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## Appeal Decisions

Inquiry (Virtual) Held on 29-30 June, 1, 6 and 8 July, 28-29 September 2021

Site Visit made on 2 July 2021

**by AJ Steen BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 July 2022**

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### **Appeal A Ref: APP/B5480/C/19/3236400**

#### **Land North of Willoughby Drive, Rainham RM13 7BW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Kilnbridge Construction Services Limited against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/818/16, was issued on 26 July 2019.
- The breach of planning control as alleged in the notice is:  
Without the benefit of planning permission:
  1. The material change of use of the land identified hatched in black in the attached site plan to commercial uses in connection with a waste recycling business including, offices, storage of skips and metal containers, porta bins, machinery and equipment, creation of Heavy Goods Vehicle and car parking area, Parking of Heavy Goods Vehicles and cars; and
  2. Unauthorised development in the form of:
    - i. Erection of 2 storey and single storey modular buildings, and metal palisade fencing and walls exceeding 2m in height;
    - ii. Creation of hard standing.
- The requirements of the notice are to:
  - i. Cease the use of the land shown hatched on the attached plan for office use, storage of skips, metal containers, porta bins, storage of machinery and equipment in connection with the unauthorised uses; AND
  - ii. Cease the use of the land shown hatched on the attached plan for parking, storage of motor vehicles including Heavy Goods Vehicles; AND
  - iii. Remove two storey and single storey modular buildings, and metal palisade fencing and walls exceeding 2m in height; AND
  - iv. Remove all skips, metal containers, porta bins, storage of machinery and equipment used in connection and with the unauthorised uses; AND
  - v. Remove all hardstanding; AND
  - vi. Remove from the land all debris, rubble and other materials accumulated as a result of taking the above steps; AND
  - vii. Return the land back to the condition before the unauthorised use started.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.**

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### **Appeal B Ref: APP/B5480/W/21/3270498**

#### **Kilnbridge Waste Recycling Facility, York Road, Rainham, RM13 7BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.

- The appeal is made by Mr Dermot McDermott of Kilnbridge Construction Services Limited against the Council of the London Borough of Havering.
- The application Ref P1030.20, is dated 2 July 2020.
- The development proposed is improvements to York Road and part of Willoughby Drive.

**Summary Decision: The appeal is allowed subject to conditions in the terms set out below in the Formal Decision.**

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### **Applications for Costs**

1. An application for costs was made by the London Borough of Havering against Kilnbridge Construction Services Limited and an application for costs was made by Kilnbridge Construction Services Limited against the London Borough of Havering. These applications are the subject of separate Decisions.

### **Preliminary Matters**

2. The provisions of s176(1) of the Act give Inspectors wide ranging powers to correct or vary enforcement notices in order to get them "in order", provided that such alterations would not result in injustice to any party. At the Inquiry it was agreed that paragraph 1 of the description of the breach of planning control should have read "...hatched in black on the attached site plan ..." to correct a minor typographical error. It was also agreed that the phrase "creation of Heavy Goods Vehicle and car parking area" should be deleted as that element of the breach is repeated in paragraph 2. I will make those corrections to bring the notice in order.
3. Appeal A relates to land north of Willoughby Drive, Rainham RM13 7BW comprising the land identified on the site plan attached to the enforcement notice. For clarity, the decision on appeal A, including the appeal under ground (a), relates solely to this land and not any land that may be in the same use but outside the land identified on that plan.
4. Appeal B relates to works on York Road and Willoughby Drive. Whilst proposed by the owners of the land subject of the enforcement notice in appeal A and on adjacent land, the two developments are not dependent on one another. I note that the development proposed in appeal B may not be completed in the form proposed if the enforcement notice were upheld. Consequently, for the purposes of this decision I shall deal with appeal B as a freestanding proposal.
5. A revised National Planning Policy Framework (Framework) and London Plan were published during the course of the appeal. The Council and appellant were given the opportunity to comment at the Inquiry and I have taken their contents into account in coming to my decision.
6. I understand that a replacement for the Joint Waste Strategy is in the process of preparation. This is at a very early stage, such that it can carry only limited weight in my decision.
7. Evidence was given at the Inquiry under affirmation.

### **Appeal A on Ground (b)**

8. An appeal on ground (b) is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. This ground of appeal relates to the two storey modular buildings mentioned in paragraph 2 of the breach of planning control.

9. I understand that the two storey modular buildings were located within the area identified by the plan attached to the enforcement notice prior to the notice being issued. That is not in dispute. However, at some point that may have been prior to issue of the notice, they have been moved to their current location outside the enforcement notice boundary, within the neighbouring waste recycling facility (WRF) operated by the appellant.
10. Section 174(2)(b) of the Act sets out this ground of appeal and is worded in the past tense, which indicates that an appeal on this ground could not succeed where a breach has ceased between the Council becoming aware of it and issuing the notice.
11. Under this ground of appeal it was suggested that I could remove reference to the two storey modular buildings from the enforcement notice. However, it is clear that the two storey modular buildings had been located on the site such that this part of the breach had occurred, even if it may have been remedied prior to the issue of the notice. For that reason, the appeal on this ground as set out at Section 174(2)(b) of the Act must fail.
12. My attention was drawn to the judgement of the Court of Appeal in *Secretary of State for the Environment, Terry Holding v Thurrock Borough Council* [2002] EWCA Civ. 226 (Thurrock) that related to the abandonment of a use. Whilst the circumstances of that case are very different to this, paragraphs 23-24 of that judgement set out some background that may be relevant. This states that what is of potential concern to the public is not the process of building or of changing the use as such but the continued existence of the building or of the new use. Effectively, where the breach has been remedied there is no public benefit to the breach being identified in an enforcement notice, or for any remedy to be applied. Essentially, this relates to whether, if the two storey modular buildings had been removed from within the area identified by the enforcement notice, it was expedient to issue a notice.
13. However, my jurisdiction only applies to the grounds of appeal set out at Section 174(2) of the Act. Any challenge to the enforcement notice reflecting the expediency of taking enforcement action would need to be made to the courts, not through an appeal against the enforcement notice set out at Section 174 of the Act.
14. In any event, I note that the Council's Officer who delivered the enforcement notice thought he remembered seeing the two storey modular buildings were still on the land subject of the enforcement notice when he delivered the notice. That was not corroborated by any photographs or other evidence and he attended the site only very briefly. Taking account of the points made in the judgement on *Gestmin v Credit Suisse* [2013] EWHC 3560, although he clearly believed what he was saying was true, it is possible his recollections are not accurate. Equally, although there is clear evidence that the appellant had intended to move the modular buildings before that date, no witness was provided to say that they had actually been moved.
15. As a result, the evidence on the location of the two storey modular offices on the date the enforcement notice was issued is less than conclusive. Nevertheless, taking account of all the evidence before me, on the balance of probability I consider that the buildings had not been moved. Consequently, even if I had been able to consider this matter, I would have concluded the two

storey modular buildings should have been included within the breach of planning control.

16. For these reasons, I conclude that the appeal under ground (b) should fail.

### **Appeal A on Ground (a) and the Deemed Planning Application**

#### *Background and main issues*

17. Section 177(1) of the Act provides that planning permission may be granted for the whole or any part of the matters set out in the enforcement notice or in relation to the whole or any part of the land to which the notice relates. It would be possible for me to grant planning permission for the use and built development, or any part of it. For example, I could decide to remove the two storey modular buildings from the description of development if I were to consider this necessary. It is not open to me to grant planning permission for any land outside the area identified in the plan attached to the enforcement notice. I will keep these matters in mind in dealing with this ground of appeal.

18. The main issues are:

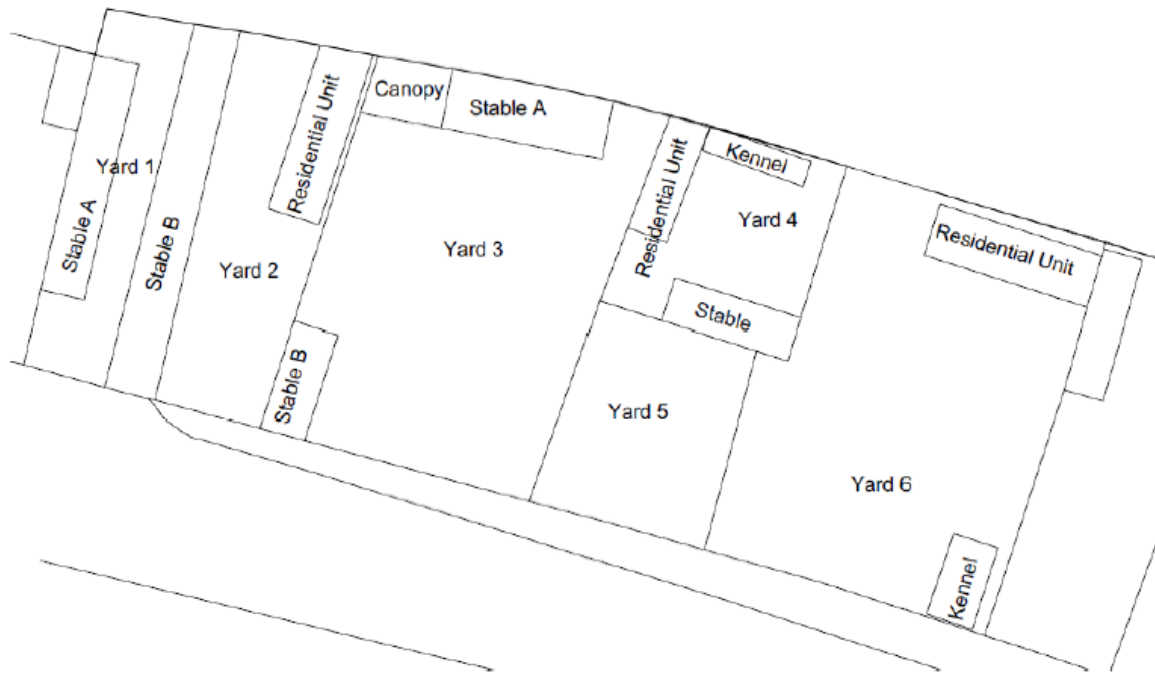
- Whether the development set out in the breach of planning control comprises inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- Whether there are other matters that result in additional harm;
- Whether there are other considerations weighing in favour of the development; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, does this amount to the very special circumstances required to justify the proposal.

#### *Reasons*

Whether inappropriate development

19. The Framework states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. This includes limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. Other forms of development, including material changes in the use of land, would also not be inappropriate provided they preserve openness and do not conflict with the purposes of including land within it. The Glossary to the Framework confirms that previously developed land includes "land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure".

20. Prior to occupation by Kilnbridge Construction Services Limited the site was divided into six yards identified on a plan within the Proof of Evidence of Mr Cunnane. I have inserted the plan here for ease of reference and will refer to it subsequently as "the above plan".



21. Yard 1 was a narrow area to the depth of the site, on the western end. It had been occupied by two stable blocks. The aerial photographs provided indicated they had been there for a significant period of time such that they had become lawful under Section 171B of the Act. That wasn't disputed by the Council. However, these appear to have been in a poor condition and may have collapsed or been removed prior to the appellant purchasing the land. There is limited evidence to show that was the case, so on the balance of probability I consider they were still there when the appellant bought the land.
22. Yard 2 was a similar shape and size directly adjacent to yard 1. It had planning permission<sup>1</sup> for stationing of a static caravan for residential occupation with two associated sheds, container with dog run and cess pit dated 19 November 2010. That was subject to conditions limiting occupancy of the site and requiring the use to cease at the end of three years from the date of permission, with materials and equipment brought onto the site in connection with the use to be removed, including ancillary buildings. I note that buildings would include any structure or erection, and any part of a building, as so defined. Consequently, all the development associated with the use was required to be removed.
23. The Council suggest that much of yard 1 was within the site area associated with the planning permission for yard 2. Comparing the plans with the above, particularly in relation to the kink at the rear of the WRF beside yard 1 and the WRF, that appears to be the case. However, as the stables were already located on the land, they could not have been brought onto the site in connection with the use, so they were not required to be removed. As a result, at the time the development subject of the enforcement notice took place, yard 1 comprised previously developed land but yard 2 did not.
24. An area approximately comprising yard 6 toward the east of the site was subject of a planning application for the change of use to residential for one mobile home and one touring caravan for a gypsy family that was allowed on

<sup>1</sup> Planning application reference P1376.10

appeal<sup>2</sup>. The year on the date of decision is indistinct on the copy provided but appears to be 30 March 2005. That was subject of a condition requiring the use of the land to cease and removal of the mobile home, touring caravan and all materials and equipment brought onto the land in connection with that use at the end of two years from the date of the decision.

25. The land subject of that appeal was outlined in red on the plan attached to the appeal decision. Other land, which appears to be yards 2, 3, 4, 5 and some land to the opposite (east) side of yard 6, was identified in blue which comprised land in the ownership of the appellant but not within the appeal site. The Inspector described what he saw when he visited. He stated the land identified in blue contained a block of eight stables and an area divided into three small paddocks for exercising horses. The plans and aerial photographs provided with that decision indicate the stables were on the land to the east. Prior to this development, yards 2, 3, 4, 5 and 6 appear to have been open grassland with a hedge or trees on the frontage with Willoughby Drive.
26. A subsequent application<sup>3</sup> was approved on 17 July 2007 for the "retention of mobile home and continuation of residential use for a gypsy family". Consequently, this was a new permission for development rather than a variation of a condition, albeit relating to the same development as that approved at appeal. No site plan with a red line around the site has been provided. However, a Locational Plan with a thick black line approximately covers yards 3, 4, 5, 6 and the neighbouring land to the east. It appears that the process of scanning and photocopying the plan has resulted in a black and white plan such that the original thick red line has turned black. That appears inconsistent with the earlier appeal decision plans that are in colour. However, in the absence of any other plan with a red line and on the balance of probability, the site for this planning permission must be the area outlined in black. There were additional plans comprising a mobile home plan and elevations, and a Block Plan.
27. The Block Plan shows three paddocks, presumably the same as those identified by the Inspector in the earlier decision, a canopy that is also shown on the above plan, an area of development including mobile home and sheds, kennel and stables with another canopy adjacent. The stables adjacent to the canopy in yard 3 on the above plan do not appear on the Block Plan. Yard 4 appears to be shown as a paddock. The mobile home and sheds appear to have been shown within yard 6. The stables and adjacent canopy shown on the Block Plan may be the stables referred to by the Inspector on the earlier appeal and appear to be on what is now the neighbouring site, outside the area identified on the plan attached to the enforcement notice.
28. That planning permission was subject of a condition stating that it was for a limited period expiring on 30 December 2010 after which the buildings and works associated with that use should be removed and the site reinstated to its former condition.
29. An application<sup>4</sup> for a variation of that condition was submitted and subsequently approved on 4 February 2011, with the same plans as on the permission to which it related. A new condition was imposed that required the use to cease at

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<sup>2</sup> Planning application reference P0704.04; appeal reference APP/B5480/A/04/1152584

<sup>3</sup> Planning application reference P0780.07

<sup>4</sup> Planning application reference P1865.10

the end of a period of three years from the date of the permission and all buildings, materials and equipment brought onto the premises in connection with the use, including the ancillary buildings approved, be removed.

30. The appellant suggests that the only "buildings" required to be removed were the twin unit mobile home and touring caravan. However, the stationing of a mobile home for residential occupation is a use of land; the mobile home would be a caravan for the purposes of planning control, not a building. The condition required that use to cease. In order to cease that use, any caravans would need to be removed. Indeed, the Officer Report associated with that application states that no operational development was proposed.
31. The Officer Report into the variation of condition states that the site comprised a parking area (stable yard), two paddocks, a canopy, a garden area, two pigeon lofts, a mobile home, sheds, kennel and stables. The pigeon lofts were identified on the Block Plan submitted with a letter dated 23 January 2011 in support of that application. They were approximately in the position of the residential unit and stable shown in yard 4 on the above plan. The kennel was shown on the Block Plan attached to the application in yard 6. A canopy was shown on yard 3 and I understand stables were subsequently brought onto that land, shown on the above plan. Other stables with a canopy attached were shown on the Block Plan on the land to the east, outside the area identified on the plan attached to the enforcement notice. The report identifies the stables and kennel as pre-existing.
32. Use of land for the commercial activities of the gypsy family would have been connected with their occupation of the site. I understand the occupant was a horse dealer, so the keeping of horses would have been part of his commercial activities. The keeping of dogs and pigeons was also connected with the occupation by the gypsy family. Consequently, any buildings brought onto the land in connection with those activities and located on yards 3, 4, 5 and 6 would have been subject of the relevant condition and required to be removed. That would include the stables, canopy, pigeon lofts and kennel.
33. It is unclear when the stables in yard 3 were brought onto the land; they don't appear on the Block Plan attached to the application for variation of the condition, although were on the site by the time of the aerial photograph that I understand was taken in 2015. They would, however, have been used in connection with the residential use of the mobile home.
34. For these reasons, I conclude that all the buildings, materials and equipment on yards 3, 4, 5 and 6 were required to be removed by the condition attached to the planning permission for the mobile home and associated residential use. As a result, that development was temporary or unauthorised and the land did not comprise previously developed land.
35. Paragraph 149g) of the Framework states that, subject to any effect on openness, limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, could comprise an exception to inappropriate development in the Green Belt. Taking account of the WRF and development to the other side of the appeal site along Willoughby Drive, development of the site may constitute limited infilling or the redevelopment of previously developed land if it were not to have a greater impact on the openness of the Green Belt than any previous development.

36. In changing the use of the site and completing the development alleged in the enforcement notice, the appellant cleared the land of the previously existing structures. They suggest that the removal of the previous development and the change of use in connection with the waste recycling business with associated built development comprised a single operation. I see no reason to disagree with that. Nevertheless, that previous development has been removed and replaced with development that is currently unlawful.
37. The development described in the enforcement notice comprises a change of use of the land including offices, storage of skips and metal containers, porta bins, machinery and equipment, and parking. In addition, two storey and single storey modular buildings, metal palisade fencing and walls have been erected and hard standing has been laid. This development covers the whole site. This differs from the previous development described above. So, although stables on the site were likely to be more permanent than the modular buildings referred to in the enforcement notice, the quantum of development is now greater. As a result, in spatial terms, this means the development harms the openness of the Green Belt.
38. The site is now covered in hard standing. This results in a harsher appearance to the surface of the ground but does not visually or spatially affect openness. However, it does enable the use of the site for storage and parking purposes.
39. The use of the site for unrestricted storage of skips, metal containers, porta bins and siting of modular buildings results in visual harm to the openness of the Green Belt compared to the previous lawful use of the site. The number of items stored and structures located on the site will fluctuate over time. The appellant has accepted that the height of skip, container and porta bin storage could be limited by condition to 4 metres and I could remove reference to any 2 storey modular buildings from any planning permission, such that any uses of the site should be restricted in height. I note that the skips and other containers have been relocated from the WRF, such that this is not a wholly new harm but has extended the area in uses related to the WRF. I have taken all this into account in coming to my decision.
40. There are now tall concrete walls to the open space at the rear and neighbouring site containing a mobile home. These replace the lower close boarded fences that had been erected around most of the site. The concrete walls are, to a large extent, covered with ivy that gives them a largely green appearance from the open space. Whilst this means that the visual harm from the development within the site is hidden to some extent and the greenery softens the appearance, the height of the walls mean that there is additional visual harm in views from the open space and neighbouring properties.
41. A palisade fence has been erected to separate the site from Willoughby Road. This replaces the previous close boarded fences that would have restricted views into the site. The solidity of the close boarded fences would block views into the site more than the palisade fence from surrounding viewpoints, particularly Willoughby Drive and York Road, and public footpath between Willoughby Drive and Dagenham Road. However, this needs to be balanced with the increased height of the palisade fence compared to the previous close boarded fence. The increased openness of the palisade fence means that the visual effect of the fence in views from Willoughby Drive and Dagenham Road does not, on balance, affect the openness of the Green Belt.



42. It was suggested that a close boarded fence could be erected or attached to the rear of the palisade fence to hide the operations on site on the basis this would be more attractive. However, that would be more solid such that, even if more attractive, it would visually harm the openness of the Green Belt. Similarly, landscaping outside the palisade fence would improve the appearance but would not materially affect the openness of the Green Belt.
43. The Framework specifies five purposes of the Green Belt, including safeguarding the countryside from encroachment and assisting in urban regeneration, by encouraging the recycling of derelict and other urban land. The previous uses of the site related predominantly to temporary gypsy accommodation and stables. These are not urban uses, and in any event they were required to be removed, consequently it was not derelict urban land. The re-use of the site in association with the WRF does not encourage the recycling of derelict and other urban land as it accommodates an urban use within the Green Belt. As such, it does not assist in urban regeneration. It results in an urban use encroaching into the Green Belt and, consequently, the countryside. As such, it conflicts with that purpose of the Green Belt.
44. On balance, therefore, both the spatial and visual effects of the development have resulted in harm to the openness of the Green Belt and conflict with the purposes of including land within it. As a result, the proposal cannot fall within the exception to inappropriate development within the Green Belt relating to limited infilling or the partial or complete redevelopment of previously developed land and it would not constitute a material change in the use of land that would not be inappropriate.
45. For these reasons, I conclude that the development has resulted in inappropriate development that harms the openness of the Green Belt and conflicts with the purposes of it. The development conflicts with the Framework and does not comply with Policy DC45 of the Core Strategy and Development Control Policies Development Plan Document (CS) and Policy G2 of the London Plan that seek to protect the Green Belt from inappropriate development and promote uses in the Green Belt that have a positive role in fulfilling Green Belt objectives.

#### Other matters

46. The reasons for issuing the enforcement notice refer to the effect of noise and disturbance on the living conditions of neighbouring occupiers of the houses and mobile homes on Willoughby Drive. The use of the site with large vehicles coming and going, including loading and unloading of skips, provides a noisy atmosphere on the appeal site. However, the tall concrete wall to the side of the site limits noise travel to the neighbouring residential properties. Conditions have been proposed, should the appeal be allowed, relating to the hours for delivery, collection and movement of skips, containers and bins. Consequently, whilst this is a noisy use that could result in disturbance to neighbouring occupiers, the mitigation by the boundary wall and imposition of an appropriate condition would be sufficient that any effects on the living conditions of neighbouring occupiers would not be material.
47. This reflects the requirements of Policy DC55 of the CS that seeks to protect noise sensitive development from noise generating activities, including through the imposition of appropriate conditions.

## Other considerations

48. The appellant states that they began use of the appeal site in order to increase efficiency of the WRF on the adjacent land. The WRF seeks to process and recycle construction, demolition and excavation (CD&E) waste. The skips and other containers were stored on that site, but this limited the space available for storage of sorted waste. That lack of storage of sorted waste meant that less waste could be recycled. Co-location means travel between the WRF and the storage location for skips and other containers is minimised, which limits vehicle emissions. By using the appeal site for storage of skips and other containers, the WRF can operate more efficiently and sustainably in processing waste up the waste hierarchy.
49. The National Planning Policy for Waste, Policy SI 7 of the London Plan, Policy CP11 of the CS and Policy W1 of the Joint Waste Plan promote the circular economy, keeping products and materials at their highest use for as long as possible, and seek to drive waste management up the waste hierarchy. These show that re-use, recycling and recovery are preferable to disposal. The WRF contributes to these objectives and provision of the appeal site for storage of skips and other containers supports the efficiency of the WRF in contributing to the circular economy and moving waste up the waste hierarchy.
50. I understand that Policy SI 8 of the London Plan seeks net self-sufficiency for London, safeguarding existing waste sites, optimising the capacity of existing sites and providing new sites. As the WRF and appeal site are located within London and much of the waste processed at the site arises from projects in London, it contributes toward re-use and recycling within London, and self-sufficiency in terms of dealing with CD&E waste.
51. Policies SI 8 and SI 9 of the London Plan also seek to safeguard and optimise existing waste sites. This would include the existing WRF. Optimising suggests making best use of the existing site rather than through extension. Nevertheless, these policies would support the increase in capacity of the WRF, albeit not an extension to the site.
52. I note that the London Plan also seeks re-use and recycling of CD&E waste on construction sites. However, this is a longer term aspiration and there is a need for capacity in the meantime.
53. Policy W5 of the Joint Waste Plan relates to waste related development, suggesting planning permission should only be granted where the development will not significantly adversely affect people, land, infrastructure and resources. The only adverse effect I have identified is that relating to the Green Belt. The policy does not specifically refer to the Green Belt. My attention has not been drawn to the Green Belt constituting the land, infrastructure or a resource as set out in the policy. Consequently, I conclude that there is no conflict with this policy.
54. I understand that the appellant has been searching for an alternative site for the accommodation of the WRF as a whole or for the skip and Heavy Goods Vehicle (HGV) storage for a period of at least five years, including prior to purchasing the appeal site. They have been unsuccessful in finding an appropriate site. I understand that there are a number of other waste firms seeking new premises and this use is not welcomed on a lot of otherwise suitable industrial areas, such as Freightmaster and Avocet Park.

55. My attention has been drawn to the potential to accommodate the uses subject of this appeal on the appellant's headquarters site. However, this is some distance from the WRF and it isn't clear whether there is space for the accommodation on that site.
56. I note that the London Plan seeks to ensure the city is self-sufficient in relation to waste recycling. Consequently, the site search has been limited to the city. The appellant has sought to ensure any replacement site would be well-related to the source of the waste and that the WRF and skip storage are closely related in order to be efficient and reflect the requirements of Policy SI 8 of the London Plan seeking net self-sufficiency for London. The Council suggests that as a proportion of the waste handled comes from outside London, the search area should be extended beyond the city. This would enable further flexibility to the search and may enable the appellant to find a suitable site. However, it would conflict with that policy.
57. It is clear from the evidence that there was a reasonably comprehensive, but unsuccessful, search for an alternative site over a substantial period of time.

### *Conclusion*

58. I have found that the use of land subject of the enforcement notice in connection with a waste recycling facility harms the openness of the Green Belt and conflicts with the purposes of the Green Belt. As a result, it does not fall within the exception to inappropriate development comprising limited infilling or the partial or complete redevelopment of previously developed sites. Neither does it constitute another form of development that is not inappropriate in the Green Belt, such as a material change of use of the land. Consequently, it constitutes inappropriate development that harms the openness of the Green Belt and conflicts with the purposes of it. I have not identified any other harm. The Framework states that substantial weight should be given to Green Belt harm and any other harm.
59. The creation of Heavy Goods Vehicle and car parking area and use of the land including offices, storage of skips and metal containers, porta bins, machinery and equipment, and parking of Heavy Goods Vehicles and cars supports the efficiency and sustainability of the WRF on the adjacent land. It assists in enabling the processing of waste up the waste hierarchy. This complies with the National Planning Policy for Waste, Policy SI 7, SI 8 and SI 9 of the London Plan, Policy CP11 of the CS and Policy W1 of the Joint Waste Plan.
60. The appellant has sought, over a substantial period of time, to find an alternative site for the WRF and the storage on the waste site both individually and together. However, that search has not been successful.
61. As a result, the contribution of this site toward processing of waste up the waste hierarchy and lack of suitable and available alternative sites must carry considerable weight in the appeal process.
62. Taking account of all those factors, I consider that the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations, either individually or cumulatively, sufficient to demonstrate very special circumstances.
63. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

## **Appeal B**

### *Main issues*

64. The main issues are:

- Whether the development comprises inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the development on the safe and efficient operation of the highway network in the vicinity of the appeal site;
- Whether there are other considerations weighing in favour of the development; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, does this amount to the very special circumstances required to justify the proposal.

### *Reasons*

Whether inappropriate development

65. The Framework states that certain other forms of development are not inappropriate in the Green Belt provide they preserve its openness and do not conflict with the purposes of including land within it. These include engineering operations and local transport infrastructure which can demonstrate a requirement for a Green Belt location. There was some dispute as to whether the proposed works to York Road and part of Willoughby Drive would comprise local transport infrastructure. Nevertheless, the proposals, including re-surfacing, are clearly engineering works such that the development would fall within that exception to inappropriate development, providing they preserve openness and do not conflict with the purposes of including land within the Green Belt.

66. York Road and Willoughby Drive currently comprise unmade roads with parking to both sides of the road. The development would re-surface the existing road and provide parking bays to replace the existing unmade road and informal parking. As it would be at surface level, it would not affect the openness of the Green Belt in spatial terms.

67. The plans indicate some space for landscaping around the road that should result in a greener appearance, even if some existing hedgerow would be lost. The existing surface is unbound, potholed and dusty or muddy, heavily used by a variety of vehicles such that vegetation is unable to establish. The new surface would be more solid and of a more permanent appearance. There is existing parking, including of abandoned vehicles, and fly tipping that should be reduced to some extent by the new surfacing and layout with designated parking bays. The appearance would be considerably altered but only at ground level. The number and use of properties to which access would be provided would not change; consequently, there would not be an increase in the volume of traffic or parking arising from the proposal. On balance, therefore, although the appearance of the road would change, the proposed engineering operations would not affect the openness of the Green Belt in visual terms.

68. The resurfacing of York Road and Willoughby Drive would provide better access to the WRF and other premises, with less need for maintenance and provide a more formal appearance. The existing roads do not link neighbouring settlements such that their resurfacing would result in them merging into one another, nor would the resurfacing lead to encroachment into the countryside. As such, the resurfacing would not conflict with the purposes of the Green Belt.

69. For these reasons, I conclude that the proposed works to York Road and part of Willoughby Drive would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. As a result, it would comprise an engineering operation that would fall within the exception to inappropriate development set out within the Framework. It would not conflict with Policy DC45 of the CS that promotes uses in the Green Belt that have a positive role in fulfilling Green Belt objectives but does not refer to engineering operations.

#### Highway safety

70. York Road and the part of Willoughby Drive that would be affected by the proposal comprise unmade roads that are used to access the WRF, including the area subject of appeal A, and further residential and commercial premises along Willoughby Drive. York Road joins the A1112, Dagenham Road, that is a wide road of two lanes, including bus lane, in either direction with a central reservation. There is a gap in that central reservation to allow vehicles to turn into and out of York Road. I understand that vehicle speeds are above the speed limit along Dagenham Road. The safety issues that concern the Council relate to vehicles turning into and out of York Road through that central reservation, and the safety of pedestrians who would use York Road and Willoughby Drive.

71. The proposal relates solely to works to the surface of the roads. It would not result in additional vehicles using York Road or Willoughby Drive. Numbers of vehicles using the junction with Dagenham Road would not change. I note that there have, in the past, been accidents within the vicinity of the site, including one fatal accident, but these were not related to the operation of the junction with York Road. I understand that some users may stop in a position that partially blocks the highway and that visibility may be constrained by buses waiting at the nearby bus stop. However, given that there would not be a change in the number of vehicles using this junction, these problems would not increase following the proposed works. Consequently, the works proposed would not harm the safety of the junction.

72. Pedestrians currently use either York Road and Willoughby Drive or the footpath between Dagenham Road and Willoughby Drive to access the WRF and other development on Willoughby Drive. There is no separate provision for pedestrians on York Road or Willoughby Drive at present; the existing surface is shared between all road users. The proposal does not have separate provision for pedestrians. Given the surfacing would be of a smoother and better quality there is potential for vehicles, including heavy vehicles, to move along the roads at a greater speed. However, given the short lengths of roads affected and general layout proposed, including parking, this speed is unlikely to be materially greater. As a result, the proposal would not result in increased risk to pedestrians.

73. It has been suggested that the closing of the central reservation would result in improvements to vehicle safety at the junction between York Road and Dagenham Road. However, I have already concluded that the proposal would not harm vehicle safety at this junction. Consequently, this would not be necessary to make the development acceptable in planning terms or be fairly and reasonably related in scale and kind to the development. As any improvement would need to be secured by a planning obligation, it would fail the tests set out in paragraph 57 of the Framework.
74. I note suggestion of a condition limiting vehicle movements along the road. However, the appellant can only control vehicle numbers accessing and egressing their premises, not those relating to other premises accessed from York Road and Willoughby Drive. Consequently, such a condition would not be enforceable.
75. I understand that the existing unbound surface leads to mud and dust being tracked onto the surface of Dagenham Road. That could affect road safety outside the site. There may be other solutions to this problem, such as wheel washing. The replacement of the unbound surface with a bound surface would constitute a road safety improvement, albeit of limited weight given that there may be alternative solutions.
76. For these reasons, I conclude that the development would not affect the safe and efficient operation of the highway network in the vicinity of the appeal site, in particular in relation to pedestrian safety and the safety of vehicles at the junction between Dagenham Road and York Road. As such, it would comply with Policies DC32 and DC72 of the CS and Policies T3, T4 and DF1 of the London Plan that seek development proposals to not increase road danger and provide appropriate mitigation where that would overcome any adverse transport impacts, including through planning obligations.

#### Other considerations

77. My attention has been drawn to the potential for gates or bollards to be placed at the entrance to York Road to discourage fly tipping and other unauthorised access. It is unclear how such systems would operate in practice, given the variety of vehicles requiring access to these roads and number of occupiers along Willoughby Drive. Consequently, the lack of agreement to provide gates or bollards does not affect my conclusions on the proposed development.

#### Conditions

78. To meet legislative requirements, a condition shall be imposed to address the period for commencement. I shall also impose conditions for the following reasons. I have imposed a condition specifying the relevant drawings as this provides certainty.
79. A condition is necessary to ensure adequate wheel washing facilities for vehicles involved in the improvements to the roads be provided on site to protect highway safety. Approval prior to development commencing of landscaping works and their subsequent implementation and retention are necessary in order to ensure the development would reflect the character and appearance of the area. A condition to control lighting on the roads is necessary to protect the character and appearance of the area.

### *Conclusion*

80. I have concluded that the proposal is not inappropriate development and does not harm the openness of the Green Belt or the purposes of including the land within the Green Belt. It does not affect the safe and efficient operation of the highway network in the vicinity of the appeal site. For the above reasons and taking into account all other matters raised I conclude that the improvements to York Road and part of Willoughby Drive would comply with the development plan and the appeal should succeed.

### **Appeal A on Ground (f)**

81. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the hardstanding and cease the unauthorised use of the land including removal of materials and equipment and return the land back to the condition before the unauthorised use started. That seeks to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

82. The appellant suggests that the requirement to remove all the hardstanding is excessive as there were extensive areas of hardstanding on the site previously. I note that the history of the site relates to a number of planning applications for temporary development across parts of the site and there are sections where there was previous hardstanding. Nevertheless, it appears that the hardstanding now laid on the site is recent and replaces any that was on the site prior to its development and use in relation to the WRF. In that context, the removal of hardstanding from the site is not excessive.

83. The final requirement to return the land back to the condition before the unauthorised use started does not clearly specify what condition the land was in. The issue in this case is that the land had previously contained a mix of permanent and temporary uses and structures. These were all removed either before or during the works to prepare the land for its unauthorised use in relation to the WRF. The Council suggest that the requirement could be amended to require seeding to grassland but that would go further than the current requirements. In addition, under ground (a) I have concluded that part of the land was previously developed. Consequently, that would be excessive.

84. For these reasons, I conclude that the final requirement should be removed from the enforcement notice. This would have the effect of requiring all the hardstanding, materials and equipment be removed from the land in order to remedy the breach. Although it would not specify what should take place following their removal, that is the most that can be required in this instance.

85. As a result, I conclude that the requirements of the notice do exceed what is necessary in order to remedy the breach of planning control. As such, the appeal succeeds on ground (f). I shall remove the final requirement and make consequential changes to the previous requirement.

### **Appeal A on Ground (g)**

86. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
87. The appellant suggests that the three months required by the enforcement notice to meet the requirements of the notice are insufficient and a period of 18 months would be necessary. The appellant does not suggest that the requirements of the notice could not be complied with in the period set.
88. Nevertheless, I note the appellant has conducted a search to find alternative premises for both the WRF and associated uses on this site. However, that has not been successful. That indicates that appropriate premises are difficult to find.
89. It is reasonable to take account of the difficulty of finding alternative sites given that the uses on the site will need to take place somewhere. The site provides employment, contributes to the efficient operation of the WRF and sustainability of Kilnbridge Construction Services Limited, and contributes to the wider circular economy within London. I note that the Council consider the search for sites has been "faux". However, a search has clearly taken place and I accept that the use of the site would not be desirable in a lot of locations. Consequently, it is reasonable to allow a period longer than three months. Taking account of all these matters, I consider a reasonable period for compliance would be ten months.
90. For these reasons, I conclude that the appeal under ground (g) should succeed and I will alter the period specified in the notice for compliance to ten months.

### **Formal Decisions**

#### Appeal A

91. It is directed that the enforcement notice is corrected and varied by:
- The deletion of paragraph 1 and substitution of the words "1. The material change of use of the land identified hatched in black on the attached site plan to commercial uses in connection with a waste recycling business including offices, storage of skips and metal containers, porta bins, machinery and equipment, parking of Heavy Goods Vehicles and cars; and" in section 3. titled The Breach Of Planning Control Alleged.
  - The deletion of the words "...; AND vii. Return the land back to the condition before the unauthorised use started" in section 5. titled What You Are Required To Do.
  - The deletion of three months and the substitution of ten months as the time for compliance.
92. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.



## Appeal B

93. The appeal is allowed and planning permission is granted for improvements to York Road and part of Willoughby Drive at Kilnbridge Waste Recycling Facility, York Road, Rainham, RM13 7BW in accordance with the terms of the application, Ref P1030.20, dated 2 July 2020, subject to the conditions in the schedule at the end of this decision.

*AJ Steen*

INSPECTOR

### **Schedule of Conditions**

#### **Appeal B Ref: APP/B5480/W/21/3270498**

- 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:
  - ITB16119-GA-001 Rev. B 'Internal Site Access Arrangement'
  - ITB16119-GA-003 'Swept Path Analysis - Large Tipper & Skip Lorry'
  - ITB16119-GA-004 'Swept Path Analysis - Max Articulated Vehicle'
  - ITB16119-GA-005 'Swept Path Analysis - Large Tipper & Skip Lorry'
  - ITB16119-GA-006 'Illustrative Drainage Strategy'
  - KCSL/WD/LOC/01 'Location Plan'
  - KCSL-WD-APP-01 'Planning Application Boundary'
- 3) Before the development hereby permitted is first commenced, vehicle cleansing facilities to prevent mud being deposited onto the public highway during construction works shall be provided on site in accordance with details to be first submitted to and approved in writing by the local planning authority. The approved facilities shall be retained and used throughout the duration of construction works. If mud or other debris originating from the site is deposited in the public highway, all on-site operations shall cease until it has been removed.

The submission will provide:

  - a) A plan showing where vehicles will be parked within the site to be inspected for mud and debris and cleaned if required. The plan should show where construction traffic will access and exit the site from the public highway.
  - b) A description of how the parking area will be surfaced, drained and cleaned to prevent mud, debris and muddy water being tracked onto the public highway;
  - c) A description of how vehicles will be checked before leaving the site - this applies to the vehicle wheels, the underside of vehicles, mud flaps and wheel arches.
  - d) A description of how vehicles will be cleaned.

- e) A description of how dirty/muddy water be dealt with after being used for the washing off the vehicles.
  - f) A description of any contingency plan to be used in the event of a break-down of the wheel washing arrangements.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No lighting shall be installed on the site other than in accordance with details that have previously been submitted and approved in writing by the local planning authority, including details of column heights, luminance, light spill and hours of operation. Lighting shall be maintained in accordance with the details approved.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Andrew Tabachnik QC, instructed by Alison Crooks of Integrated Skills, called

Gary King, Sharps Redmore

Tim Wall, i-Transport

Alison Crooks, Integrated Skills

Joe Cunnane, Cunnane Town Planning

### **FOR THE LOCAL PLANNING AUTHORITY:**

Sasha Blackmore of Counsel, instructed by the Solicitor to the London Borough of Havering called

Onkar Bhogal, Principal Planning Enforcement and Appeals Officer, London Borough of Havering

Raphale Adenegan BA (Hons) Dip TP MRTPI, Principal Planning Officer, London Borough of Havering

Veluppillay Sivanandarajah BSc Hons (Civil Engineering), MCIHT, Senior Engineer, London Borough of Havering

**DOCUMENTS SUBMITTED AT THE INQUIRY:**

- Document 1: Site plan identifying distances from the appeal site
- Document 2: List of Core Documents
- Document 3: Speed Survey Location Plan, Speed Survey and covering emails
- Document 4: Copy of judgement of the Court of Appeal in *Secretary of State for the Environment, Terry Holding v Thurrock Borough Council* [2002] EWCA Civ. 226
- Document 5: Waste Data Input for 2017, 2018 and 2019
- Document 6: Details of planning permission reference P0704.04
- Document 7: Details of planning permission reference P0780.07
- Document 8: Details of planning permission reference P1376.10
- Document 9: Details of planning permission reference P1865.10
- Document 10: Topographical Survey, drawing no. RAI-SUR-01
- Document 11: Google Earth image dated 2020
- Document 12: Plan of the junction of York Road
- Document 13: Link Plan
- Document 14: Amended list of suggested conditions
- Document 15: Photographs relating to planning application reference P1865.10
- Document 16: Council's Closing Statement including bundle of cases and Detailed Factual Analysis of Planning Consents
- Document 17: Appellant's Closing Statement