

Planning and Rights of Way Committee

5 December 2023 – At a meeting of the Planning and Rights of Way Committee held at 10.30 am at County Hall, Chichester, PO19 1RQ.

Present: Cllr Burrett (Chairman)

Cllr Duncton, Cllr McDonald, Cllr Mercer, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Quinn and Cllr Wild

Apologies were received from Cllr Atkins and Cllr Ali

Absent: Vac - Labour

Also in attendance:

Part I

23. Declarations of Interest

23.1 In accordance with the County Council's Code of Conduct, Cllr Oakley declared a Personal Interest in Item 4, Planning Application WSCC/021/23 because his electoral division is Chichester East immediately bordering the application site to the north. It includes Oving Parish Council, which has raised a number of concerns.

24. Minutes of the last meeting of the Committee

24.1 The Committee resolved:

That the minutes of the meeting of the Committee held on 5 September 2023 be approved and that they be signed by the Chairman.

25. Urgent Matters

25.1 There were no urgent matters.

26. Planning Application: Waste

WSCC/021/23 - Regularisation, consolidation and extension to the existing waste transfer facility including an increase in throughput of waste at Recycle Southern Ltd, Elbridge Farm, Chichester Road, Bognor Regis, PO21 5EF

26.1 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet (copy appended to the signed copy of the minutes), introduced by James Neave, Principal Planning Officer, who gave a presentation on the proposals, details of the consultation and key issues in respect of the application, changes to the report and to proposed Condition 5. Additionally, the Committee was asked to note an amendment to correct typographical errors in the 'Reason' for Condition 7 'Highways Improvements' which should read: "In

the interests of highway safety, and to reduce the potential for mud and debris from entering the public highways, and to minimise dust emissions in the interests of public health and amenity, and the local environment.”

26.2 Mr Christian Smith, Director of GP Planning, the Agent for the applicant, spoke in support of the application. Recycle Southern, a local company, employs up to 55 local people, some of whom cycle to work using the cycle path network. The company undertakes visits and engagement with local residents to discuss concerns and improvements. The proposal would be a significant investment to enable substantial improvements, including a new wheel washing facility, surfacing and improved access to the A259. The waste transfer and treatment facility is one of only a few on the south coast. Demand has increased due to the closure of landfill sites and other waste management facilities. Customers are private and public sector, including Biffa, which operates the County Council’s Waste and Recycling Handling Contract. The site is controlled through an Environmental Permit from the Environment Agency; 100% compliance was shown during the last compliance assessment monitoring visit. The location is acceptable under the Waste Local Plan. There is an identified need to increase waste recycling capacity in this area. The site is adjacent to the Strategic Lorry Route Network and well-located to major centres of population and waste arisings. There are no objections from technical consultees, e.g. the Environmental Health Officers, the Highway Authority, and the Environment Agency. The proposed conditions and the Environmental Permit will ensure negative impacts are controlled and minimised to acceptable levels.

26.3 Cllr Keir Greenway, local County Councillor for Bersted, spoke on the application that is, in part, retrospective due to overtrading since 2018. Officers note the 2014 permitted activity and the proposed activity but did not note the current HGV movements and there may be some misunderstanding that the proposed extra 90 HGV movements per day are already taking place. Evidence of generated dust impacts include dust inside residents’ properties and covering vehicles, including at the Honda dealership opposite, which is not in the direction of the prevailing wind. Dust kicked up on the busy A259 is believed to be down to a poor sweeping regime. The proposed conditions and mitigations may not be robust enough. Tracked mud has a significant impact on highway safety, the efficiency of the A259 and it discourages active travel and the use of public transport, e.g. bus stops are caked in mud. The wheel washing facility and steps to improve the access road are positive proposals that should be implemented as soon as possible. The applicant has not complied with the 2014 planning permission, so the Committee needs to consider how to ensure that the improvements are implemented. Some of the proposed mitigations could have been done voluntarily, e.g. the chain socks. Previously promised proper boundary fencing has not been forthcoming. Three years after permission was granted in 2020, a concrete track at the Babsham Business Centre, south of the application site, has not been forthcoming, which is relevant because it is the site operator’s skip storage for the application site. How can residents have faith that improvements will be undertaken?

26.4 In response to comments made by Mr Smith and Cllr Greenway, the following points of clarification were made by Planning Officers:

- The County Council's waste management contract with Biffa is not a material consideration.
- The planning permission for the applicant's site at Babsham Lane was granted by Arun District Council, which is responsible for any enforcement at that site.

26.5 During the debate the Committee raised the points below and responses or clarification was provided by Officers and the Chairman, as follows:

Conditions – Length of Time to Submit Detailed Schemes

Point raised – The proposed conditions contain requirements to submit a number of detailed schemes for approval within a four-month period, e.g. a detailed surface water drainage scheme under Condition 5 'Drainage and Floor Resilience'. Given concerns about the applicant's compliance with planning permission over a prolonged period, would this be sufficient time to fulfil these requirements?

Response – Four months is a reasonable time period, which includes two months to submit a scheme and two months for the Council to approve it. The principles of the development have already been agreed as acceptable, so outline plans are in place and it is only final detail and/or adjustments that the applicant needs to make in order to submit plans for approval.

Dust

Points raised –

- How can the Committee be sure that the Dust Management Scheme will work and that it will improve the current situation?
- The proposed wheel washing facility, resurfacing and alteration of the site access road are positive and should help alleviate some of the dust problems, along with the water mist cannon.
- Mud and debris being tracked out onto the A259 via the site entrance is a concern and contributes to dust (NOTE: this matter was also linked to drainage and highway safety; please see the relevant sections below).
- A lot of weight appears to be being put on the water mist cannon as a dust suppression method. Will it be able to reach all relevant areas of the site including the stockpiles?
- How is asbestos in the waste loads dealt with, given health concerns around this material?

Responses –

- The proposed dust suppression scheme is typical of similar sites. It is much more robust and contains more provisions than those currently in place, such as the water mist cannon and the wider measures including a wheel washing facility, resurfacing and widening of the access road, all of which should help prevent track out of mud. Neither the Environment Agency nor the Environmental Health Officers have raised any concerns about the proposed dust suppression scheme. The site would

be subject to an Environmental Permit that also regulates controls over dust emissions off the site.

- The water mist cannon is a mains-fed tank of water with a fan. It is only one of the methods to control dust across the site and there would also be a bowser and manual watering of the stockpiles.
- Handling of asbestos would be subject to the Environmental Permit. The NPPF states that Planning Authorities have to assume that other regulatory regimes operate effectively.

Drainage

Points raised –

- Run off into the Elbridge Rife and the effects on the wildlife corridor need to be taken into account.
- The Strategic Flood Risk Assessment contains outdated documents and references from 2016 and earlier.
- The area to be extended is noted as free draining, so not requiring drainage measures. HGVs will compact the land and its permeability will be reduced over time. Can the proposed drainage measures manage any possible flows off that area to avoid surcharging of contaminated water into the Elbridge Rife? Could drainage of this area be included in Condition 5 'Drainage and Flood Resilience'?
- What measures will be in place to address the possible compaction and damage by HGVs passing over the French Drain along the current northern edge of the site, which drains the existing unpaved area? Should the new extended unpaved area have a similar French Drain?
- The site slopes downwards towards the entrance. Mud and debris will drain in this direction, exacerbating tracking of this onto the A259 and the cycleway, which is part of the strategic network. The proposed new surfacing is impermeable, so what will prevent flows on to the public highway and neighbouring sites, especially bearing in mind where the wheel washing facility is to be located? It is suggested that Condition 5 be amended to ensure that it includes effective drainage of the access road, noting the change of surface from permeable to impermeable and that under the 1980 Highways Act there is a legal requirement not to do anything that causes water to discharge on to the highway.

Responses –

- The County Ecologist has considered the proposed drainage measures, as well as any potential contamination of the Elbridge Rife. The Environmental Permit would cover contamination by foul water or water mixed with waste.
- The Lead Local Flood Authority has reviewed the application and is satisfied that the Environment Agency maps and documents, referenced under the Strategic Flood Risk Assessment, are up to date and in accordance with relevant rainfall data.
- Regarding the concerns about potential for compacting of the land and also gravel in the French Drain and potential damage to that, this has not been raised. Compacting could occur but

HGV traffic is not expected to increase much on the current use because the proposal regularises the current HGV movements. There is a requirement for maintenance within the drainage scheme. Details within the Flood Risk Assessment and Surface Water Strategy are still to be finalised and submitted for approval, so there is room for this to be addressed.

- Officers would be happy to ensure that the Lead Local Flood Authority is aware of the Committee's concerns about drainage from the access road when considering the final drainage scheme for approval. Officers would be happy to include a bullet point to reference drainage of the new hard surfacing at the site entrance within Condition 5, should the Committee wish to approve this proposal; wording could be delegated to the Head of Planning Services.

Cycle Way and Cyclist Safety

Points raised – There are concerns about conflict between vehicles exiting the site entrance and cyclists using the cycleway that crosses the entrance. There will be reliance on the new markings at the entrance – which will wear – and new signs stating that cyclists have priority – which will get dirty. No physical measures are proposed, e.g. a platform or hump, and it was suggested that a physical indication and also a 'Give Way' sign would provide a better indication to drivers that they are coming up to a cycleway.

Response – The Highway Authority is satisfied with the safety audit and the proposed changes to the site entrance, including the markings and signage about priority for cyclists. There is likely to be a small separation of the surfacing at the site boundary but the introduction of a hump would likely lead to noise as vehicle traverse it. Condition 7 'Highways Improvements' requires that signage and road markings must be retained. Officers will also make the Highway Authority aware of the Committee's comments about a 'Give Way' sign for them to consider in reviewing the final scheme of improvements to the access road.

Highway Capacity and Road Safety on the A259

Points raised – Excluding concerns relating to safety issues caused by mud tracking onto the A259 from the site, the following points were raised:

- It is noteworthy that the site is next to the Strategic Lorry Route Network.
- Oving Parish Council has requested a s.106 routing agreement to limit HGVs to use only A roads and not unsuitable local roads within Oving Parish. It was noted that there are agreements in Ford for routing HGVs to the south to reach the Strategic Lorry Route Network, rather than allowing routing to the north to reach the A27.
- The A259 is a very busy road. There are safety concerns about HGVs turning right onto the A259 from the site entrance. Left turn only signs should be put in place to give legal weight to Condition 21 'Exiting HGVs'. The opinion of Officers about

further enforcement through a Traffic Regulation Order (TRO) was sought.

- How far is the nearest roundabout to the south?
- Additional HGV movements will add vehicles to an already extremely busy A259 that, at times, gets gridlocked.

Responses – No response was required regarding the first bullet point. The following responses were provided for the remainder:

- A s.106 agreement for routing is generally only applied to direct HGVs to the Strategic Lorry Route Network. It can proscribe use of certain roads, but it would be unreasonable to put in place a blanket ban on use of all roads in any particular area. This application site is situated immediately next to the Strategic Lorry Route Network. The situation at Ford is different because the road to the north out of Ford is already restricted as unsuitable for HGVs.
- The applicant has undertaken to have HGVs turn left for perceived highways safety reasons; however, there is currently no condition requiring this. It is believed there is currently a sign asking HGVs to turn left. Other vehicles, including from the wider site, could turn right if they wish. Planning Officers have included Condition 21 'Exiting HGVs' requiring all HGVs from the waste site to turn left. The Highway Authority has not requested a TRO. Officers suggested that the conditional requirement for a sign directing HGVs to turn left only as per Condition 21 could be included in Condition 7 'Highways Improvements'; should the Committee approve this proposal, wording could be delegated to the Head of Planning Services.
- The Highway Authority has not raised any concerns about capacity on the A259. The site's HGV movements contribute only a very small percentage of overall vehicles using the A259.
- The nearest roundabout to the south is 800m. Plans for development of the 'Land West of Bersted' include a roundabout on the A259 approximately 250m south of the application site.

Health Concerns - Water

Point raised – Have any potential public health concerns regarding water from the mist cannon been considered, and what control measures are in place regarding this?

Response – Officers are not aware of any such concerns. Neither the Environmental Health Officers nor the Environment Agency have raised this, but it would fall under the Environmental Permit.

Lighting

Points raised – The existing internal floodlighting appears to face outwards, leading to light spill outside the site. Was this lighting installed in accordance with the existing planning permission? Is there an opportunity, via Condition 11 'Lighting', to realign it so that all internal lighting faces downwards as well as the boundary lighting?

Response – Condition 11 'Lighting' requires that lighting must be in accordance with that shown on the site plan (NOTE: page 48 of the Committee report) and that lighting should be directed inwards and downwards and suitably cowled, in accordance with the Institute of Lighting Engineers standards. For lighting not shown on the plan and already in place on site, its retention would need to be agreed and the same conditions applied. Lighting is permitted only within operating hours and would, generally, only be used in the winter months at the start and end of each day.

Waste Throughput and Need for the Development

Points raised –

- The country is trying to recycle more and a lot of good recycling of building waste takes place on this site, which should be encouraged.
- Overall, there is a need for this site to expand. The need for the increase in throughput is established, as is the need to deliver it at this location.
- Is the waste throughput recorded and how often and can officers inspect the records?

Responses – No responses were required regarding bullet points one and two. The response below was provided to bullet point three.

- Condition 16 'Quantities of Materials/Waste' requires the waste throughput to be recorded by the site operator. Planning Officers can ask to see the documentation. Annual returns are published by the Environment Agency; section 9.11 of the Committee report details the historical figures. The latest figure of 67,000 tonnes for 2022 has just been released.

Compliance with and Enforcement of Planning Conditions

Points raised –

- Members raised concerns about the applicant's non-compliance with the 2014 planning permission and the over-capacity operations that have been ongoing for some years and asked what reassurance is there that enforcement action would be taken if the permission is granted and planning conditions are not adhered to, given that the applicant has requested an increase of over 50% from the original 30,000 tonnes of waste throughput which they have not complied with from the original permitted amount. And, what enforcement action has taken place?
- How does the County Council go about enforcing planning conditions?

Responses –

- There has been a creeping increase of throughput from the start of the operations in 2015. There was an allegation in circa 2018 that the site was operating above the permitted capacity, which was investigated and raised with the site operators. It was suggested that the applicant seek to regularise the situation via

a planning application. At that time it was not considered that the non-compliance was resulting in harm that warranted immediate enforcement action. In 2019, an application was being drafted, but was presumably delayed by the Covid-19 pandemic. An application was submitted in 2021 but was withdrawn following review by Planning Officers, who felt it did not satisfactorily address all matters. That then led to the current application under consideration.

- Enforcement is usually driven by a complaint, or a concern being raised with the Council. Officers will always endeavour to work with site operators. Persuasion and negotiation aim to achieve a resolution. Officers will consider what is appropriate, including any harm being caused. This is the case for approximately 95% of cases. For some, like this situation, it will result in applications to regularise operations. Formal legal action can be taken, but it must be appropriate and proportionate, and evidence is needed to do so.

New Planting/Site Screening

Points raised –

- How long will it take for the new planting to screen the site?
- It was noted that under Condition 6 'Landscaping, Maintenance and Ecological Enhancement' there is no set timescale in which planting should be replaced, but it should be retained throughout the lifetime of the development.

Response – The response below was provided to bullet point one. No response was required regarding bullet point two.

- Planting generally involves smaller plants suitable for the situation. Depending on the species it is likely to take some five to ten years to provide substantive screening.

Hours of Operation

Point raised – Could the Hours of Operation be amended to require a 7.30 am start instead of 7 am, so as to reduce noise for neighbouring properties?

Response – A 7 am start is already approved and established and consistent with existing controls. Noise must also be taken into account in the context of the background noise of the A259.

Additional Land to be Developed

Points raised – The following points relating to land ownership were raised:

- Who owns the land that would be developed for the extension to the site?
- Would the bund require a 'Grampian' condition because it is land not in the ownership of the applicant and there are concerns that, because of that, this part of the development may not be implemented?

Response – Both points were addressed as follows. Land ownership is not relevant in planning terms and planning permission is often sought on land that is not in the ownership of applicants; it is down to an applicant to secure the land in order to develop it. Anything within the red-line boundary of the application plan would be subject to the planning permission and conditions and is, therefore, enforceable. A 'Grampian' condition is not required because the bund is within the red-line boundary.

Agricultural Land

Point raised – The land to be developed is agricultural land. Is this a departure from the Local Plan, e.g. turning agricultural land to industrial use?

Response – This is greenfield land and the area is a 'gap between settlements'. There would be a loss of a small area of Grade 1 arable land, although the applicant's strategy is not to remove soils if possible. The balance between loss of agricultural land and the need for the site has been weighed and the need consideration has greater weight.

Environmental Permit

Point raised – An Environmental Permit of up to 75,000 tonnes per annum has been granted by the Environment Agency, but this does not appear to accord with the original planning permission of 30,000 tonnes per annum of waste throughput.

Response – The Environmental Permit is a 'Standard Rules Permit'. These are all for up to 75,000 tonnes per annum. The actual waste throughput allowed is determined by the planning permission.

26.6 Cllr Montyn, seconded by Cllr Duncton, proposed the substantive recommendation, as set out in the Committee Report and subject to the Conditions and Informatives set out in Appendix 1, and amended to include the following changes:

- Condition 5 'Drainage and Flood Resilience' amended as per the Agenda Update Sheet, with a further additional bullet point to include "effective drainage of the site access road" or words to that effect to be delegated to the Head of Planning Services; and
- Condition 7 'Highways Improvements' amended to add wording to include "for exiting HGVs including as specified by Condition 21" or words to that effect to be delegated to the Head of Planning Services, with a further amendment to the 'Reason' to read: "In the interests of highway safety, and to reduce the potential for mud and debris from entering the public highways, and to minimise dust emissions in the interests of public health and amenity, and the local environment".

The recommendation was voted on by the Committee and approved by a majority.

26.7 Resolved:-

That planning permission be granted subject to the Conditions and Informatives as set out in Appendix 1 of the report and amended by the Agenda Update Sheet and also amended, as agreed, by the Committee.

27. Date of Next Meeting

27.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 9 January 2024 at 10.30 am.

27.2 Members noted the report on 'Current Planning Applications, Current Definitive Map Modification Orders (DMMOs), Town and Village Green Applications (TVGs) and Public Path Orders (PPOs) under investigation'. The item that may be scheduled for consideration at the next meeting of the Planning and Rights of Way Committee is DMMO 2/19: Henfield and Woodmancote, although it should be noted that scheduling can be subject to change.

The meeting ended at 12.27 pm

Chairman