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# Appeal Decision

Hearing held and site visit made on 13 September 2011

**by Terry G Phillimore MA MCD MRTPI**

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

**Decision date: 10 October 2011**

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**Appeal Ref: APP/W2275/A/11/2154335**

**The Old Quarry, Straw Mill Hill, Tovil, Maidstone, Kent ME15 6XD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Pinden Ltd against the decision of Kent County Council.
  - The application Ref MA/10/167, dated 15 January 2010, was refused by notice dated 7 January 2011.
  - The development proposed is a materials recycling facility.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - a) the impact the development would have on the character and amenity of the area having regard to landscape, traffic and noise, and taking into account potential alternative employment use of the site and proposals for neighbouring land;
  - b) whether any harm identified is outweighed by a need for the development.

## Reasons

### ***Character and Amenity***

#### *Status of the site*

3. The site is a former quarry on the south edge of Maidstone within the parish of Tovil. It largely comprises hardstanding, and contains a substantial framed warehouse building and the remains of several former office and weighbridge buildings. It has been vacant and unused for some time.
4. Comparisons have been made between the proposal and potential alternative uses of the site for employment purposes. Planning permissions were granted in 1983 and 1987 relating to its use for waste paper processing and storage. A decision in 2004 on an appeal against a deemed refusal to issue a waste management licence (ref APP/WM/03/200) found that the permissions provided for a mixed B2 and B8 sui generis use and did not confer lawfulness on a change of use to just B2. It further determined that waste transfer and recycling use for which a licence was sought at that time was also sui generis and did not have lawful status.

5. The site falls within a location identified under policy ED2 of the Maidstone Borough-Wide Local Plan 2000 as one of a number of 'designated existing areas of economic activity or areas with planning consent for economic development'. The location and its stated floorspace are given as 'Tovil (4,000m<sup>2</sup> B1; 9,000m<sup>2</sup> B2)'. The policy indicates that permission will not be granted for redevelopment or use for non-employment purposes unless the retention for employment use has been fully explored without success. Also falling within this location is the land immediately adjoining the appeal site to the north-west. Outline permission was granted by Maidstone Borough Council on this neighbouring site in 2005 for a largely residential development providing for 272 dwellings, on which an extension of the time limit for implementation was approved on 1 July 2011 (ref MA/10/0256). The Borough Council submits that the permission took account of evidence that the site had been marketed for employment purposes for a considerable period without success.
6. This adjoining proposal is consistent with extensive evidence in representations on this appeal of a substantial change in the nature of Tovil in recent years involving the loss of its former industrial businesses and the replacement of commercial premises by residential development in particular. This process is well documented in the Tovil Community Plan 2008. It has changed the predominant character of Tovil from a mixed industrial and housing area to a primarily residential one, with an associated contraction in its significance as an employment location and limited market interest in new development for employment purposes.
7. Calculations have been made both of potential B2/B8 floorspace on the appeal site based on the scale of the previously permitted use and of B1/B2 floorspace pro rata to the Local Plan figures. However, the nature of the lawful use is very restricted, with no indication of any likelihood that this would be taken up. Although there has been no marketing of the site, the prospects of other employment use also appear to be limited having regard to the above evidence. Any planning application for such use could be expected to be assessed in terms of environmental impact including traffic. Notably, policy ED9 restricts B8 uses to designated sites (including under policy ED2) where the proposed B8 use supports existing manufacturing or commercial operations and is well related to the primary road network.
8. In these circumstances the implied alternative potential of the site by reference to 'unrestricted B2/B8 use' is somewhat misleading, and this potential carries limited weight as a fallback despite that policy ED2 has been saved only relatively recently.

### *Landscape*

9. The site abuts the part of Straw Mill Hill where it rises and narrows, constrained by embankments, walls and vegetation. This gives it the character and appearance of a rural lane, changing from the more urban built-up part of Tovil. The east side of the road forms the boundary of the Loose Valley Conservation Area, which extends a considerable distance to the south. The valley topography with its vegetation and sporadic buildings give a tightly landscaped, rural character to the Area. The abutment onto a rural lane is a complementary setting to the north edge of the Area.

10. The main part of the site is set down from road level and well contained in terms of visibility from public viewpoints. The proposals within this area would have little visual impact. However, the proposed new access arrangements involving a new opening to the south of the existing access would have a substantial impact on the lane. A large section of wall together with the vegetation behind would be removed, creating a wide opening with hard surfacing and views of the access road and fencing extending into the site. This would significantly erode the existing soft, enclosed feel, harming the character and appearance of the lane and the setting of the Conservation Area. The effect would go considerably beyond that of vegetation removal required on the basis of arboricultural management alone, and would only partially be mitigated in time by new planting.

#### *Traffic*

11. The facility would have a maximum throughput of materials of 90,152 tonnes per annum, proposed to be limited by condition. At the hearing the appellant put forward reduced traffic generation figures for this throughput, following re-calculation of these. The revised projections are a total of 124 vehicular movements per day, of which 78 would be HGVs. A condition is also suggested to set these figures as limits.
12. There is a signed lorry route to Tovil from the centre of Maidstone. This establishes the route as acceptable in principle for lorry use. Taking this into account, and on the basis of a comparison of vehicle movements from the proposal with an alternative B2/B8 use of the site showing that the proposal would have a lower potential generation, the highway authority reached the conclusion that it is acceptable.
13. However, as set out above, the realistic fallback position is more limited than an unrestricted B2/B8 use. Further, the Inspector in the 2004 decision recorded that daily maximum lorry movements for the whole site following the 1983 permission was estimated as '16 out and 23 in', and with the 1987 permission was estimated to be '14 vehicles over 3 tons visiting the site each day'. In addition, the assessment submitted with the appeal application based on alternative B1/B2 use gave much lower HGV generation figures than for the proposal. In this context the proposal would give rise to a significant volume of HGV traffic which warrants assessment of impact on its own merits, notwithstanding that there is no restriction on vehicular movements in connection with the lawful use.
14. It appears that the existence of the signed lorry route largely reflects the former presence of industrial uses in Tovil. It does not demonstrate that its use now by an increased number of HGVs would have no adverse impact, especially in the context of the change in character of Tovil. The route from the A229 out of Maidstone town centre on the B2010 comprises mainly congested residential roads, characterised by restricted width, adverse camber, on-street parking and significant pedestrian activity. There is not a ready link between the site and the primary road network, and the site is not well related to this.
15. Even with controls on the management of vehicular movements to and from the site, the proposal would give rise to noticeable adverse environmental effects of HGVs along the route through Tovil, at the junction of Straw Mill Hill and Farleigh Hill/Tovil Hill, and within Straw Mill Hill. These effects relate to the

intrusive visual and other sensory impacts of the relatively frequent passage of HGVs, rather than cumulative noise. There would be consequent harm to the quality of the residential environment of Tovil, and to the setting of the Conservation Area by way of vehicles entering and leaving the site directly opposite its boundary.

16. The technical evidence confirms that sightlines achieved at the new access would have appropriate regard to current standards, and the access would incorporate an improvement to cycle and emergency access to the adjoining residential proposal. Conditions could cover these aspects, and also installation of an overrunable area at a narrow point of Straw Mill Hill at the existing site entrance. At the junction of Straw Mill Hill with Farleigh Hill/Tovil Hill visibility to the south is sub-standard due to visibility constraints. The addition of significant numbers of slow moving HGVs exiting from Straw Mill Hill would have a material adverse effect on highway safety, notwithstanding that the constraints affect only part of the carriageway and the better views available to drivers of larger vehicles by comparison with cars.

#### *Noise and Neighbouring Land*

17. The proposal would utilise screened buildings, including an adaptation of the existing warehouse. The appellant's initial noise report indicated that, while there would be no material noise impact on existing residential properties, noise levels at the nearest proposed houses on the neighbouring site would be such that complaints would be likely without further mitigation. A second report was submitted prior to the County Council's decision. This made an assessment based on a revised plant layout, additional screening, and proposed operation of some plant in turn rather than simultaneously. This concluded that in all cases the consequent noise levels would not exceed existing background levels, and therefore complaints would not be likely.
18. Both reports incorporated assumptions about an acoustic barrier between the appeal site and the neighbouring site having regard to existing earth bunding at the boundary. In the first report this was modelled as a 5m high acoustic barrier and described as extending to at least the level of the eaves of the proposed nearest properties. In the second it was assumed to be a bund (possibly with an acoustic fence on it) to a total height of 46m AOD (tapering lower to the north). At the hearing the appellant suggested a planning condition requiring noise from the site not to exceed 41  $L_{Aeq}$  at any residential property and for measures to be taken including plant insulation, silencing of vehicles and machinery, and provision of acoustic screening to ensure this. In this way it is asserted that, were the adjoining houses to be developed, the appropriate mitigation would accordingly be put in place to meet this specification.
19. This approach leaves the details of the boundary screening imprecise. The plans indicate a lowering of ground levels at the existing bund for the erection of the proposed houses, and this was confirmed at the site visit. The plans also suggest enhancement of the earth banking straddling the boundary, but the form and detail of construction are unclear. The second report is similarly indeterminate as to which side of the boundary the mitigation would be provided. In this context the concern raised by the Borough Council about the vagueness and likely effectiveness of the mitigation measures are valid. Given the proximity to the boundary of the proposed houses in the approved layout, there remains a firm prospect that the proposal would be materially harmful to

- the living conditions of the future occupiers either by way of noise or the effects of a boundary screen on outlook.
20. Evidence for the adjoining landowner is that, with approval of reduced contributions including affordable housing in the recent extension of the planning permission, viability of the permitted residential development has been maintained. However, it is argued that the development would no longer be viable were the appeal proposal to proceed due to consequent reduced market values of the houses and lowering of the development value, resulting from perception of the facility as a bad neighbour. It is contended that with this outcome the benefits of the permitted scheme would be lost, including provision of new housing including affordable units, re-use of a brownfield site which requires remediation, landscaped open space, and highway improvements.
21. The value of these potential benefits is not disputed. However, evidence for the appellant submitted at the hearing is that the adjoining landowner's appraisal is based on an over-optimistic view of local house prices given that Tovil is regarded by potential purchasers as a less attractive location than other parts of Maidstone. It is argued that, taking this into account, the development is not viable and would not be undertaken at present, and therefore limited weight should be given to the impact on the future amenity of the approved scheme.
22. At the hearing it was pointed out that the appellant's appraisal undercounts the number of units in the approved development by 26. The appellant's evidence reinforces the landowner's contention regarding the effect of perception of the character of a site's location on house prices. Although the evidence does not enable a precise view to be taken on the market value disputes, there is a credible case that without the proposal the residential development could be undertaken in the foreseeable future, and that the proposal would make this less likely. The above point regarding potential amenity impact with respect to noise is a specific aspect of the relationship between the sites that could be expected to have such a negative effect. PPS10 advises that likely proposed development in the vicinity of a waste recycling location is a factor to be taken into account in considering site suitability. The reduced likelihood of the regeneration benefits of the neighbouring residential development being achieved would be a material harm from permitting the appeal scheme. This is despite the degree of certainty that would follow from allowing the proposal with conditions to control its impact.

### **Need**

23. There is clear support in national policy for local waste processing and recycling, and for favourable consideration of proposals on non-allocated sites. Policies W5, W6 and W7 of the South East Plan 2009 also set out waste recycling objectives and targets.
24. Policy W6 of the Kent Waste Local Plan 1998 on waste proposals in unidentified locations indicates that, where demonstrable harm to interests of acknowledged importance would result, need will be a material consideration. At the hearing there was no disagreement that need is a factor to be taken into account in this case in the event of such harm being found. The above considerations identify relevant harm with respect to the setting of the neighbouring Conservation Area, environmental quality, highway safety, and

- effect on development of the adjoining site. The site does not achieve the good transport connections and compatible land uses sought for waste facilities by policy W17 of the South East Plan.
25. No case on need was made with the application on the basis that the proposal would not be harmful. The written case submitted by the appellant with the appeal is very limited in scope. Reference is made to an existing facility at Detling on the north east side of Maidstone, and it is argued that a recent planning permission to increase throughput there demonstrates a need for the type of recycling facility proposed. It is also contended that the southern side of Maidstone lacks a facility.
26. The County Council refers to there being a relevant future waste capacity requirement for an additional 60,000 tonnes per annum for the Maidstone area. While this appears to be a simple sub-division of the county figure, no alternative figure is put forward to substitute for it. The proposed capacity of the appeal facility at over 90,000 tonnes per annum would significantly exceed this figure, and as such would appear to go beyond meeting a local need. There is no reason to believe that the facility would not run at full capacity. According to the County Council, there are other existing sites in addition to the expansion permitted at Detling, and further sites could be expected to be brought forward through the emerging Kent Waste Sites Development Plan Document. The DPD will provide the basis for comparison of the merits of individual sites. While comments were made at the hearing on the limitations of individual existing and potential future sites, the fragmented and restricted nature of the evidence does not amount to a compelling quantitative or locational case based on need. The benefit of taking waste from the nearby civic amenity site appears to be relatively minor.

### **Other Matters and Conclusion**

27. The technical evidence indicates that the proposal would give rise to no material harm in terms of air quality and biodiversity.
28. Arguments are made both for and against the proposal on grounds of sustainable development. The contribution towards waste recycling, together with re-use of a vacant site, are factors in its favour in this respect. Also in support of the proposal is that it would provide for economic activity and employment on the site, in line with Government objectives on the economy. Conversely, the identified adverse impacts of the proposal on the local environment, to which extent it would not respect or enhance the character and distinctiveness of the settlement and landscape, give rise to conflict with policies CC6 and BE1 of the South East Plan.
29. In drawing the overall balance, and having regard to the test set out in policy W6, the harm of the proposal is not justified by considerations of need.
30. Having regard to all other matters raised, including the officer recommendation in support and the absence of technical objections at application stage, for the reasons given above I conclude that the appeal should be dismissed.

*T G Phillimore*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

M Woolner BA MRTPI	Firstplan
B Bateman BA MA MRTPI	Firstplan
I Roberts MCIHT	Bellamy Roberts
B Smith BSc MSc CPhys MInstP MIOA	Acoustic Associates
I Thompson	ESG

### FOR THE WASTE PLANNING AUTHORITY:

M Goddard BA DipTP DMS MRTPI	Goddard Planning Consultancy for Kent County Council
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### FOR THE LOCAL PLANNING AUTHORITY:

S Clarke	Maidstone Borough Council
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### INTERESTED PERSONS:

C English	Parish Councillor
I Chittenden	Borough Councillor
P Aelen	DHA Planning for P Burke
G Heard	Highway consultant for P Burke
D Pares	Sibley Pares Chartered Surveyors for P Burke
P Burke	Adjoining landowner
D Fleck	Local resident
A Chell	County Councillor
F Simpson	CPRE Maidstone
R Burke	Local resident
G Stead	Local resident
W Morley	Local resident
C Bush	Local resident
A Moore	Local resident
D Head	Local resident
K Senior	Local resident
P Horton	Local resident
P Garrett	Local resident
G Rudd	Local resident
J Day	North Loose Residents Association

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Appellant's appearances
- 2 Submission by Councillor Chittenden
- 3 Maidstone Borough-Wide Local Plan Policy ED9
- 4 Acoustic Associates Noise Assessment report dated 20 July 2010

- 5 Sight line plans (3no.)
- 6 Kent CC Minerals and Waste Development Framework Programme 2010-2013
- 7 Statement by Sibley Pares for P Burke
- 8 Appellant's viability opinion by Page & Wells dated 5 September 2011
- 9 County Council's suggested conditions
- 10 Appellant's suggested amended conditions