat boxes to be provided within the site.

The lighting shall thereafter be erected, installed and operated in accordance with the approved details.

14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the commencement of the development; and any trees or plants which within a period of 15 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

15) The landscaped area shown on the approved plans shall be retained in perpetuity and no operations associated with the metals recycling facility, including processing of end-of-life vehicles shall be carried out within the areas shown as landscaped.

16) The development hereby permitted shall be implemented in accordance with the impact avoidance precautionary measures set out in section 5.1 of the

Preliminary Ecological Appraisal (Skilled Ecology, June 2021) except insofar as they relate to bats.

- 17) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained trees branches, stems or roots be pruned, in accordance with Drawing No. 182-02 Rev D, dated 11 May 2021, titled 'Tree Constraints Plan'.
- 18) Any fuel, lubricant or/and chemical storage vessel (whether temporary or not) shall be placed or installed within an impermeable container with a sealed sump and capable of holding at least 110% of the vessel's capacity. All fill, draw and overflow pipes shall be properly housed within the bunded area to avoid spillage. The storage vessel, impermeable container and pipes shall be maintained to prevent leaks for the life of operations on site/the development hereby permitted.
- 19) Repair, maintenance and refuelling of plant, equipment and machinery shall only take place on an impervious surface drained to an interceptor.
- 20) No salvaging operations, including the de-polluting and dismantling of end-of-life vehicles, shall take place outside of the building shown on the approved plans.

[END]