



Appeal Decision

Site visit made on 14 May 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2024

Appeal Ref: APP/B5480/W/21/3289582

**The Refuse Container Unloading Jetty, Rainham Landfill Site,
Coldharbour Lane, off Ferry Lane, Rainham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Land and Water Remediation Limited against the Council of the London Borough of Havering.
 - The application Ref is P0803.21.
 - The application sought planning permission for the permanent retention of the jetty, and associated infrastructure, together with a change of use of it to allow continued use in association with the Landfill and use in association with the Rainham Lagoons restoration project and as a marine logistics hub without complying with a condition attached to planning permission Ref P0995.17, dated 2 February 2018.
 - The condition in dispute is No 3 which states that: *During the operation of the landfill site in accordance with Planning Permission Reference P1566.12, the total number of lorry movements to or from the jetty shall not exceed 100 loads (total 200 movements). After 31 December 2026, or when material is no longer permitted to be imported onto the landfill site, whichever is the sooner, the total number of lorry movements to or from the jetty shall not exceed 80 loads (total 160 movements). A detailed log of all lorry loads and movements to and from the jetty shall be kept at all times and available for inspection in the jetty office (office on the weighbridge).*
 - The reason given for the condition is: *In order that the activity associated with the use is an acceptable level in terms of noise, visual amenity and compatibility with future recreational use of the area.*
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Decision

1. The appeal is dismissed and planning permission is refused.

Applications for costs

2. An application for costs was made by the Council of the London Borough of Havering against Land and Water Remediation Limited. This application is the subject of a separate Decision.

Preliminary Matters

3. A separate appeal¹ for the non-determination of a planning application for works at the Rainham Lagoons restoration project was made by the appellant. However, on 4 April 2022, this appeal was withdrawn by the appellant, at the request of the Council.

¹ Ref. APP/B5480/W/21/3289583

Background and Main Issues

4. The appeal site is located on the north bank of the river Thames, to the south of Rainham. The whole of the London Borough of Havering is within an Air Quality Management Area (AQMA) due to the levels of Nitrogen Dioxide (NO₂) and particulate matter (PM₁₀) from unspecified road transport.
5. The area containing the appeal site has been used for waste landfill for many years, including separate household waste and dredged materials. As part of the latter, wildlife habitat important for breeding and over-wintering wetland birds was to be created in the form of silt lagoons.
6. In 1986, much of the area was designated a Site of Special Scientific Interest (SSSI), as part of the Inner Thames Marshes. However, following the cessation of dredging in the early 21st century, these lagoons began to dry-out, changing the habitat so that it no longer favoured wetland birds.
7. A restoration programme is now underway involving various stakeholders to restore the Inner Thames Marshes SSSI to a more favourable condition, using further dredged materials to restore the silt lagoons.
8. As part of the wider restoration of the area, and in addition to the creation of wildlife habitats, there would be a continuing recreational use of parts of the area. Recreational footpaths/bicycle paths exist that link the appeal site to Rainham railway station to the north. These footpaths include and connect to the London LOOP public right of way that passes close to the appeal site.
9. On 22 September 2016, the Council granted planning permission² for *the continuation of waste inputs and operation of other waste management facilities (materials recycling facility, waste transfer station, open air composting site and associated soil plant, gas engines, leachate treatment plant, and incinerator bottom ash processing) until 2024 and re-profiling of final contours*.
10. On 2 February 2018, the Council granted planning permission³ for *the permanent retention of the jetty, and associated infrastructure, together with a change of use of it to allow continued use in association with the Landfill and use in association with the Rainham Lagoons restoration project and as a marine logistics hub* (the original planning permission).
11. On 4 April 2018, the Council is said to have granted planning permission⁴ for a revised restoration plan for the site of the silt lagoons, from one previously approved in 1980.
12. On 27 April 2021, the Council validated the appeal application which seeks to vary Condition 3 of the original planning permission so as to allow for an increase in vehicle movements to a maximum of 600 vehicle movements per day (300 loads). This is said by the appellant to be needed so as to be able to use waste material from the excavation of the Thames Tideway Tunnel overflow sewer in the silt lagoon restoration.
13. In its appeal statement, the Council states that it does not consider the appeal application to be valid. The Council refers to a subsequent planning application

² LPA Ref. P1566.12

³ LPA Ref. P0995.17

⁴ LPA Ref. P2076.17

in February 2022⁵ which is said to seek *to amend conditions to allow waste processing and storage of non-restoration materials on site*.

14. The Council states the Design and Access Statement in support of the 2022 planning application P0144.22 shows the proposed vehicle movements would be within the increased vehicle movements sought by the appeal proposal. Consequently, the Council considers the appeal proposal is related to an expanded use of the silt lagoons site, including importation, processing and storage of waste material. The Council considers that as this would not solely be concerned with the restoration of the silt lagoon, it would be beyond the scope of the s73⁶ planning application / appeal.
15. With reference to paragraph 13(b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations), the appeal proposal was considered to be within the Impact Risk Zone (IRZ) of the Inner Thames Marshes SSSI and four other SSSIs⁷. Consequently, the Secretary of State undertook a screening of the proposal during the appeal process.
16. To enable the screening to take place, further information was requested from the appellant in a letter dated 5 December 2023, which was copied to the Council. The appellant responded in a letter dated 5 February 2024, which was also copied to the Council.
17. On 25 April 2024, the Secretary of State advised the appellant and the Council that whilst there may be some impact on the surrounding area and nearby SSSIs as a result of this development, it would not be of a scale and nature likely to result in significant environmental impact. It is not, therefore, Environmental Impact Assessment (EIA) development.
18. Consequently, the main issues are whether the proposal:
 - is suitable to be determined under s73 of the Act;
 - would adversely affect the Inner Thames Marshes SSSI and other nearby SSSIs;
 - would adversely affect the designated AQMA containing the appeal site; and,
 - would adversely affect the recreational use of the area.

Reasons

Section 73

19. As previously stated, the Council validated the s73 application that is the subject of this appeal and notified the appellant of this. In its Statement of Case, the Council now considers this s73 application, and consequently the s73 appeal, to be invalid. There is no evidence before me that shows the Council notified the appellant that they no longer considered their application to be valid, prior to the appeal for non-determination being made.

⁵ LPA Ref. P0144.22

⁶ section 73 of the Town and Country Planning Act 1990 (as amended) (the Act)

⁷ Purfleet Road Aveley SSSI; Ingrebourne Marshes SSSI; Purfleet Chalk Pits SSSI; and Abbey Wood SSSI.

20. The planning permission to which the appeal condition is attached is manifestly much wider than as described in the Council's Statement of Case, including at paragraphs 6.7, 6.11 and 9.1. In addition to being used in association with the silt lagoons restoration, the planning permission allows the permanently retained river jetty and the associated infrastructure, including part of Coldharbour Lane, to also be used in association with the landfill operation and as a Marine Logistics Hub.
21. The Council states that the supporting statement for the 2022 planning application claims 'the vehicle movements associated with the current and proposed development will be within the HGV movements per day proposed...' in the appeal application⁸.
22. I am not fully familiar with the 2022 planning application and there is no evidence before me that the Council has granted planning permission for this proposal. In any event, this is a separate matter. The appeal proposal would not result in a change to the description of development for the original planning permission, and the 2022 application has no bearing on the assessment of the effects of increasing the permitted number of vehicle movements to and from the jetty, as the appeal proposal seeks to do.
23. The potential implications of the Council granting planning permission for the 2022 application, or the consistency or otherwise of any such approval with the original planning permission, are clearly not relevant to the appeal proposal.
24. For these reasons I find the Council's position to be inaccurate and confused with regard to the validity of the proposal. I am satisfied from the evidence before me that the application that is the subject of this appeal is valid. No compelling evidence has been provided to the contrary.

SSSIs / AQMA / Recreational use of the area

25. The appellant provided very limited information with their application in terms of the likely effects of the proposed increase in vehicle movements on local air quality, on the nearby SSSIs and on the current and future recreational use of the area.
26. Further evidence was provided by the appellant to facilitate the EIA screening of the proposal. However, this does not address the actual vehicle movements at the appeal site as part of the current operation of the silt lagoon restoration, or for the separate landfill use, or in connection with the use of the jetty as a Marine Logistics Hub.
27. Furthermore, no details have been provided regarding the vehicle movements servicing the silt lagoon restoration, which do not use the appeal site, but the wider road network instead.
28. The appellant acknowledges that the proposal would result in the increased use of the appeal site and that there would be a consequent increase in PM₁₀ particulate matter from vehicle emissions and other potentially dust generating activities. On this basis there is also likely to be an increase in NO₂ from vehicle emissions at the appeal site.

⁸ LPA Ref. P0803.21

29. Whilst the appeal site is a private road it is located adjacent to the Inner Thames Marshes SSSI; is located close to four other SSSIs; is located within an AQMA; and, is adjacent to a number of recreational pathways. There is no substantive evidence before me that the effect of the increased emissions / dust would not cause harm to these receptors.
30. The appellant states that the increased use of barges to transport material to the silt lagoons would lead to a reduction in vehicle movements on the wider road network and so there would be a reduction in harmful emissions overall.
31. However, there is no evidence to support this. It seems equally likely that the increased use of barges would be in addition to vehicles using the wider road network to transport materials to the lagoons, meaning an overall increase in harmful emissions.
32. Furthermore, there would be no means of controlling the number of vehicles using the wider road network as part of the restoration works. Whilst s73 does allow me to impose further conditions were the appeal to be allowed they would still need to meet the six tests for conditions⁹.
33. A condition seeking to control the numbers of vehicles using the wider road network for the silt lagoon restoration would fail the test of relevance to the development permitted. The original planning permission concerns the use and operation of the jetty and associated infrastructure, not the restoration of the silt lagoons themselves.
34. I note the appellant's comments on mitigation measures that are said to be deployed to reduce dust from vehicles using the jetty to transport materials to the silt lagoons. The quantity of material transferred in this way would increase as a result of the proposal and this is not a matter that is controlled by the original planning permission.
35. Under s73 of the Act, I am satisfied that a further condition regarding this matter could be imposed on any grant of planning permission were the appeal to be allowed, which would meet the six tests for conditions. However, there is no evidence of the effectiveness of such measures or that such a condition would address the harm I have identified above.
36. Whilst I note the EIA screening direction's conclusion, this is in relation to whether the proposal would be considered EIA development under the EIA Regulations. It does not directly address whether the proposal would cause unacceptable harm to air quality in the area, or to its recreational use, or would adversely affect the features of the adjacent and nearby SSSIs that caused them to be designated as such.
37. Once completed, the restoration of the Inner Thames Marshes SSSI would clearly be beneficial and would support the future recreational use of the area. To enable this to happen, vehicles must transport the materials needed for the restoration to the silt lagoons site. This would entail emissions from the vehicles, and dust from the materials, being released in the area.
38. These releases have been taking place for some time now, pursuant to the restoration of the silt lagoons and I note the appellant's comments regarding baseline data from nearby air quality monitoring stations in the London

⁹ Paragraph 56 of the National Planning Policy Framework December 2023 (the Framework).

Boroughs of Bexley and Havering. However, these are some distance from the appeal site and in any event, the data is not in the evidence before me.

39. I note the comments of Natural England and the Environment Agency on the proposal. However, from the available evidence I consider it very likely the significant intensification of the use of the appeal site proposed would mean there would be a significantly increased release of emissions and dust. I am satisfied this would have an adverse effect on local air quality, on the Inner Thames Marshes SSSI and other nearby SSSIs, and on the recreational use of the area. Whilst this would be for a limited period, it would cause unacceptable harm. No compelling evidence has been provided to demonstrate otherwise.
40. For these reasons, the appeal proposal would adversely affect the Inner Thames Marshes SSSI and other nearby SSSIs; would adversely affect the designated AQMA containing the appeal site; and, would adversely affect the recreational use of the area. It would, therefore, conflict with Policies 12 (healthy communities), 18 (open space, sports and recreation), 30 (biodiversity and geodiversity), 33 (air quality), and 34 (managing pollution) of the Havering Local Plan 2021, and with the Framework.

Other Matters

41. The wording of the condition that is subject to this appeal fails the test of precision. Whilst it specifies the number of permitted vehicle movements it does not say whether this would be per hour/day/week/month/year. Were the appeal otherwise acceptable I would need to address this matter. However, as I am dismissing the appeal for other reasons, this is not a matter that concerns me.

Conclusion

42. For the reasons given above I conclude the appeal is dismissed and planning permission is refused.

Andrew Parkin

INSPECTOR