

## PLANNING COMMITTEE: 12 NOVEMBER 2009

### REPORT ON APPEAL DECISION

<b>APPLICATION NO:</b>	U0001.09/LBHG
<b>LOCATION:</b>	`Panels Plus`, Mudlands Industrial Estate, Manor Way, New Road, Rainham, Essex RM13 8RH
<b>PROPOSAL:</b>	Change of use to Recycling of Lead-Acid Cased Batteries and Spent Catalysts
<b>APPLICANT:</b>	F J Church & Sons Ltd

#### 1. Background

1.1. On the 21<sup>st</sup> of April 2009, the Corporation granted planning permission for a change of use at the former Panels Plus site in the Mudlands Industrial Estate, Rainham, from a B2 industrial use to a sui generis use to allow a waste and recycling facility. Specifically, the permission allowed the recycling of lead-acid cased batteries and spent catalysts from metallurgical industries.

1.2. The permission was granted subject to six conditions to secure:

- 1 Commencement of development within three years of the date of the permission
- 2 A time limitation on the permission to five years
- 3 Waste limited to lead-acid cased batteries, spent catalysts and non-ferrous metal
- 4 Details of the drainage system
- 5 Details of noise insulation
- 6 Contamination investigations

1.3. On the 9<sup>th</sup> of June 2009, the Corporation received notification from the Planning Inspectorate that an appeal had been lodged against the imposition of conditions 2, 4, 5 and 6.

#### 2. The Appellant's Arguments

2.1. The principal argument put forward by the appellant was that the financial expenditure required to discharge these conditions made the operation unviable.

2.2. Condition 2 was the main source of concern, as the limitation of the use to five years meant that the operator could not guarantee a return on the investment into the site.

2.3. With respect to the works required under conditions 4 (drainage), 5 (noise insulation) and 6 (contamination investigation), again the appellant argued that the operator could not justify the expense and therefore the conditions were unreasonable and should be removed. The appellant also argued that because no scheme of works had been agreed between the applicant and the Corporation, these three conditions were unnecessary, unreasonable and imprecise. With regard to condition 6, the appellant went on to argue that the site is known to be heavily contaminated and was not willing to bear responsibility for any remediation.

2.4. The appellant supported their arguments with what they purported to be a comparable application that was approved by Havering in 2007 for the recycling of scarp metal. In this

instance no conditions were attached.

### **3. The Corporation's Arguments**

- 3.1. The Corporation's argument for the imposition of condition 2 centred on the prevailing policy context and the long term regeneration aims for the A1306 corridor. Strategically, the use would be better suited to a Strategic Industrial Location such as the Rainham Employment Area to the south of the A13. The area also falls under Havering's LDF Site Specific Allocation 12, which seeks the comprehensive residential led redevelopment of the area. Also at a local level, the emerging East London Joint Waste DPD was referenced, as this will specifically allocate waste uses within the Borough. This DPD would likely be an adopted document by the expiration of the five year permission. Overall, the policy context gave the Corporation sufficient grounds in which to refuse the application. However, rather than simply refuse, and keeping in mind the positive approach to development control that is considered best practice, the decision was made to permit the scheme subject to this time limitation so that the future surrounding context could be assessed with an application to extend the life of the permission.
- 3.2. Condition 4 was necessary as the site is located within a flood risk zone and the proposed use deals with hazardous materials. Without adequate details of drainage, the use would have been wholly unacceptable due to the risk to human health and the environment. The Environment Agency considered the risk posed in removing the condition enough to warrant their own separate representations to the Inspector.
- 3.3. The Corporation's argument in imposing condition 5 was that the condition was reasonable and necessary in order to protect both existing and future occupiers of the surrounding area, as no information had been provided by the applicant with respect to the noise generated by the operation. The potential for future noise sensitive development to be affected by this development was particularly relevant to this condition, as the site is adjacent to the proposals for Havering College and the proposed residential development at Dovers Corner further to the east.
- 3.4. Condition 6 was imposed by the Corporation as the area is known to be heavily contaminated and the applicant had not provided any information to the contrary. The imposition of this condition was argued by the Corporation to be necessary in following the precautionary principle prescribed by PPS23 on pollution control.
- 3.5. With respect to the 2007 planning permission put forward by the appellant's as being comparable, the Corporation argued that this permission was approved under the previous policy regime, namely Havering's 1993 UDP and the 2004 London Plan. This was a significant point as the UDP did not identify the area for residential led land use change, while the previous London Plan did not make reference to waste operation being located within Strategic Industrial Location. Furthermore, it was argued that the example permission did not present the same level of risk as the appeal case.

### **4. Appeal Decision**

- 4.1. The Inspector considered there to be two main issues in the appeal. The first was whether the removal of condition 2 would prejudice the long term redevelopment of the site and its surroundings. The second was whether conditions 4, 5, and 6 are necessary to ensure that the proposed development would not harm the environment and be safe to occupiers of the site.
- 4.2. With regard to the first issue, while the Inspector stated that he fully understood the desire of the appellant to have the certainty of a long term use of the site, he also acknowledged that the policies for the area had been through formal preparation and adoption and therefore must be given substantial weight. In commenting on the Corporation's approach, the Inspector stated that, *"the planning authority, fairly in my mind, has taken a reasonable approach to permit the proposal to be implemented ... but at the same time to retain the potential for the long term*

*comprehensive redevelopment of the site.”*

- 4.3. The second issue, regarding the detailed matter of the remaining conditions, was again considered by the Inspector to be reasonable. The Inspector concluded that these conditions were ‘essential’ to deal with the environmental and safety implications of the proposal and made the comment that the temporary period of consent does not obviate the need to take a precautionary approach in dealing with these matters.
- 4.4. In conclusion, the Inspector found that, *“the removal of condition 2 would result in a proposal which would not accord with the development plan and the removal of conditions 4, 5, and 6 would be detrimental to the potential environmental impact and safety of the proposed development”*. The appeal was therefore dismissed.

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CASE OFFICER: Stephen Allen

DATE: 21/10/2009

CASE NO: LTGDC-09-002-FUL

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