



Appeal Decision

Site visit made on 11 August 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2025

Appeal Ref: APP/J1535/W/25/3364275

The Old Waterworks, Green Lane, Waltham Abbey EN10 6RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant 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 Mr M Smith against the decision of Epping Forest District Council.
- The application Ref is EPF/2243/24.
- The application sought planning permission for Retrospective use of employment land as a construction contractors compound with associated storage and car parking. There is also an ancillary small office and welfare facility. Temporary double and single stacked containers and store racking are located around the perimeter of the compound and are covered by a temporary sheet roofing structure to protect stored goods, plant and machinery from inclement weather without complying with conditions attached to planning permission Ref EPF/2044/23, dated 30 August 2024.
- The conditions in dispute are Nos 2, 3, 5, 6, 7, 8, 9 and 10 which state that:
 - 2: *'The use hereby permitted shall only be open between the hours of 8.00am to 18.00pm on Monday to Friday and 8.00am - 12.00 Saturday and no opening Sundays and Bank Holidays.'*
 - 3: *'The temporary scaffolding and steel roof construction shall be removed from the site within six months of the decision date in accordance with a scheme of work submitted to and approved by the local planning authority. The scheme of work shall be submitted to the Local Planning Authority by no later than 3 months of the decision date.'*
 - 5: *'Within 3 months of the date of this decision, a Service Management Plan outlining how the company will manage and deliver its service shall be submitted to and agreed in writing to the Local Planning Authority. The details of the approved plan shall be permanently adhered to. Details shall include:*
 - (a) *specify the provisions to be made for the control of noise*
 - (b) *be based on the results of a Noise Assessment*
 - (c) *assure that, for fixed plant, the rating level of noise emitted from the site, measured at the closest boundary of the nearest residential dwellings, shall not exceed the existing background level.*
 - (d) *assure that, for other operations on site, the rating level of noise shall not exceed the existing background level at the positions described above. Measurement, assessment and works shall be made according to British Standard BS4142:2014 and BS 5228.*
 - (e) *Measures to control disruption;*
 - (f) *Monitoring and Management;*
 - (g) *On-site parking capable of accommodating all staff and sub- contractor vehicles clear of the public highway'*
 - 6: *'No external lighting shall be installed on the site at any time.'*
 - 7: *'Within 3 months of the date of this decision notice, the height of all storage containers within the site shall be reduced so that they are no higher than 1 container, i.e. no higher than 2.9m from natural ground level. No container shall be stacked on top of another. All containers shall also be moved 2m away from the southern boundary of the site. The site will be maintained as such in perpetuity.'*
 - 8: *'All plant, machinery and vehicles used on any part of the site shall be fitted with effective noise attenuating equipment which shall be regularly maintained. When operating in proximity to residential properties, non-audible reverse warning alarm systems shall be deployed.'*
 - 9: *'Within 3 months of the date of this decision notice, a details of a traffic management plan shall be submitted to and approved by the Local Planning Authority. The details shall include:*
 - *Off peak times delivery times for Heavy Good Vehicles.*

- *Details of measures to avoid the road being blocked by Heavy Good Vehicles at any time*
- *Signage for drivers and other users of the highway*
- *Instructions for drivers entering and existing the site and lane.*

The approved Plan shall be carried out in full for the duration of the use.'

10: *'Within 6 months of the date of this decision, details of a tree screen close to the perimeter of the site shall be submitted to and approved in writing by the Local Planning Authority. The Tree Screen works shall be carried out in accordance with the approved details. The works shall be carried out within the first planting season after they are approved. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, that tree, or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree, or plant of the same species and size as that originally planted shall be planted at the same place.'*

- The reasons given for the conditions are:

2: *'In order to minimise disturbance to local residents, in accordance with Policies DM9 & DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.'*

3: *'The scaffolding and steel roof is constructed of materials of a temporary nature and is detrimental to the visual amenities of the locality in accordance with Policy DM4 and DM9 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.'*

5: *'To protect the amenity of the area, in accordance with Policies DM9 & DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.'*

6: *'To ensure that the use does not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours, in accordance with Policies DM9 & DM21 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.'*

7: *'In order to protect views of the Lee Valley Regional Park and in the interests of general amenity of the area in accordance with policy DM9 of the Adopted Local Plan.'*

8: *'In the interests of neighbouring residential amenity in accordance with Policy DM9 of the Adopted Local Plan.'*

9: *'To minimise the adverse impact of the development on the free flow of traffic, neighbouring amenity and the character and appearance of the Lane in accordance with Policies T1 and DM9 of the Local Plan.'*

10: *'To comply with requirements of Section 197 of the Town and Country Planning Act 1990 as well as to safeguard the amenity of the existing trees, shrubs or hedges and to ensure a satisfactory appearance to the development, in accordance with Policies DM3 & DM5 of the Epping Forest District Local Plan 2011-2033 (2023)'*

Decision

1. The appeal is allowed and planning permission is granted for retrospective use of employment land as a construction contractors compound with associated storage and car parking. There is also an ancillary small office and welfare facility. Temporary double and single stacked containers and store racking are located around the perimeter of the compound and are covered by a temporary sheet roofing structure to protect stored goods, plant and machinery from inclement weather at The Old Waterworks, Green Lane, Waltham Abbey EN10 6RS in accordance with the application Ref EPF/2243/24, without compliance with condition numbers 3, 5, 6, 7, 8, 9 and 10 previously imposed on planning permission Ref EPF/2044/23 dated 30 August 2024 and subject to the conditions in the attached schedule.

Background and Main Issues

2. Planning permission was granted in August 2024 for the retrospective use of the employment land as a construction contractors compound with associated storage and car parking. The site is within the Green Belt.

3. Although retrospective permission was sought, on my visit I observed that the site had been completely cleared. Notwithstanding this, the original permission was for construction contractors compound and I have dealt with the appeal on the basis of what was applied for.
4. The appellant seeks to remove or vary a number of the conditions that were imposed on the original permission relating to matters including the operating hours, height and location of containers, management plans, noise attenuation measures and landscaping.
5. The main issues are, therefore, whether the disputed conditions are necessary and reasonable to protect the living conditions of nearby occupiers and the character and appearance of the area.

Reasons

Condition 2

6. The construction compound would store construction materials and equipment, with construction contractors coming to the site to load vehicles.
7. There is a neighbouring residential property which was granted via deemed consent. Irrespective of how the property got approval, a residential property is nevertheless in close proximity to the compound and is therefore a material consideration. Further residential properties are also located a short distance from the appeal site on Green Lane.
8. The appellant proposes a variation to condition No 2 which would allow the compound to open at 6.30am rather than 8am. I note the appellants concern that the existing opening hours restrict the ability to use the site for the intended purpose. However, disturbance arising from passing vehicles and from the use of the compound early in the morning is likely to be discernible and distracting at a time when neighbouring residents would typically expect ambient noise levels to be lower, irrespective of the site being allocated for employment land.
9. As I have no substantive technical evidence before me, such as a noise assessment, which demonstrates the existing and predicted noise levels at the appeal site, I cannot be satisfied that earlier opening hours would not be harmful to the living conditions of neighbouring residents. In this regard, I find that condition No 2 is reasonable and necessary to protect the living conditions of nearby occupiers in accordance with Policy DM9 of the Epping Forest Local Plan (2023) (LP).
10. Whilst the site may previously have been used for storage, I have limited information as to how the site operated historically therefore this does not alter my view above.

Condition 3

11. At the time of the original application, the description of development referenced temporary single and double-stacked containers on the site, along with a temporary sheet roofing structure for plant and machinery. Condition No 3 was imposed, requiring that the roofing structure was removed within six months due to concerns over the character and appearance of the area. As the structure is no longer present on site, this condition has effectively been discharged. Therefore,

condition No 3 is no longer necessary in the interests of either the character and appearance of the area or the living conditions of neighbouring occupiers.

Condition 6

12. Considering the use of the site is for a construction compound, I find that condition No 6 preventing any external lighting, is unduly restrictive. In the winter months, during the current permitted operating hours, the site would be in darkness for periods in the morning and late afternoon/early evening. To have no lighting would be unreasonable. The reason for the imposition of the condition was to ensure no undue disturbance would be caused to neighbouring properties. I have carefully considered the appellant's suggestion of varying the condition to restrict external lighting to only the hours of site operation. However, notwithstanding the potential use of portable lighting, given the area surrounding the appeal site has generally limited development and associated light sources, I consider it is reasonable for the local authority to have some control on the type and lux of fixed lighting installed on the site to ensure the living conditions of neighbouring occupiers would not be unduly harmed in accordance with Policy DM9 of the LP. Therefore, I will remove condition No 6 and impose a new one requiring that a lighting scheme be submitted to and approved by the local planning authority.

Condition 7

13. Given that the containers have now been removed from the site, the part of condition No 7 that required the height of the containers to be reduced within three months is no longer applicable. However, condition No 7 also sought to restrict the overall height of containers on site and to prevent containers from being stacked.
14. Due to the close proximity of the neighbouring property to the northern and eastern boundary, stacked containers within the appeal site would have an overbearing and oppressive impact, which would be detrimental to the living conditions of the occupiers of this property.
15. The Council also imposed condition No 7 to protect the views of the Lea Valley Regional Park. The appeal site has a good level of screening from existing tall trees along its western boundary, adjacent to the road, and from mature trees on the west, south and eastern boundary surrounding the paddock immediately south of the appeal site. Given the enclosed nature of the site, with only glimpsed visibility from public viewpoints where a break in the hedgerow is located for the site access, I find that the stacking of containers two high, would not adversely affect the views of the Lea Valley Regional Park. However, this does not outweigh the harm that would be incurred to neighbouring living conditions. Given the site is not readily perceptible from public vantage points and that the height of containers would be restricted, I find it is not necessary for the containers to be moved 2 metres away from the southern boundary, and I will accept the appellants suggestion of 1 metre.
16. For the reasons above, a condition restricting the height of containers on the site is reasonable and necessary to ensure no adverse impact on the living conditions of nearby residential occupiers, in accordance with Policy DM9 of the LP. However, as all containers have been removed, I will remove condition No 7 and impose a variation of it which omits the requirement for existing containers on site to be reduced in height within three months. Whilst I note that such a restriction may lead to the appellant having to increase the extent of the site, resulting in a spread

of development, I have very limited information on what such a scheme would look like or whether it would get permission; as such this attracts limited weight.

17. I have little detail on the nearby Valley Grown Nursery development, how the distances to residential properties compare to this appeal or the factors which led to its approval. As such, this does not alter my view with regards to condition No 7.

Conditions 5 & 8

18. Given the close proximity of the site to nearby residential properties and its intended use as a construction compound, condition No 5 requiring a service management plan, to ensure that the site is properly controlled and any disruption mitigated, is necessary and reasonable to ensure no adverse effect on neighbouring living conditions. I acknowledge the appellants suggested condition to restrict noise emissions to 34 decibel; however, no noise monitoring has been undertaken to indicate that this would be an appropriate measure.
19. As condition No 5 seeks to ensure equipment does not exceed the existing background noise level, ascertained by a noise assessment, condition No 8 which requires all plant, machinery and vehicles to be fitted with noise attenuating equipment is not necessary, as this is effectively covered by parts c and d of condition No 5.

Condition 9

20. This condition was imposed because of concern regarding the free flow of traffic and impact on neighbouring occupiers living conditions. Where proposals are likely to generate significant numbers of heavy good vehicle movements, Policy T1 of the LP requires a management plan to demonstrate no severe impacts would be caused to the road network and no material harm to neighbouring residents living conditions.
21. However, I have little substantive evidence to indicate that traffic movements associated with the site are, or would be, 'significant.' Given the modest size of the site, I am not persuaded from the information before me, that traffic movements would be so significant as to warrant a specific traffic management plan to the extent currently required by condition No 9. Due to the restrictions on operating hours, the size of the site, and little evidence to indicate the road is heavily trafficked, I consider a requirement to provide off-peak delivery times for heavy goods vehicles is not necessary. However, I acknowledge interested party comments and the frustration in respect of large vehicles using Green Lane, particularly when reversing. Given the narrow width of the lane, such a manoeuvre has the potential to cause an obstruction on the lane which would be to the detriment of the living conditions of the nearby neighbouring occupiers, contrary to Policy DM9 of LP. I therefore find it would be reasonable for instructions for drivers entering and exiting the site and Green Lane to be provided in the service management plan, as well as details of measures to avoid the road being blocked by heavy goods vehicles. For this reason, disputed condition No 5 will be varied to include the above requirements in addition to the existing requirements set out in condition No 5.

Condition 10

22. Given that the site is already a designated employment site, that height restrictions are imposed to containers within the site and the existing site screening, I find condition 10 requiring tree screening, is not reasonable or necessary, and removing this condition would not result in an adverse effect on the character and appearance of the area.

Other Matter

23. Although issues relating to the compliance with the conditions of the original permission have been raised by several interested parties, any breaches of planning conditions would be a matter for the Council's Planning Enforcement Service. I have not been provided with robust evidence to suggest the appellant is routinely breaching conditions. Even if this was the case, the Council has powers to investigate and secure such breaches. This therefore has limited bearing on my overall decision.

Conditions

24. By allowing this appeal a new planning permission is created. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
25. A plans condition is necessary for certainty. A condition specifying the opening hours is necessary and reasonable to ensure no adverse effects on neighbouring occupiers. A condition restricting the use to B8 storage and distribution is necessary to protect neighbouring living conditions and to ensure no harm to the character and appearance of the area. To ensure the development does not have an adverse effect on flooding, a condition requiring that the development accords with the flood risk assessment is necessary.
26. Conditions requiring a service management plan, a scheme of lighting and to restrict the height and position of containers is necessary to safeguard the living conditions of nearby occupiers.

Conclusion

27. In light of the foregoing, I conclude that the appeal should partly succeed. I will grant a new planning permission without disputed condition Nos 3, 8, 9 and 10. I will substitute disputed conditions 5, 6 and 7 to allow for a variation to the wording of these conditions. Disputed condition No 2 and the remaining undisputed conditions are retained.

T Bennett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: GL001A and Location Plan.
- 2) The use hereby permitted shall only be open between the hours of 8.00am to 18.00pm on Monday to Friday and 8.00am - 12.00 Saturday and no opening Sundays and Bank Holidays.
- 3) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (or any Order revoking and/or re-enacting that Order) the premises shall only be used for B8 Storage and distribution and for no other purpose.
- 4) The development be carried out in accordance with the flood risk assessment (Ref FRA-2023-000061, Version 1.0, 27th July 2023 Date) and flood warning and emergency plan (version 1.0, 8th April 2024) submitted with the application unless otherwise agreed in writing with the Local Planning Authority.
- 5) Within 3 months of the date of this decision a Service Management Plan outlining how the company will manage and deliver its service shall be submitted to and agreed in writing to the Local Planning Authority. The details of the approved plan shall be permanently adhered to. Details shall include:
 - (a) specify the provisions to be made for the control of noise
 - (b) be based on the results of a Noise Assessment
 - (c) assure that, for fixed plant, the rating level of noise emitted from the site, measured at the closest boundary of the nearest residential dwellings, shall not exceed the existing background level.
 - (d) assure that, for other operations on site, the rating level of noise shall not exceed the existing background level at the positions described above. Measurement, assessment and works shall be made according to British Standard BS 4142:2014 and BS 5228.
 - (e) Measures to control disruption;
 - (f) Monitoring and Management;
 - (g) On-site parking capable of accommodating all staff and sub-contractor vehicles clear of the public highway.
 - (h) Details of measures to avoid road being blocked by heavy goods vehicles
 - (i) Instructions for drivers entering and exiting the site and lane.
- 6) Within 6 months of the date of this decision, a scheme for external lighting within the site shall have been submitted for the approval of the local planning authority. The approved scheme shall be carried out and completed in accordance with the approved details and thereafter maintained.
- 7) No container shall be stacked on top of another and shall be no higher than 2.9 metres from natural ground level. All containers shall be placed 1 metre away from the southern boundary of the site. The site shall be maintained as such in perpetuity.

****End of Conditions****