
Appeal Decision

Site visit made on 3 January 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2018

Appeal Ref: APP/B5480/C/17/3169449

The land at 6 Salamons Way, Rainham, Essex RM13 9UL

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mark Ferrari [hereafter "the appellant"] against an enforcement notice issued by the Council of the London Borough of Havering [hereafter "the Council"].
 - The notice was issued on 16th January 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of 6 Salamons Way, Rainham, Essex from Use Class B8 to car breakers yard, storage and selling of motor vehicles and carrying out motor vehicle repairs (Use Class Sui Generis) in enclosed area edged in black in the attached plan.
 - The requirements of the notice are:
 1. Cease using the Land shown edged in black on the attached plan for dismantling of motoring vehicles, selling and storage of motor vehicles including carrying out motor vehicle repairs in enclosed area edged in black in the attached plan; and
 2. Remove from the land all motor vehicles and equipment associated with unauthorised use; and
 3. Remove all waste materials, scrap metal, tyres, and car parts including equipment associated with unauthorised use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in s174(2)(a) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - (i) In paragraph 3, deletion of "car breakers yard" and substitution of "use for dismantling of motor vehicles"; and
 - (ii) In paragraph 3, deletion of "Use Class Sui Generis" and substitution of "Sui Generis use".
 - (iii) In paragraph 5, deletion of "The Enforcement Notices to require".

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. At my site visit I saw that the appeal land had been split into four separate parts and that the appellant's business occupied only one of those parts¹. However, at the time that the enforcement notice was issued the appellant's business occupied the whole of the land. It is that earlier use taking place across the entire land to which the enforcement notice relates. I shall deal with the appeal and the deemed application accordingly.
3. There is no appeal brought on ground (b) that the matter alleged has not occurred as a matter of fact. However, one of the elements comprised in the allegation is use as a "car breakers yard" which is disputed by the appellant.
4. The term "car breakers yard" is a broad term and could cover activities such as (for example) the depollution and crushing of vehicles. However, the appellant says that the site has not been used as an "end of life" breaker's yard and that only limited dismantling activities have been undertaken involving the removal of vehicle parts for re-use. There is no contrary evidence.
5. On the evidence it would be more precise to describe this element of the use as "use for the dismantling of vehicles" rather than "car breaker's yard". Also, such a description would make the allegation consistent with the requirement at paragraph 5.1 of the notice.

Other matters concerning the enforcement notice

6. The use is described, in paragraph 3, as "Use Class Sui Generis" whereas a use which is sui generis falls outside of any Use Class.
7. The text "The Enforcement Notices to require", in paragraph 5 of the notice is confusing and grammatically incorrect. It is also superfluous because the heading states already that the paragraph concerns "What you are required to do".
8. I shall correct the notice by deleting "Use Class" from the reference to sui generis use in paragraph 3 and by deleting the unnecessary text at paragraph 5. I shall also correct the description of the allegation (as referred to above) by deleting "car breaker's yard" and substituting "use for the dismantling of vehicles". I shall make all these corrections under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.

The deemed application

9. The deemed application takes its terms from the allegation in its corrected form.
10. Reference has been made in the appeal submissions to recently erected/partially erected buildings on the land. These buildings are not, however, referred to in the allegation and therefore are not covered by the deemed application that is before me.

¹ The appellant has produced a plan (drawing no. KS1701637/01) which shows the four separate parts of the site. The appellant's business occupies that part labelled "6", the other parts being labelled A, B and C and being in use by different occupiers apparently for storage of vehicle bodies (part A), storage of vehicles prior to export (part B) and storage of vehicle parts (part C).

The appeal on ground (a) and the deemed application

Planning policies

11. The Development Plan (insofar as relevant to this appeal) is comprised of the Core Strategy and Development Control Policies Development Plan Document 2008 [CS & DCPDPD], the Joint Waste Development Plan for the East of London Waste Authority Boroughs (February 2012) [JWDP] and the London Plan 2015. I have been referred to a number of planning policies.
12. Policies CP11 [CS & DCPDPD], W1 [JWDP] and 5.16 of the London Plan, taken together, seek to minimise the amount of waste and reduce landfill. Policy W2 [JWDP] seeks to safeguard existing waste management facilities and approve strategic facilities on allocated sites.
13. Policy DC9 [CS & DCPDPD] seeks to safeguard land for employment uses.
14. Policies DC48, DC52, DC53, DC61 [CS & DCPDPD] and W5 [JWDP], taken together, seek to ensure that development does not give rise to unacceptable risk to human health and the natural environment, nor that it does not result in any significant adverse effects upon amenity, with particular regard to contamination of land and the water environment, air quality, visual effects and noise.
15. Policy DC32 [CS & DCPDPD] and W5(xiii) [JWDP] seek to protect the functioning of the road hierarchy.
16. Policy DC55 [CS & DCPDPD], which concerns noise sensitive developments (e.g. residential, schools and hospitals) and its proximity to noise sources has also been cited. As the appeal development is not a noise sensitive development, and does not affect a noise sensitive development, I find this policy of no relevance to the appeal.
17. All of the other cited development plan policies are relevant. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.²
18. Government's national planning policy for England is set out in the National Planning Policy Framework [the Framework]. The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. Amongst its core planning principles (paragraph 17) are those of always seeking to secure high quality design and a good standard of amenity, encouraging the reuse of existing resources, encouraging the effective use of land and reducing pollution. Section 1 advises on building a strong and competitive economy.
19. National Planning Policy for Waste (October 2014) [NPPW] sets out government's waste management policy for England. The NPPW (amongst other things) encourages increase in use of waste as a resource, and places great emphasis on recycling and the protection of human health and the

² S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

environment. Guidance on the implementation of this national policy is set out in the Planning Practice Guidance for Waste.³

20. The above national policies and guidance are material consideration for the appeal.

Main issues

21. Having regard to the policy background and submissions made by the parties I consider the main issues in the appeal to be:

- (i) Effect upon the economy of the area and the interests of safeguarding land for B1 (b) and (c), B2 and B8 uses;
- (ii) Effect upon the interests of minimising waste and reducing landfill;
- (iii) Effect upon the amenity of the area with particular regard to visual effect and noise; and
- (iv) Whether risks to human health and the natural environment are satisfactorily managed.

Effect upon the economy of the area and the interests of safeguarding land for B1 (b) and (c), B2 and B8 uses

22. The site is within a Strategic Industrial Location as identified in the CS & DCPDPD. In such a location land is safeguarded to provide for a range of industrial, storage and distribution uses. Policy DC9 stipulates that permission "will only be granted" for B1 (b) and (c), B2 and B8 uses.⁴
23. The appeal use, being a sui generis use, does not fall neatly within any particular one of the specified Use Classes. It is, however, a use which is a composite of industrial processes and storage activities analogous to B2 and B8 uses together with vehicle sales arising from the use. Additionally, policy DC9 states that waste uses will be considered acceptable within the Strategic Industrial Locations. Therefore, by reasonable interpretation, I do not consider that the use is contrary to policy DC9.
24. The Framework places significant weight on the need to support economic growth in its widest sense and indicates a more flexible approach to the development of employment land. Policy DC9 pre-dates the Framework. The appeal use gives rise to economic activity within an area intended for economic growth. I consider (taking the appellant's point) it quite likely that there is synergy between the appeal use and other businesses in the area. Even if the appeal use is considered to not fall wholly within policy DC9 the Framework, and the more flexible approach which it advocates, would carry more weight in these overall circumstances.
25. On this first main issue, therefore, I do not find that the use has a detrimental effect upon the interests of safeguarding land for B1 (b) and (c), B2 and B8 uses or upon the economy of the area. Neither do I consider it to offend the aims of policy DC9.

³ The National Planning Policy for Waste (October 2014) replaced former national policy as expressed in PPS10. Planning Practice Guidance for "Waste" provides guidance on the implementation of the revised waste policy and replaces the earlier companion guidance to former PPS10.

⁴ The Town and Country Planning (Use Classes) Order 1995 (as amended) sets out classes of uses for planning purposes. Class B1(b) uses are those involving research and development and B1(c) uses are uses involving other light industrial processes. Class B2 uses are those involving general industrial processes and Class B8 uses are those involving storage and distribution.

Effect upon the interests of minimising waste and reducing landfill

26. The use, insofar as it involves the salvage of parts from vehicles which have been previously discarded, falls to be considered against the waste management policies of the development plan.
27. Policy W2 seeks to protect existing waste management facilities and safeguard identified locations for new strategic waste development. It does not preclude other development involving waste management in other locations.
28. The appeal use is not of such scale as to be regarded as a "strategic" facility for which sites are specifically identified. As a general principle it is desirable to manage waste as close as possible to its source. Whilst I have not been told exactly from where the vehicles come I am mindful of the likely relationship the use has with other businesses in the area. I also take into account that policy CP11 includes strategic industrial locations as being broadly suitable for waste management developments. Therefore, I do not find on balance that the use is contrary to East London's strategy for sustainable waste management in terms of its location.
29. The Council has pointed out that the JWDP identifies vehicle dismantling as a transfer type operation which does not count towards meeting the capacity required to manage waste which it has to account for. However, that is not to say that such uses cannot serve a useful purpose within the overall waste management strategy.
30. In this case the element of "vehicle dismantling" is part of an overall composite use which, essentially, involves the recovery of vehicle parts and their re-use. I consider such a use, on balance, to contribute positively towards driving waste management up the waste hierarchy and to help towards minimising the extent of waste disposal within the district.
31. On this second main issue, I find that the appeal development serves a useful purpose towards minimising waste and accords with the aims of the JWDP. I find no conflict with policies W1 and W2 [JWDP], CP11 [CS & DCPDPD] or 5.16 of the London Plan.

Effect upon the amenity of the area with particular regard to visual effect and noise

32. Within the immediate surroundings on Salamons Way are a mix of business uses including car repair garages, tyre fitting and vehicle services, ready mix concrete suppliers, recycling services and services involving the supply and fitting of refurbished engines, gear boxes and car parts taking place within a range of industrial buildings with yards. The appeal use is not dissimilar to the other uses that immediately surround it.
33. This pocket of existing businesses on Salamons Way sits within the London Riverside Business Improvement Area where there is evidence of considerable investment and recent employment development in particular by the riverside. There are, additionally, large areas of reclaimed land served by infrastructure ready for further development. The prevailing characteristic of the area is one of regeneration and environmental improvement.
34. Within this context, and in accordance with the relevant policies of the development plan, development on the appeal site should complement or

improve the amenity and character of the area both visually and in terms of environmental quality generally, including with regard to noise. It is important that the right balance is struck between business needs and environmental gains to ensure development is sustainable and contributes to the general improvement of the immediate and wider area.

35. The appeal site is most easily seen in public viewpoints at its frontage from Salamons Way. Through the fencing, and with the gates open, activities within the site are clearly visible which, at the time the notice was issued, comprised the parking and storage of a considerable number of vehicles and storage of other items in a somewhat disorganised and haphazard manner as is demonstrated by the Council's photographs. The site frontage itself, being comprised of spiked palisade fencing and gates, metal fencing and barbed wire also has a quite hostile and unattractive appearance.
36. The undertaking of vehicle repairs and removal of vehicle parts within the open site, additionally, is visually displeasing. Whilst this harm could be overcome by confining such activities to within buildings, the buildings that are presently on the site do not have planning permission and the Council has expressed concerns about their design. Whilst the acceptability or otherwise of the buildings is not a matter for me within the scope of this appeal I cannot be sure, in these overall circumstances, that they will provide a solution to these visual concerns in the longer term.
37. With regard to noise arising from the use (which could include noise from the use of power tools and equipment, running engines, the use of hand tools banging on metal and general yard noise) I acknowledge that the site is within an industrial area where there is already a degree of background noise. However, to maintain an acceptable environment for those who work in the area and visitors it is important that the effects of noise are minimised. Whilst the effects could be mitigated to an extent by confining vehicle repair and dismantling activities within buildings the acceptability of the existing buildings for that purpose remains uncertain.
38. Neighbouring business owners have sent letters of support for the appeal development and do not raise any concerns about noise and visual effects. However, my findings on this third main issue are that there is unacceptable visual harm and detriment to the level of noise within the area. The use is, thus, contrary to policy W5 [JWDP] and policy DC61 [CS & DCPDPD].

Whether risks to human health and the natural environment are effectively managed

39. The policies which concern risks of flooding and pollution take a precautionary approach and are, in the main, framed in terms that planning permission will only be granted where it is demonstrated that environmental risks can be satisfactorily managed. In other words, the policies place a responsibility upon the applicant to show, at the outset, that there will be no significant adverse effects upon people and the natural environment.
40. The appeal site is within an area identified as Zone 3 for flood risk purposes, that being an area where there is the highest risk of flooding. Policy DC48 states that a Flood Risk Assessment [FRA] must be submitted for all developments within Zone 3.

41. Additionally, the policy states that regard should be had to measures for dealing with surface water and that consideration should be given to providing a sustainable urban drainage system. The arrangements for surface water drainage are of particular concern in an area at high risk of flooding.
42. In respect of the appeal development, there is no FRA and neither is it clear how surface water is to be controlled. These details, together with a FRA, cannot in my view be required by condition(s) as they are fundamental to the principle of the development, its design and layout. Without these details at the outset the flood risk implications arising from the development cannot be adequately understood.
43. Regarding land contamination issues, I am told that the site is "landfilled" and that, in all likelihood, there have been previous contaminating uses. Whilst taking place from that starting point, it is important to ensure that the appeal use does not add further to the contaminated condition of the land.
44. To my mind, there is considerable likelihood of the release of polluting substances to the land (through spillages and leaks for example) arising from the waste management activities, vehicle repairs, dismantling, parking and vehicle storage which, in turn, could give rise to contamination of surface water and, thus, pose risks to both land and water environments. I cannot be sure, from the evidence before me, that the site surfacing and surface water drainage arrangements are to an adequate standard to satisfactorily mitigate these risks.
45. Residual wastes also need to be managed. Reference has been made to the use of tanks for water and oil, and receptacles for use in the event that fluids have to be drained from vehicles. I understand that there are also arrangements for the collection of discarded batteries. However, there is no scheme before me, as such, to show how these arrangements integrate within the overall site layout and other activities, and I cannot be sure that what has been described is the totality of the activities involving residual waste.
46. Concerns have also been raised about the effect upon air quality from fumes and emissions. It is likely that the running of car engines, associated with car repairs, within the open part of the site would (to a degree) have a detrimental effect in these respects. That effect could be mitigated to an extent by confining vehicle repair activities to within buildings. However, I cannot be sure that the existing buildings (which do not have permission) would be fit for purpose, meet the health and safety standards that might be required by other regulations and be available for use going forwards.
47. On the matter of pollution control generally, I acknowledge that a number of issues are covered by other regulatory bodies which can be assumed to operate effectively. The focus of the planning system should be on whether the development itself is an acceptable use of the land and the impacts of that use. However, before granting planning permission, a decision-maker must be satisfied that the development under consideration is consistent with what is required under the various other regulatory regimes. In this case the appellant held a Site License under the Scrap Metal Dealers Act 2013.⁵ However, the scope of that license is unclear. Neither is it satisfactorily explained how the

⁵ A copy of the site license, issued by the London Borough of Havering, accompanies the appeal. It is dated 19th March 2014 and expired 18 March 2017. There is no information as to whether a site license is held currently.

use interfaces with other regulatory bodies and agencies. Therefore, I cannot be satisfied that the development can adequately provide for all necessary health, safety, and pollution control requirements.

48. In respect of all the matters covered in the fourth main issue, it has not been adequately demonstrated that environmental risks to health and the natural environment are satisfactorily managed. I find on this issue, therefore, that the development fails to accord with policies DC48, DC52, DC53, DC61 [CS & DCPDPD] and W5 [JWDP].

Other matters

49. It has been suggested that the use is prejudicial to the functioning of the road hierarchy. However, the infrastructure leading to Salamons Way is designed for high volume traffic, including heavy goods vehicles, to serve the London Riverside Business Improvement Area. There is no evidence that the use has had a detrimental effect upon the wider transport network.
50. Salamons Way itself is an unmade cul-de-sac, potholed, susceptible to flooding and with limited capacity for the movement of vehicles and on-street parking. Any significant increase in the amount of traffic using it (such as might arise from the visiting public viewing cars "for sale" for example) could result in severe residual cumulative traffic impacts within Salamons Way, depending upon intensity, which could be a matter of concern. However, the appellant says that car sales are "ad hoc" (not a primary part of the business) and that no more than one or two cars are available for sale at any one time. He also disputes that there has been a significant increase in the number of vehicles entering and leaving the site. There is no further detailed evidence (such as numbers/types of vehicular movements for example) from either party on the point.
51. On the balance of the evidence, therefore, I do not find that the use has demonstrably affected traffic conditions within Salamons Way or that it offends policies DC32 [CS & DCPDPD] and W5(xiii) [JWDP]. In any event, this issue is not decisive as I have already found unacceptable harm in my assessments of the third and fourth main issues.
52. I note that street lighting and a security camera are provided via the appeal site. Whilst these are valued facilities that contribute to the safety and amenity of Salamons Way, and may depend upon there being active economic use of the land, they are not part of (or reliant upon) the appeal development as such. This consideration carries little weight, therefore, and does not outweigh the identified harm.
53. I have taken into account that, before the appellant took occupation, the land had been used for storage. Amongst the appeal papers is a planning permission granted in 1973 to Jefferies Steel for the open storage of scrap metals and steel joists. I have no reason to doubt that the land could revert to storage use which, in itself, could give rise to undesirable environmental and visual effects. However, in these circumstances where planning control is to be exercised, the weight of the decision should fall in favour of the policies of the development plan which seek to protect human health and the natural environment, and seek to enhance the visual and general amenity of the area. This potential "fallback" position is a consideration to which I attach only limited

weight. It does not alter the conclusions I have reached in the overall planning balance.

54. I do not rule out the possibility that some of the issues of concern in this appeal could be covered by conditions (access, parking, manoeuvring space, storage, recycling arrangements and boundary treatments for example) although there is no scheme before me to consider. Even if there was a satisfactory scheme covering these matters, that would still leave unresolved the more fundamental issues relating to the acceptability of the buildings, surface water drainage, surfacing and other measures (as may be necessary) for managing the risks of pollution and providing for adequate health and safety. Such a scheme could not, in itself, lead to a positive decision.

55. It appears to me that the use of the land has altered significantly since the time that the enforcement notice was issued, not least because the appellant's business now takes place only on a part of the land (part 6) and (insofar as the land at part 6 is concerned) no longer involves vehicle storage. A significant element of the appellant's use is the storage of salvaged vehicle parts on racks and within stacked containers although that element was not expressly included in the allegation when the notice was issued. There is also the matter of the recently erected/partly erected buildings which the appellant wishes to complete and retain. These are not matters on which I can reach any conclusions within the scope of this appeal. They must remain matters for the appellant and the Council in the first instance.

Conclusions on ground (a) and the deemed application

56. On ground (a) I find that, whilst being acceptable in its location and to the economy of the area, and contributing to the interests of reducing waste, the development results in unacceptable visual harm and is detrimental to the amenity of the area in terms of noise. Additionally, it has not been satisfactorily demonstrated that any risks to human health and the natural environment are being satisfactorily managed. In these respects the use is contrary to policies DC48, DC52, DC53, DC61 [CS & DCPDPD] and W5 [JWDP] and, thus, contrary to the development plan as a whole. There are no considerations which indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails and the deemed application shall be refused.

Conclusion

57. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector