

VEOLIA

DEMOLITION OF AN EXISTING BUILDING AND CONSTRUCTION AND OPERATION OF A WASTE TRANSFER STATION, INCLUDING THE PRODUCTION OF REFUSE DERIVED FUEL AND ASSOCIATED DEVELOPMENT INCLUDING A NEW WEIGHBRIDGE, RELOCATION OF EXISTING WASH BAY, DIESEL TANK AND RE-ALIGNMENT OF EXISTING FENCE LINE

Long Leys Road, Lincoln LN1 1DS (the Site)

(Lincolnshire County Council Ref: L/1076/16)

STATEMENT OF CASE

1. This is an appeal against the decision of Lincolnshire County Council (**the Council**) to refuse planning permission for the above development.
2. The application was considered by the Planning & Regulation Committee of the Council and the decision notice issued on 6th February 2017.
3. The Site lies within the former Old Albion clay pit and brickworks which was later landfilled and restored. Immediately to the west of the site are a number of commercial and industrial users, and further to the north and west lie residential properties. The Site is accessed via a private access road from Long Leys Road. The Site is surfaced in concrete hardstanding, and contains office buildings, vehicle workshop, and a storage building.
4. The Site is currently used as a depot in connection with Veolia's commercial waste operations. This operation includes stationing refuse collection vehicles at the Site overnight. The depot operations have been carried out at the Site for more than ten years. Previous planning permissions for the development at the Site have not imposed any conditions restricting hours of operation.
5. The planning application proposes the construction of a new waste transfer station and associated development relating to Veolia's commercial waste operations in the wider area. Veolia submits that such a use is in accordance with the development plan and would support the recovery of waste and constitutes sustainable development – an issue which appears to be a matter of common ground with the Council.
6. The application anticipates the continued use of the depot for the overnight parking of refuse collection vehicles alongside the proposed waste transfer station.
7. In its decision notice, the Council states the following reason for refusal:

"... given the applicant's proposed continued and dual use of the site difficulties could arise in terms of differentiating between the hours of operation and activities associated with one use and that of another. The imposition of a planning condition in order to restrict the hours of operation for the waste transfer use would not be sufficiently precise and enforceable and the applicant has refused to enter into a Planning Obligation in order to restrict the hours of operation for the whole site. Without the ability to impose a planning condition or secure a Planning Obligation, it would not be possible to control the hours of operation associated with the waste transfer operations and therefore these could potentially be carried out 24 hours a day."

8. Veolia disagrees with the Council's approach as set out above and contends that the reason for refusal is flawed as a matter of law and policy. The position taken is inconsistent with guidance in paragraph 206 of the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).
9. On the assumption that a condition is necessary it would in practice be possible to differentiate between the activities on site, as the waste transfer functions are proposed to take place in a separate building. It would also be possible to distinguish between vehicle movements associated with the waste transfer station function and those associated with the existing depot.
10. Further, the requirement for Veolia to enter into a planning obligation is unnecessary because as a matter of law, the hours of operation of the Site can be controlled by planning condition. The issue therefore is not the absence of a planning obligation, as the reason for refusal states, but the fact that the condition the Council would otherwise wish to impose is contrary to the NPPF and PPG, since it would restrict an existing unrestricted use and would therefore be both unreasonable, and not relevant to the development permitted.
11. The reason for refusal goes on to state that:

"As the potential noise impacts arising from that use (in combination with the existing permitted use) during the evening and night- time hours have not been assessed, then the proposals have not demonstrated that they could be carried without having an unacceptable impact on the amenity of nearby residents".
12. It is apparent from this statement that the Council's case is based upon an alleged lack of assessment, rather than on a firm view that the impacts would be unacceptable. In support of the planning application, Veolia submitted an Environmental Noise Assessment to consider the potential noise impacts generated by the proposed waste transfer station during the anticipated operating hours and therefore did not assess impact beyond those hours.
13. The assessment concluded that the predicted noise levels from the operation of the proposed transfer station (including the mobile plant, shredder and associated HGV movements) show that the Site rating noise levels would not exceed representative background sound levels and therefore likely to result in a low impact and that overall there would be no reason to refuse planning permission on the grounds of noise.
14. At paragraph 41 of the Officers Report, the Council concluded that:

"The submitted noise assessment identifies the potential sources of impact during the construction and operational stages of the Waste Transfer Station during the proposed hours of work. In both instances the predicted noise levels are within acceptable limits and the EHO of the City of Lincoln has confirmed that subject to imposition of a condition to restrict the hours of working, noise arising from the development and construction phase (being temporary) would not have an unacceptable impact on the amenity of nearby residents"
15. However in light of the Council's concern about potential noise impacts during the evening and night time hours as stated in the reason for refusal, a further Noise Assessment was commissioned by Veolia which is submitted in support of this appeal (see Document PA.19 which accompanies this Statement). This further assessment concludes that the potential impacts of the proposed uses are acceptable, even if carried out in the evening/night time, subject to appropriate mitigation measures. These measures are set out at paragraph 5.4 of the Addendum to the Noise Assessment.
16. The methodology used in the original Noise Assessment was accepted by the Environmental Health Officer and the revised assessment is based on broadly the same approach. In those circumstances, the Site could operate over 24 hours

without adverse impacts and therefore that a condition to control operating hours is unnecessary in its entirety.

Third parties

17. Whilst not cited in the Council's reason for refusal, Veolia is minded that the planning application attracted a number of representations from local residents and local businesses which raised the following concerns:
 - Increase in vehicle movements;
 - Amenity impacts – odour, vermin, litter;
 - Visual impact
 - Fire & flood risk
 - Contamination
18. These issues have all been addressed in the planning application and in the Officers Report. Veolia will rely upon those assessments should third parties pursue these points on appeal.

Conclusion

19. The Council has acknowledged and reported that the proposed development, on balance, represents a *"sustainable waste management practice and is acceptable in terms of its broad location"*
20. Veolia is of the view that the Council's reason for refusal is not robust:
 - a) Based on the conclusions of the noise assessments, no condition is necessary;
 - b) Even if the view was taken that a condition is necessary to control the hours of operation of the proposed development, it is possible to impose a sufficiently precise and enforceable condition such that no requirement for a planning obligation arises; and
 - c) As the Council considered that the benefits of the proposed development were only outweighed by the potential impacts of evening and night time noise on sensitive receptors and Veolia has demonstrated that with appropriate mitigation such impacts are not unacceptable, the reason for refusal cannot be upheld.

Veolia reserves the right to add to this Statement of Case in response to any statement submitted by the Council or any third party.

2 August 2017