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## Appeal Decision

Inquiry held on 11 and 12 April 2017

Site visit made on 12 April 2017

**by Nick Palmer BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 04 May 2017**

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**Appeal Ref: APP/V1505/W/16/3158317**

**Land to the north of Terminus Drive, Pitsea, Essex**

- 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 Ken Kent of KE Kents Ltd against the decision of Basildon Borough Council.
  - The application Ref 14/00890/FULL, dated 23 July 2014, was refused by notice dated 14 April 2016.
  - The development proposed is the change of use of land to a haulage yard together with associated works, including the siting of a portacabin office, erection of security fencing and laying of hard surfacing.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a haulage yard together with associated works, including the siting of a portacabin office, erection of security fencing and laying of hard surfacing at land to the north of Terminus Drive, Pitsea, Essex in accordance with the terms of the application, Ref 14/00890/FULL, dated 23 July 2014, subject to the conditions set out in the attached schedule.

### Preliminary Matter

2. The Council referred in its statement of case to the impact of the proposal on the grade II listed Cromwell Manor. The Council subsequently clarified that it does not wish to pursue this matter which did not form part of its reasons for refusal. Accordingly I shall not consider this as a main issue.

### Main Issues

3. From all that I have read, heard and seen I consider the main issues in the appeal to be:
  - i) the effect of the proposal on the Council's strategy for employment development;
  - ii) whether or not there has been shown to be no reasonable prospect of the site being used for B1 or B2 uses<sup>1</sup>; and
  - iii) the implications for development of other adjacent land for B1 and B2 uses.

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<sup>1</sup> Classes B1 or B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended): Business or General Industrial uses

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## Reasons

### *Background*

4. The appeal site is on the southern edge of the built up area of Basildon. It is vacant, roughly triangular in shape and adjoins the A13 flyover on one side. It is accessed via Terminus Drive which is a private road and forms a public footpath. To the immediate south of Terminus Drive is a waste recycling and materials recovery facility and a fencing business. To the north of that road and east of the site is a car park that serves Pitsea railway station which is on the other side of Pitsea Hall Lane. To the south of the adjacent waste facility there is a railway line beyond which is Cromwell Manor. There is a further railway line to the north-east.
5. The site is about 1.8 ha in area and forms part of an area of 3.5 ha which is allocated for employment development in the Basildon District Local Plan (LP) (1998). The adjacent waste and fencing businesses are also within the allocated area. Policies of the LP were saved by direction from the Secretary of State in 2007. Saved policy BAS E2 of the LP restricts the employment uses that may take place on the site to B1 and B2 uses. The proposal is for a *sui generis* use which would not accord with that policy.

### *The Council's Strategy for Employment Development*

6. The National Planning Policy Framework (the Framework)<sup>2</sup> advises that local planning authorities should set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth. Strategic sites should be identified and criteria set for local and inward investment to match the strategy and to meet anticipated needs over the plan period.
7. The Council commissioned an Employment Land and Premises Study (ELPS) which was produced in 2013 and has informed its Economic Development Strategy<sup>3</sup> and its emerging Local Plan.<sup>4</sup> Although the Borough has a generally strong economy the Council has identified a need to attract more advanced engineering, research and office jobs in order to redress an imbalance in local employment provision and to provide more resilience economically.
8. The emerging Local Plan proposes allocation of 49 ha of employment land to provide for the identified requirements over the Plan period, of which 36-38 ha would be within existing employment areas and 11-14 ha would be released from the Green Belt. Taking into account other available employment land including the appeal site there will be about 71 ha available but a surplus is needed in order to ensure that the identified land requirement is realistically available.
9. The reasoning behind the restriction of the site to B1 and B2 uses is given in the supporting text to saved policy BAS E2 of the LP. This is because a nearby railway bridge on Pitsea Hall Lane is of restricted width such that only one HGV can pass at a time. There is a traffic management system in place to ensure this. An increase in HGV traffic such as would be likely to result from B8 use<sup>5</sup>

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<sup>2</sup> NPPF paragraphs 18 - 22

<sup>3</sup> Basildon Borough Council Corporate Economic Development Strategy Action Plan (Aug 2014)

<sup>4</sup> Basildon Borough Draft Local Plan (2016)

<sup>5</sup> Storage and Distribution

- would place additional pressure on the bridge and its operation. While the proposal would generate HGV traffic the distribution of movements would differ from those of a storage and distribution use. The appellant has provided a Transport Statement which demonstrates that the vehicle movements that would be generated would have no harmful effect on the local highway network. The Highway Authority accepts this and has raised no objection.
10. The ELPS recommended that existing allocations for employment development, including that of the appeal site should be retained. It appears that no site-specific assessment was undertaken in respect of the continued restriction to B1 and B2 uses however. Following the ELPS permission has been granted for the adjacent waste facility<sup>6</sup> which occupies a significant proportion of the allocated area covered by saved policy BAS E2. That facility is a *sui generis* use.
  11. The site has remained vacant for a long period of time. Whether or not this is indicative of its unattractiveness for B1 or B2 development the recent waste processing facility will have reduced the attractiveness of the site to potential investors for those types of development. The waste facility adjoins most of the southern boundary of the appeal site and outside storage areas for waste material directly adjoin the boundary. I saw that waste is stacked higher than the enclosing walls and that the waste facility is at a higher level than the appeal site. Planting could be provided along the boundary but it is unlikely that this would be completely effective in screening the stacked waste from view. Although the storage of waste is subject to controls which would limit any harmful environmental effects I nevertheless have concern that noise, dust and odour arising from the waste facility may be sufficient to deter any developer for B1 or B2 use.
  12. The proposal would provide additional employment albeit at a lower level than would be expected from B1 or B2 development. Logistics forms an important part of the local economy. The appellant has operated his haulage business in the local area since the early 1970s and this has grown to become a significant local employer with 55 employees. The proposal would generate an additional 20 jobs. The emerging Local Plan<sup>7</sup> and the Council's Economic Development Policy and Corporate Plan<sup>8</sup> express support for local businesses and the proposal would accord with the Council's strategy in this respect.
  13. The Council has identified a particular need for new B1 office floor space to reflect its aspirations for attracting inward investment and because much of the existing space is not of sufficient quality. While recognising this aspiration, for the reasons given I find it doubtful that the site would realistically be developed for this use. Furthermore because land is to be allocated elsewhere including within established business locations I find that the B1/B2 restriction on the appeal site is not critical to the Council achieving its economic development objectives.
  14. An Economic Development Needs Assessment is currently underway. The Council advised that the surplus of employment land may be less than was previously forecast because a decline in B2 uses has not been as great as predicted and some employment land has been lost to other uses. The Council

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<sup>6</sup> Ref ESS/13/15/BAS

<sup>7</sup> Paragraph 7.6

<sup>8</sup> Basildon Borough Council Corporate Plan 2016 - 2020

expressed concern that the proposal could lead to a requirement for a greater amount of green field land to be allocated, including land within the Green Belt. The land to be allocated for employment development in the emerging Local Plan will include employment generating *sui generis* uses. Because the proposal would be such a use it would not diminish the overall supply of land for employment development. It has not been demonstrated that the proposal would necessarily lead to a need to release more land from the Green Belt.

15. The Council has referred to an appeal<sup>9</sup> decision which considered the loss of employment land to retail use. In that case there was evidence of a lack of supply of a specific type of employment land of which the site in question formed part. However I find no evidence of any lack of supply in this case.
16. I have found that the proposed haulage yard would accord with an important aspect of the Council's strategy for employment development. I have also found that the site is constrained for the allocated uses and that the overall supply of employment land would be maintained. These are important material considerations to which I give weight. For the reasons given I find that the proposal would not be prejudicial to the Council's strategy for employment development.

*Prospect of B1 or B2 uses*

17. The site has been owned by the Homes and Communities Agency (HCA) since 2008 and before that the Commission for New Towns and the Basildon Development Corporation. The HCA over its 8 year period of ownership has had an objective to bring the site into productive use and as part of this would have sought to attract private sector investment particularly to generate employment and to dispose of the land both of which would have been in the public interest. While the period of marketing in 2013 of about one month was limited the site would have been available to potential investors over a significant period.
18. The ELPS recommends a 2 year period of marketing and the Council intends to include this as a requirement of draft policy E12 in the emerging Local Plan. I can only give limited weight to this consideration as it is not a development plan requirement and the emerging Local Plan is at an early stage in its adoption process.
19. I accept that the limited marketing period and the resulting absence of enquiries for B1 or B2 use does not of itself demonstrate conclusively that there is no demand for such development on the site. A longer period of marketing would have allowed for fluctuations in the market. However because a public agency charged with disposing of the land in the public interest has held the land for a significant period of time and there is no evidence of any other enquiries having been made, this to my mind demonstrates a clear lack of interest for the allocated uses.
20. I have already found that the adjacent waste processing facility harms the prospect of B1 or B2 uses on the site. This is a recent development which was approved in early 2016. Before that however there are other factors which may have limited the attractiveness of the site to potential investors. The flyover would affect outlook towards the north and west. The site has a

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<sup>9</sup> APP/P4605/A/12/2187738

broadly triangular shape and parts of the site must be kept free of development to allow access to the flyover for maintenance purposes. These factors would restrict to some extent the size and configuration of development that could be achieved. They would not necessarily act as a barrier to development but the HCA's view is that the site has physical, environmental and economic challenges.

21. I take into account the proximity to the railway station and to the A13 both of which would be beneficial in terms of employee travel and commuting. However for the reasons given I find it unlikely that there is any realistic prospect of the site being used for B1 or B2 uses.

*Implications for adjacent land*

22. The proposal together with the waste facility would occupy the majority of the allocated area and the only remaining areas of land would be small areas to the north of Terminus Drive and to the rear of the adjacent car park. The proposal would consist of a hard surfaced area for lorry parking with a portacabin office and would be enclosed by fencing. Landscape planting could be required around the margins of the site which would soften the appearance of the site and ensure that it is visually acceptable in the context of the adjacent footpath.
23. There would be no adverse environmental effect as confirmed by the responses of the statutory consultees. It has been demonstrated that the proposal would have no adverse effect on highway safety. While I have found that the adjacent waste facility is likely to have limited the potential of B1 or B2 development on the site, the proposal would not alter this with regard to the other remaining allocated land.

*Other Planning Policies*

24. The supporting text to saved policy BAS E6 of the LP identifies the parking of heavy vehicles as 'untidy industry'. That policy provides for such industry to locate at the Harvey Road and Archers Field area of the Burnt Mills Industrial Estate. The appellant has a number of existing sites in Basildon including sites in that area. He has been looking for an alternative site in that area for a number of years but states that none have been available. Mr Herman confirmed this. The Council has not provided any evidence of any land in that area as having been available.
25. While saved policy BAS E6 encourages untidy industry to locate in the identified area it permits such industry in other locations within existing industrial areas where proposals will be assessed on the basis of their likely effects on nearby uses. Given that the site is within an allocated area and that part of that area has been developed it is an existing industrial area. No specific adverse environmental effects have been identified but the Council has concern that the proposal would adversely affect the use of footpath N<sup>o</sup> 136 which runs along Terminus Drive and connects to another footpath that links to the countryside and a nature reserve as well as nearby residential areas.
26. Terminus Drive is a straight no-through road which is wide enough to accommodate HGVs as well as pedestrians although it would be necessary to define the pedestrian route separately from the vehicular route. This can be achieved through the imposition of a suitable condition. The single vehicular

access into the site would be clearly identifiable and would not prejudice pedestrian safety.

27. The route already has an industrial character as it passes the waste facility and fencing company. The footpath has good visibility and the erection of fencing along the appeal site would not alter this. For these reasons the proposal would not adversely affect the use of the footpath and would accord with saved policy BAS E6 of the LP.
28. Saved policy BAS E7 allows for the development of allocated employment land for uses within other use classes subject to a number of criteria. Those criteria require that there is adequate land elsewhere to meet the district's employment needs, that there is no significant net loss of employment, that there is adequate car parking and that there is no adverse impact on the amenities of the area. I have found that the first and last of those criteria would be met. There would be no net loss of employment as the site is vacant. Car parking provision for employees would be provided within the site. Although the proposal would not fall within a defined use class I find that it would for the reasons given accord with the overall requirements of that policy.

#### *Other Matters*

29. Local residents have concerns about the extra HGV traffic that would be generated and its effect on Pitsea Hall Lane in particular. They point out that there are already significant numbers of these vehicles that visit the waste facilities to the south as well as traffic to and from the country park. I have taken those concerns into account but they have been adequately addressed in the appellant's evidence, the Highway Authority had no objection and this does not form a reason for refusal. I see no reason to conclude otherwise.
30. The Environmental Health Officer had no objection to the proposal in terms of any effects on noise, dust and vibration. Lighting can be controlled by a suitable condition. I note that there is a house in close proximity to the junction of Terminus Drive with Pitsea Hall Lane whose occupants would already experience some disturbance from vehicle movements. However this does not alter my view that there would be no unduly adverse effect in these respects.
31. The appellant has undertaken an extended phase 1 habitat survey which recommended further survey work for Great Crested Newts and reptiles. A survey of ponds within 250m of the site found that Great Crested Newts are likely absent. The reptile survey found a low population of common lizards and slow-worms on the site and recommends appropriate mitigation measures to protect those species. A condition can be imposed to secure those mitigation measures.

#### *Overall*

32. The Framework requires flexibility in terms of recognising potential barriers to investment as is the case here. The Framework also states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The proposal would accord with the Framework in these respects and this is a material consideration in my decision as is the support for existing

- business sectors that is expressed both in the Framework and the Council's policies.
33. I have found that the proposal would not accord with saved policy BAS E2 of the LP. However the material considerations that I have identified are of sufficient weight to outweigh that policy conflict.
34. The proposal would accord with the economic and social dimensions of sustainable development by providing for the expansion of a local business with attendant benefits for the local economy including additional employment and social benefits. It would not prejudice the Council achieving its aspirations for future economic development. The proposal would not result in undue environmental harm and on this basis would accord with the environmental dimension. For these reasons, considered as a whole the proposal would be a sustainable form of development.

### **Conditions**

35. I have imposed the conditions as suggested and agreed between the main parties with some amendments and one additional condition regarding the findings of the Reptile Survey. In doing so I have had regard to the tests in paragraph 206 of the Framework.
36. A condition requiring development to be in accordance with the approved plans is necessary to provide certainty. A number of conditions are necessary in order to ensure that the development meets normal highway safety standards.
37. The existing junction of Terminus Drive with Pitsea Hall Lane requires some improvement in terms of its alignment and surfacing. I have imposed the necessary conditions in this respect. I saw that there is adequate visibility in both directions from that junction. For this reason and given that the appellant does not control the land on either side of the junction it would be unnecessary and unreasonable to require provision and maintenance of visibility splays. I have imposed other conditions in respect of pedestrian visibility at the junction, provision of gates and provision of parking spaces on the site to ensure that highway safety standards are met.
38. A Construction Method Statement is required to be approved before commencement of any works to ensure that construction activities do not obstruct the highway or the footpath and that road conditions are not adversely affected. The suggested condition requiring provision for loading, unloading, reception and storage of building materials would be covered by the Construction Method Statement.
39. I have imposed a condition requiring surfacing of the footpath and measures to protect pedestrians to ensure that the route is properly segregated from vehicular movement and remains safe. These measures require approval before works start in order to safeguard pedestrians during the construction process. Landscaping would be necessary to ensure the appearance of the development is acceptable as would approval of details of the fencing.
40. Provision of suitable surface water drainage is necessary to ensure that there is no localised flooding. This should be a pre-commencement condition because this matter needs to be approved at the outset of the development. The hours of construction work require control to ensure the living conditions of nearby residents are safeguarded. Approval of lighting is necessary to ensure that this

is not intrusive in the area generally and that it does not adversely affect wildlife, specifically bats.

41. Finally although not forming one of the suggested conditions I have imposed a condition requiring development to take place in accordance with the recommendations in the appellant's Reptile Survey in order to ensure that any reptiles that are on the site are protected.

**Conclusion**

42. For the reasons given I conclude that the appeal should be allowed.

*Nick Palmer*

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: 13.662/194 Rev A and 13.662/901.
- 3) Before commencement of the use hereby permitted the vehicular access shall be constructed at right angles to the highway boundary and the existing carriageway of Pitsea Hall Lane.
- 4) Before commencement of the use hereby permitted 1.5 metre x 1.5 metre pedestrian visibility splays, as measured from and along the highway boundary shall be provided on both sides of the vehicular access. The splays shall be retained free of any obstruction in perpetuity and shall not form part of the vehicular surface of the access.
- 5) Any gates provided at the access to the site from Terminus Drive shall be inward opening only and shall be set back a minimum of 12 metres from the back edge of the carriageway of that road.
- 6) Before the commencement of development details of the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in its entirety before commencement of the use hereby permitted and shall be retained at all times.
- 7) No development shall take place, including any ground works or demolition until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development; and
  - iv) wheel and underbody washing facilities.
- 8) Before the commencement of development a written scheme (a) to ensure that the public's rights and ease of passage over public footpath N<sup>o</sup> 136 will be maintained free and unobstructed at all times, (b) for the provision of appropriate signage to advise all highway users where the proposed traffic access route crosses public footpath N<sup>o</sup> 136 and (c) details of surfacing of public footpath N<sup>o</sup> 136 including the time scale for such provision shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in full before commencement of the use hereby permitted.
- 9) Before commencement of the use hereby permitted the vehicle parking areas indicated on the approved plans, including the parking spaces for the mobility impaired, the motorcycle parking facility and the bicycle parking facility shall be provided. The parking spaces shall be hard surfaced, sealed and marked out in parking bays. The parking facilities shall only be used for parking in connection with the use hereby permitted and for no other purpose and shall be thereafter retained.

- 10) No development shall take place above ground level until details of hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. The soft landscaping details shall include schedules of tree and shrub species with stock sizes, planting numbers and densities. The details shall include planting layouts and a programme and methodology for provision, including ground protection and preparation, weed clearance, seeding rates, planting methods, mulching, plant protection, staking and/or support and details of the aftercare and maintenance programme.

The soft landscaping works shall be carried out in accordance with the approved details within the first available planting season (October to March inclusive) following commencement of the development. If within a period of five years from the date of the planting, any tree or plant is removed, uprooted, destroyed or dies, or becomes, in the opinion of the local planning authority seriously damaged or defective, another tree or plant of the same species as that originally planted shall be planted in the same place.

The hard landscaping details shall include details of paved surfacing with materials, finishing and edgings. The development shall be carried out in accordance with the approved details.

- 11) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in full before commencement of the use hereby approved.
- 12) General construction work shall only take place between 07:00 hours and 19:00 hours on Mondays to Fridays and between 08:00 hours and 13:00 hours on Saturdays. Noisy works such as concrete breaking, pile driving and angle grinding shall only take place between 08:00 hours and 17:00 hours on Mondays to Fridays. No general construction work shall take place on Sundays or Bank or Public Holidays.
- 13) Before commencement of the use hereby permitted details of a lighting scheme shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be installed and thereafter retained.
- 14) Before commencement of the use hereby permitted details of the boundary treatment(s) shall be submitted to and approved in writing by the local planning authority. The approved boundary treatment(s) shall be provided and thereafter retained.

Development shall take place in accordance with the mitigation, compensation and enhancement measures set out in section 8 of the Reptile Survey undertaken by Southern Ecological Solutions dated June 2014.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Zack Simons, of Counsel instructed by Lorraine Browne, Solicitor to the Council

He called

Carl Glossop BA (Hons) MA

Principal Planning Officer

Clive Simpson BA (Hons) MRTPI

Clive Simpson Planning Limited

### FOR THE APPELLANTS:

Mark Lowe, of Queens Counsel instructed by Boyer Planning

He called

James Bevis MEng MCILT MCIHT

i-Transport LLP

Colin Herman BSc MRICS

Kemsley LLP

Matthew Clarke MRTPI

Boyer Planning

### INTERESTED PERSONS:

Peter Nicol

Pitsea Mount Community Association

Dean Buffoni

Owner of adjacent property

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

### SUBMITTED BY THE COUNCIL

- 1 List of Appearances
- 2 Opening Statement
- 3 Extract from Basildon Employment Land and Premises Study (pp 25 – 32)
- 4 Extract from Basildon Employment Land and Premises Study (p 102)
- 5 Extract from report of conformity of development plan policies with the NPPF
- 6 List of draft proposed conditions
- 7 Closing Submissions

### SUBMITTED BY THE APPELLANT

- 8 Opening Statement
- 9 Basildon Employment Land and Premises Study Executive Summary
- 10 Basildon District Council Statement of Consultation Appendix – Part 4

- 11 Proposed additions/variations to the conditions suggested by the Council
- 12 Closing Submissions