Appeal Decision

Hearing Held on 4 July 2017
Site visit made on 4 July 2017

by David Richards  B Soc Sci DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 August 2017

Appeal Ref: APP/Z5060/W/16/3166021
Former Berryman Site, Perry Road, Dagenham RM9 6QD

- 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 Recycled Material Supplies against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 16/01295/CTY, dated 12 August 2016, was refused by notice dated 17 November 2016.
- The development proposed is change of use from the production and storage of cullet to the production and storage of secondary aggregates and the erection of new offices and process building.

Decision

1. The appeal is allowed and planning permission is granted for change of use from the production and storage of cullet to the production and storage of secondary aggregates and the erection of new offices and process building at the former Berryman Site, Perry Road, Dagenham RM9 6QD in accordance with the terms of the application, Ref 16/01295/CTY, dated 12 August 2016, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issues are the effect on the supply of land for processing apportioned waste in the Borough of Barking and Dagenham, and whether the appellant has provided sufficient evidence of need to outweigh any identified policy conflict.

Reasons

3. At the hearing, the Council agreed that it would have no objection to changing the description of development to include the erection of buildings as indicated in the plans accompanying the application. I have amended the description of development accordingly.

4. The Council also agreed that there were no unresolved environmental objections to the proposed development. The refusal reasons rely on a policy conflict regarding the safeguarding of sites for the processing of certain types of municipal waste.

5. The appeal site is within the London Borough of Barking and Dagenham, which is within the area covered by the East London Waste Authority (ELWA). It is located on the eastern side of Perry Road, within the Dagenham Dock.
employment area, extending to some 1.8 hectares and surrounded by employment uses of a general industrial nature including a number of other waste and aggregates uses. The site was previously occupied by Berryman’s for the recycling of glass bottles. This activity has been consolidated on a site near Tilbury Docks and the site subdivided and sold to new owners, including the appellant company. Part of the former Berryman’s site is now occupied by Edwards Recycling, which has recently been granted planning permission for a waste recycling facility. Manns Waste Management occupy land to the immediate north of the site, and Hansons Aggregates occupy a large plot immediately to the east of the site. There are no nearby residents, sensitive commercial uses or other sensitive receptors.


Effect on the supply of sites for apportioned waste

7. The Council’s aim in refusing permission is to safeguard the site for the processing of apportioned waste within the Borough. Glass cullet (for which the site was formerly used) forms part of the apportioned waste arisings, targets for which are set out in the London Plan. However the change of use proposed is to the processing of construction and demolition waste, which is not part of apportioned waste.

8. Policy 5.16 of the London Plan seeks to manage as much of London’s waste within London as practicable, working towards the equivalent of 100% within London by 2026. Measures to achieve this will include improving London’s net self-sufficiency through reducing the proportion of waste exported from the capital over time. It sets a target of 95% for the recycling of CE&D waste by 2020.

9. Policy 5.17 is concerned with waste capacity. It supports the need to increase waste processing capacity in London. In preparing Local Plans, land to manage Borough Waste Apportionments should be brought forward through protecting and facilitating the maximum use of existing waste sites, identifying sites in strategic industrial locations and locally significant employment areas amongst other things. If an existing waste site is lost to a non-waste use, an additional compensatory site provision will be required.

10. Policy 5.18 is concerned with Construction, Excavation and Demolition (CE&D) waste. It states that new construction, excavation and demolition waste management facilities should be encouraged at existing waste sites and supported by using mineral extraction sites for CE&D recycling and ensuring that major development sites are required to recycle CE&D waste on site, wherever practicable. The reasoned justification encourages more beneficial and higher order uses of this inert waste. A combination of on-site mobile facilities on construction sites, effective use of existing waste processing sites and the provision of recycling facilities at aggregate extraction sites should be capable of meeting the anticipated future requirement within London to achieve a more beneficial re-use of this material.

11. The treatment of apportioned waste is addressed in more detail in the JWDPD. Policy W2 includes a provision for safeguarding the capacity of existing waste
management facilities listed in schedule 1 and encouraging the increased processing of waste at these facilities. The reasoned justification explains that the loss of existing waste management capacity or suitable sites for future facilities will make recycling targets harder to achieve. The appeal site is included within Schedule 1 (as Reuse Collections Limited) with a capacity of 260,000 tonnes per annum. Part of the site has recently been granted planning permission for a materials recycling facility (75,000 tonnes p.a.), leaving the appeal site with a notional capacity of 185,000 tonnes p.a. currently safeguarded for processing apportioned waste. However, it is clear that the site has not been available for this use since it was purchased by the Appellant in 2015, and it is not currently contributing to capacity for processing apportioned waste.

12. The JWDPD advises that a large portion of recycling and reuse of CE&D waste currently occurs on site rather than at designated licensed facilities, or is transferred out of London through inert transfer stations. In addition, there is adequate existing capacity to deal with such waste without identifying additional new permanent sites for CE&D waste. Further explanation is provided by the Inspector’s Report on the JWDPD which states at paragraph 14: ’The issue here is whether there is a need for safeguarding of existing sites because it is not possible for all CE&D sites, so that there is a significant amount that requires treatment on waste management sites. I accept that there will be construction sites, both medium size and small, where it will not be feasible or viable, to set up dedicated recovery and recycling facilities. However, I was given evidence that the Boroughs have adequate capacity, including the Barking Riverside Recycling Park, to deal with these arisings. I see no need to identify areas of search for new facilities, but I do see the need for safeguarding of existing waste management sites.’

13. The Appellant argues that sufficient capacity will remain within the ELWA area to process apportioned waste even if the appeal is allowed. The requirement to be managed within the ELWA area is 427,000 tonnes p.a. Taking into account existing capacity on Schedule 1 sites (464,000 tonnes p.a.) and allocated (Schedule 2) sites which have subsequently been granted planning permission (390,000 tonnes per annum p.a.), the Appellant calculates that there would be a surplus of recovery capacity of 426,000 tonnes p.a. There was some discussion at the hearing concerning the availability of capacity at the Chinook site (180,000 tonnes p.a) at the London Sustainable Industries Park, but even if this were to be discounted there would still be a surplus of 246,500 tonnes p.a. In this context, it was argued that the loss of potential capacity at the appeal site (185,000 tonnes) would not prejudice the ability of the EWLA to process apportioned waste arisings within its own area.

14. I accept that there uncertainties attached to such assessments. The Council argued strongly that it has ambitious plans for housing growth, which would require additional capacity in the future. Nevertheless it does not seem to me that unquantified future growth estimates would be sufficient reason to safeguard the site indefinitely for apportioned waste when there is no immediate identified shortfall in processing capacity for apportioned waste. The most recent monitoring report for the LB Barking and Dagenham (2014/15) confirms that ‘the Joint Waste DPD is clear that the Council do not need any new recycling facilities to deal with Municipal or Commercial and Industrial Waste.’
15. I therefore conclude that the proposal would not have a materially adverse effect on the supply of sites capable of handling apportioned waste in the London Borough of Barking and Dagenham.

**Evidence of need**

16. The Appellant accepts that, in view of the conflict with the safeguarding policy, it is necessary to demonstrate exceptional circumstances for the development to proceed, in accordance with the conclusions of 2 recent appeal decisions.\(^1\) Notwithstanding that this is common ground between the parties, it appears to me that the appeal should be determined on the basis of the statutory requirement that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise.

17. The Appellant states that RMS provides a specialist recycling service, focusing primarily on recycled concrete, using waste concrete from redevelopment sites to produce various specifications of crushed concrete, fines and shingle. The specialist nature of the operation and the need to ensure product specification means that the waste cannot be managed at general waste sites. While much CE&D waste is processed on redevelopment sites, some sites are too small or not otherwise suitable and there remains a demand for this waste to be taken off site for re-processing.

18. The company presently operates from a site within Newham, which, like Barking and Dagenham, is within the area of the East London Waste Authorities. The company was established in 2007 and now employs nearly 100 staff. The existing site has a time limited consent and the appeal site was acquired in 2015 to secure business continuity. It is stated that the Appellant has been searching for alternative premises over the last few years. A number of sites were investigated but ruled out due to being safeguarded for other uses, sold immediately on being marketed, or because they were too far from the existing customer base, and therefore less sustainable.

19. The Council does not dispute the business need for the company to relocate from its existing site. To my mind, the business contributes to the sustainable use of resources within London, and specifically within the area covered by the East London Waste Authorities. It was not disputed that the company has to relocate from Newham if it is to continue to provide a service to existing and potential customers. The Needs Appraisal submitted with the application examined the capacity of existing sites within the ELWA area to handle the type and volume of waste material dealt with by RMS. Only the Keltbray site in Newham appears comparable, and this has a capacity of 75,000 tonnes and was operating at capacity in 2014. RMS processed 200,000 tonnes of waste in 2014, and the EA permit is for 250,000 tonnes. On the basis of the evidence of the needs assessment, which was not substantially disputed by the Council, there are no other existing sites capable of managing the type and quantity of waste handled by RMS.

**Conclusion**

20. The proposed change of use would conflict with the safeguarding provisions of Policy W2 of the JWDPD, which seeks to retain the site for the processing of apportioned wastes within the ELWA. Nevertheless it is material that the site

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1 Appeals at 19 Thames Road, Barking APP/Z5060/A/12/2183674 & APP/Z5060/A/14/2217636

https://www.gov.uk/planning-inspectorate
has been sold and is not currently available for such use, nor is there any persuasive current evidence of a shortfall in processing capacity for apportioned waste in Barking and Dagenham. The previous operator, Berryman’s still process the waste from the ELWA area, but at a site at Tilbury Docks. Although this is outwith the London area, there is a sustainability logic in that it is closer to the port facilities from which the glass cullet is exported. There is no indication that compensation for this ‘lost’ capacity is likely to be made or needed within the ELWA area.

21. I accept that the JWDPD indicates that there is no requirement to identify new sites for CE&D waste, as most is treated at redevelopment sites. Nevertheless it is clear that there is a remaining demand for material from smaller sites to be processed which is addressed by RMS’s existing successful business. There is convincing evidence that there are no other existing sites in the ELWA area capable of providing the service that RMS do, and that the company has made a proportionate search for other sites in London, but that such sites within reasonable reach of their existing area of operation are very hard to come by, and are often sold quickly for other uses. I attach substantial weight to the fact that RMS has a limited life at its current site in Newham, and has sought a suitable replacement site within a neighbouring London Borough. This will safeguard a significant number of existing jobs.

22. In other respects, the proposed change of use would accord with the London Plan target of 95% for the recycling of CE&D waste by 2020 (Policy 5.16). With regard to Policy 5.17, the site would not be lost to waste use, although it would treat a different category of waste to that handled by Berryman’s. It would be generally in accord with Policy 5.18 which encourages new CE&D waste management facilities at existing waste sites, although I do not regard this as a new site so much as one that has been displaced by development pressures elsewhere in London.

23. I conclude that the conflict with Policy W2 of the JWDPD is outweighed by the evidence of need put forward by RMS in support of the proposed change of use, and accordingly that the appeal should be allowed.

24. In addition to the time limit, a condition specifying compliance with the submitted plans is necessary to define the permission and in the interest of proper planning. A limitation on throughput is necessary to prevent adverse environmental impacts, as are conditions requiring a dust management plan and the treatment of any contamination found on the site. Conditions addressing materials and landscaping are necessary to secure a satisfactory appearance to the development. Conditions in respect of vehicle and cycle parking are necessary to ensure that satisfactory provision is made and retained on site.

David Richards
INSPECTOR
APPEARANCES

FOR THE APPELLANT:

Alison Crooks           Integrated Skills
James Cannon            Recycled Material Supplies

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Pope             Acting Head of Planning
Dave Mansfield          Development Management Manager
Ian Drew                Case Officer
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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: RMS/BER/LOC/01; Site Plan RMS/BER/APP/01; Proposed Site Layout 8202/SK01; Proposed Drainage layout 8202/100; proposed elevations 8202/SK02 & 8202/SK03.

3) The development hereby permitted shall not exceed a total annual throughput of 250,000 tonnes per annum. The applicant will keep such records as may be required to permit the local planning authority to determine compliance or otherwise with this condition, and those records shall be made available to the local planning authority on request.

4) No development above ground level shall take place until details of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

5) Prior to occupation of the development a detailed soft landscaping plan and five year maintenance strategy maximizing the use of mature trees and species of native origin shall be submitted to and approved in writing by the local planning authority. The development shall not be carried out otherwise than in accordance with the approved scheme in the first planting season following first occupation. Any plants or trees required as part of the implementation of the condition that die or are removed, or become damaged or diseased within a period of five years from the substantial completion of the development shall be replaced by others of a similar size and species.

6) The use hereby approved shall not be commenced until a dust assessment, management and monitoring plan has been submitted to and approved in writing by the local planning authority. The site shall thereafter be operated at all times in accordance with the approved plan.

7) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on site, whether or not it originates on the site. The scheme shall be undertaken by competent persons and a written report of the findings must be produced and shall be submitted for approval in writing by the local planning authority. The report of findings must include:

   i. A survey of the extent and nature of contamination
   
   ii. An assessment of the potential risks to human health, property, adjoining land, ground and surface waters, ecological systems, archaeological sites and ancient monuments

   iii. An appraisal of remedial options, and a proposal for preferred options
iv. This work must be conducted in accordance with DEFRA and the Environment Agency’s ‘Model Procedures for the Management of Land Contamination CLR 11’.

8) No development shall take place until a detailed remediation scheme required to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and submitted for approval in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under part 2A of the Environmental Protection Act 1990 in relation to the intended use of the site after reclamation.

9) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notice of commencement of the remediation scheme works.

10) Following completion of measures identified in the approved remediation scheme, a verification report (also known as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and submitted to the local planning authority for approval in writing.

11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 7 above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 8 and subsequently implemented before the development is occupied.

Following completion of measures identified in the approved remediation scheme, a verification report (also known as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and submitted to the local planning authority for approval in writing.

12) The car parking area indicated on Plan no 8202/SK01 (including the provision of 3 blue badge spaces, 4 electric vehicle charging points spaces and 4 passive electric vehicle charging point spaces) shall be constructed and marked out prior to the use of the unit hereby permitted and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose.

13) The development hereby permitted shall not be occupied until full details of cycle parking, including its external appearance, location and the means of secure storage proposed, have been submitted to and approved in writing by the local planning authority. The cycle parking shall be provided prior to the occupation of the development in accordance with
the approved scheme, and subsequently retained and used for no other purpose.