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Landor Planning Consultants
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Liverpool
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19 December 2019

Dear Mr Henry,

Reference: 18/00285/WST

Site Address: 1 Pickerings Road, Widnes, WA8 8XW

Proposal: Proposed change of use to waste transfer and treatment facility, construction of waste transfer building and ancillary development including weighbridge, welfare facilities, storage bays and fencing

We refer to the above referenced application for a proposed change of use to waste transfer and treatment facility, with construction of a new building and associated ancillary development at 1 Pickerings Road in Widnes, WA8 8XW.

We act on behalf of Hale Bank Parish Council, the claimant in *Hale Bank Parish V Halton Borough Council and Veolia ES (UK) Ltd [2019] EWHC 2677 (Admin), CO/1023/2019*.

As you are aware, planning permission granted by Halton Borough Council (HBC) on 7 January 2019 (Planning Committee resolution) under reference 18/00285/WST was quashed by Mrs Justice Lieven on 14 October 2019 on the following grounds:

- Breach of s.38 (6) Town and Country Planning Act (TCPA) 1990 by failing to properly apply WM1 of the Joint Waste Management Development Plan (JWDP) and
- Failure to disclose documents forming the basis of the Officer Report as required by s.100D of the Local Government Act 1972.

In quashing permission Justice Lieven stated that the correct application of planning policy would inevitably or highly likely result in a different outcome in the decision-making process, i.e. that planning permission would be refused. Paragraph 62 of the Judgement states:

62. I will quash the planning permission because I do not accept that the decision would inevitably or be highly likely to be the same. The proper application of the sequential test, after appropriate inquiries are made, is a critical step in the planning policy framework, lying behind the determination of the application. Unless and until that policy exercise is gone through it is not possible to know what decision the Council will make.

The legal effect of quashing planning permission is that the permission is *void ab initio*, meaning invalid from the outset. The application is now returned to HBC for re-determination. We are in receipt of a letter from HBC, dated 02/12/2019 which advises that the applicant has submitted an addendum supporting statement and a table of waste types and codes. The letter invites representations, to be received by 23/12/2019.

We are pleased to respond by the due date on behalf of our client. Hale Bank Parish Council wishes to register the strongest objections to the application proposal and requests that this letter of representation be taken into consideration in HBC's assessment of the application proposal.

Hale Bank Parish Council is of the view that planning permission ought to be refused by HBC for the following reasons:

- The application site is not allocated for waste purposes in the JWDP;
- Policy WM1 of the JWDP requires a sequential approach in which allocated sites are prioritised;
- Sites allocated in Policy WM1 for Waste Transfer Stations are available and yet to be developed;
- The application site is accessed through a residential area with 119 HGV movements anticipated each day from Monday – Friday and 27 HGV movements on Saturdays;
- Negative impacts arising through noise, odour, fumes, pollution, air quality affecting the living conditions and health of local residents and
- Intensification of use of the site, compared to previous use.

Our analysis of the application proposal is assessed in relation to these and other matters in the following sections of this letter.

Description of Development

Firstly, we find that the description of development is not accurate as it does not reflect the fact the applicant intends to produce and export refuse derived fuel (RDF) on site. The applicant's Supporting Planning Documentation dated May 2018 states (Section 5.0) that the new building will be used for the processing of residual wastes to produce RDF for export. The proposed use of the site to reflect use for fuel processing/creation and export is not reflected in the description of development.

In addition, the applicant has provided a table of waste types and codes indicating that numerous hazardous substances are to be stored on site. However, Section 23 of the Planning Application Form in which it is required to state the quantities of toxic/reactive/explosive and flammable substances to be held on site has not been completed. The storage of hazardous materials on site is denied and unquantified by the applicant and hence the threat to human health and risk of serious incident has not been assessed by HBC.

At the present time and with the potential for further legal challenge in mind, in our view, the local planning authority ought to consider correcting the disingenuous description of development and requiring confirmation of the levels of hazardous materials proposed to be stored on site. In the absence of such information, the local planning authority cannot be satisfied that the impacts of the proposals would be acceptable.

Inadequate Supporting Information

The application proposal for the proposed Waste Transfer Station (WTS) is supported by Plans; a Flood Risk Assessment; Noise Report; Contaminated Land Report and appendices; Transport Assessment (TA), including Traffic Generation Comparison and a Supporting Statement. New information submitted to assist with the redetermination includes an Addendum Statement and Waste Codes.

Policy WM12 of the JWDP specifies the minimum required information to be submitted to support Waste Planning Applications, with an extensive list set out in Box 1 (Page 72) of documents relating to General Information; Environmental and Amenity Impacts; Traffic and Transport Impacts; Heritage and Nature Impacts; Sustainability Impacts and Open Windrow Composting Specific Impacts.

Meanwhile, Policy WM1 requires applicants to clearly demonstrate why allocated sites are not available and suitable before unallocated sites will be considered. WM1 states that this must be justified as follows:

1. JWDP Site Assessment Method is applied including Site Scoring Criteria set out in Table 5.1;
2. Sustainability Appraisal;
3. Habitat Regulations Assessment;
4. Deliverability Assessment and
5. Compliance with criteria based and other relevant policies.

The application is not supported by adequate information to satisfy the requirements of JWDP Policies WM1 and WM12. Moreover, the Transport and Transport impacts of the proposals are not adequately quantified, explored or justified due to flaws in the submitted TA and Traffic Comparison Report.

In the absence of full supporting documentation as required by the JWDP, the application proposal cannot be assessed in its current format by HBC. Insufficient information is a valid reason for planning permission to be refused as in the absence of such information the Local Planning Authority cannot be satisfied that the proposed development would not have a detrimental impact. This is particularly relevant to the negative impacts arising through noise, odour, fumes, pollution and air quality which would have unacceptable impacts on the living conditions and health of local residents.

This is particularly pertinent in relation to consideration for the JWDP. The High Court has already found that HBC has erred in law in respect of the TCPA 1990 by failing to correctly apply the JWDP. A second ground for quashing planning permission related to HBC's failure to disclose information as required by the Local Government Act 1972.

This cannot be allowed to happen again. Any such repeated display of indifference to the High Court and to the law from HBC will not go unchallenged.

Planning Policy Assessment

Planning law dictates that applications for planning permission must be determined in accordance with the development plan (adopted Local Plan), unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in the determination of planning applications. Meanwhile, emerging local plan policies may attract material weight, depending on the stage of preparation.

The development plan for the area in which the application site is located comprises the following documents:

- Halton Core Strategy (adopted April 2013, and comprises Strategic Planning Policies for the Borough until 2028)
- Halton Unitary Development Plan (UDP) (adopted April 2005, for a twenty year plan period from 1996-2016)
- Merseyside and Halton Joint Waste Development Plan Document (JWDP) (adopted July 2013 for a plan period up to 2027)

The following documents are material considerations:

- National Planning Policy Framework (NPPF) (Published February 2019)
- National Planning Policy Guidance (NPPG)
- National Planning Policy for Waste (Published October 2014)
- Emerging Halton Delivery and Allocations Local Plan (DALP) (not yet submitted for examination)

For the avoidance of doubt, the following matters are not material planning considerations:

- Veolia's Business Plan;
- Veolia's Business Model;
- Financial Implications for Veolia with regard to economies of scale.

The Planning Issues arising from the proposed development are assessed against the development plan and other material considerations in the following sections of this letter of representation.

Existing and Proposed Use of the Site

The application proposal comprises operational development and change of use to a Waste Transfer Station from the currently vacant, former premises of a demolition contractor and vehicle dismantling operator located at 1 Pickerings Road in Widnes. The application form confirms (in Section 18) that the existing lawful use comprises 600m² of B1(a) office floor space and 400m² of Sui Generis floor space in a total site area of 1.1 hectares.

The same section of the form, confirms that the proposed use is for 1,175m² of Sui Generis floor space in a site area of 1.1 hectares. Section 22 of the Application Form confirms that the proposed use of the site would have an annual throughput of 85,000 tonnes of commercial and industrial waste and 40,000 tonnes of construction, demolition and excavation waste. The total waste throughput is therefore 125,000 tonnes of waste. As already stated, the levels of hazardous substances to be stored on site has not been quantified by the applicant, nor assessed by HBC.

The applicant has provided an Addendum Planning Statement dated 19 November 2019 to assist HBC with the redetermination of this planning application. It correctly states in Paragraph 53 that the proposed use of the site constitutes both operational development and change of use on the basis that there is variation in the waste type, amount of waste to be stored and processed, the introduction of open air storage, glass storage; processing of industrial, commercial, construction, demolition and excavation waste and the processing of RDF for export (compared to the existing lawful use of the site).

The proposed use and operation of the site is materially different to the existing lawful use, hence the application must be regarded as an application for 'new waste development'.

The Principle of Development

The Core Strategy provides an overarching Strategic Framework of policies for Halton and addresses the subject of Waste in Policy CS24. The Core Strategy cedes the allocation of sites and detailed development management policies to the Joint Merseyside and Halton Waste Local Plan.

The Halton UDP identifies the area in which the application site is located as Halebank Action Area (one of six regeneration areas identified in the plan). Policy RG5 applies to Halebank Action Area and states that the following land uses are acceptable: B1 (Office/Light Industrial); C2 (Residential Institutions) ; C3 (Residential); D1 (Non-residential Institutions) ; A1 (Retail) ; A3 (Restaurant/café) and D2 (Leisure and Assembly). The proposed Sui Generis use of the site is contrary to UDP Policy RG5, therefore the principle of development is not acceptable in accordance with the adopted development plan.

The land designation of the application site in the emerging DALP is Primarily Employment. Sui Generis is not an employment use. Therefore, the principle of development is not acceptable in accordance with emerging development plan policy.

Meanwhile, the JWDP was jointly prepared by Halton, Liverpool, Sefton, Knowsley, Wirral and St Helens Councils to plan for waste development management within the Liverpool City Region for the period up to 2027. The JWDP identifies an appropriate number of sites suitable for both sub-regional and district level waste facilities. The sites allocated in the JWDP are, *'located in the vicinity of existing clusters of waste management facilities where these have been shown to be sustainable. The sites were selected using robust site criteria based on constraint and opportunity mapping'*. (Sub-Regional Site Approach, P. 43 JWDP).

Policy WM1 of the JWDP states that developers should develop sites allocated in the JWDP in the first instance and should **only** consider alternatives if allocated sites have already been developed, are not available for the waste use proposed by the industry, or can be demonstrated as not being suitable for the proposed waste management operation. The burden of evidential proof to satisfy these tests rests with the applicant.

Planning Permission was quashed in the High Court on the basis that the sequential approach to waste management development, advocated in WM1 had not been demonstrated by the applicant and therefore not proven to the Local Planning Authority.

The application is for new waste management development. It remains the case that the applicant has failed to demonstrate compliance with JWDP WM1. The principle of development is therefore contrary to, and not acceptable in accordance with the JWDP.

The principle of development is not acceptable in accordance with all adopted and emerging development plan documents. In cases where the local planning authority intends to depart from development plan policy, article 15(3) of the Development Management Procedure Order sets out the publicity requirements which must be followed before the decision is taken. Applications which depart from the development plan may be called in by the Secretary of State. Hence, we are sending a copy of this letter to the Rt Honourable Robert Jenrick, Secretary of State for Housing, Communities and Local Government to request that this application be called-in.

[Site Prioritisation for Waste Management Development in accordance with JWDP](#)

The applicant previously failed to demonstrate compliance with the sequential approach of the JWDP. Although it was claimed that the proposed development was compliant with policy (Paragraph 7.5.10 of planning documentation) because it would reduce Veolia's reliance on third parties; the site is close to an existing depot on Ditton Road; it was not known if other sites were available and due to the site's broad location within the Industrial area of Ditton/Widnes.

Planning Permission was subsequently quashed in the High Court as HBC failed to apply the policies of the JWDP in accordance with the TCPA 1990.

The JWDP differentiates sites allocated for waste management development into two types- Sub-Regional – of Regional Strategic importance - and District- local level to meet local needs.

Sub-Regional Sites are set out in Policy WM2 of the JWDP. Paragraph 4.10 of the JWDP states that, “The sub-regional sites are those which are larger in size (4.5 hectares or greater) and waste management capacity, and are capable of supporting facilities which will be of strategic importance to Merseyside and Halton. They may be able to accommodate one large facility or a number of facilities co-located on the same site. Where several facilities are developed on a single site, integration between the operations is desirable to maximise synergies, reduce transport impacts and make best use of infrastructure.”

District level sites are identified in Policy WM3 and are differentiated from Sub-Regional level sites as smaller-scale local facilities to take account of specific district level local needs.

The applicant indicates (Paragraph 8.3.2) that the proposed WTS at Pickerings Road is of the Sub-Regional level of significance as it will be collecting and processing Commercial, Industrial, Demolition, Excavation and Construction waste from all over Merseyside. In contrast, a district level operation would be restricted to waste from Halton only.

In order to demonstrate compliance with JWDP Policies WM1 and WM2, the applicant is required to provide evidence to confirm that all allocated Sub-Regional Sites in the Liverpool City Region are developed, unavailable or unsuitable.

Merseyside Environmental Advisory Service (MEAS) is carrying out Implementation and Monitoring Reports on the JWDP on an annual basis and records the take up of allocated Sub-Regional Sites. The results are as follows:

- JWDP Implementation and Monitoring Report 2013/14- Paragraph 140: Performance: No sites taken up.
- JWDP Implementation and Monitoring Report 2014/15- Paragraph 157: Performance: Knowsley Council was minded to approve an AD facility on ‘K1 – Butlers Farm, Knowsley Industrial Park’ in June 2015.
- JWDP Implementation and Monitoring Report 2015/16- Paragraph 157: Performance: Knowsley Council was minded to approve an AD facility on ‘K1 – Butlers Farm, Knowsley Industrial Park’ in June 2015.
- JWDP Implementation and Monitoring Report 2016/17- Paragraph 151: Performance: Site S1a Former Transco Site, Pocket Nook received permission (P/2016/0440/FUL) for construction of a new office and workshop building, reconfigure of external hardstanding for storage of HGV's. This proposal was for the land on the west of the site.
- JWDP Implementation and Monitoring Report 2017/18- Paragraph 141: Performance: no waste applications have come forward on sub-regional sites during the monitoring period.

The Implementation and Monitoring Evidence compiled by MEAS since the adopted of the JWDP verifies that there has been minimal take-up of Sub-Regional allocated sites in Knowsley and St Helens with capacity remaining in Sefton, Halton, Liverpool and Wirral.

It is therefore the case that the applicant has not and cannot demonstrate that the Sequential approach of JWDP Policies WM1 and WM2 has been complied with. The proposed development does not comply with the policies of the JWDP and planning permission should be refused.

Pickerings Road-Redetermination 19 November 2019

Since planning permission has been quashed, the applicant has shifted position and now attempts to justify the proposals in a newly submitted Addendum Statement dated 19 November 2019 and entitled Pickerings Road-Redetermination.

This document makes a number of spurious assertions to re-attempt to justify the proposed development. It is our intention to rebut these assertions in order to assist and prevent HBC from once again being led to err in law. For ease of reference, we respond to these assertions stating the Paragraph number in which they appear in the applicant's Addendum Statement.

5) The applicant states that it is necessary for the Council to have regard to its previous decision and to set out reasons for any departure from conclusions previously reached. While the previous decision may be a material consideration in the re-determination, HBC must acknowledge that the decision was quashed as unlawful. HBC is therefore not bound by the quashed decision and must assess the proposal afresh taking into account the development plan and other material considerations.

Moreover, a key factor in the quashing of planning permission in the High Court was that the correct application of planning policy would inevitably or highly likely result in a different outcome in the decision-making process, i.e. that planning permission would be refused. Paragraph 62 of the Judgement states:

62. I will quash the planning permission because I do not accept that the decision would inevitably or be highly likely to be the same. The proper application of the sequential test, after appropriate inquiries are made, is a critical step in the planning policy framework, lying behind the determination of the application. Unless and until that policy exercise is gone through it is not possible to know what decision the Council will make.

7) The applicant assumes that discharged Conditions attached to the quashed approval will be taken into account in the re-determination. However, the legal effect of the quashing of planning permission is that it is void ab initio- invalid from the outset. This means that the context of the redetermination, there is no permission, and no conditions of approval, whether these are previously discharged or otherwise.

53) The applicant claims that the starting point for analysis in the consideration of the current application lies in understanding the site planning history. As already stated, the site would appear to have the benefit of B1(a) and Sui Generis consent, but is vacant and defunct for these purposes. The applicant claims that the application site is an existing waste management site. However, Figure 4.2 in the JWDP referred to by the applicant does not accurately plot or list such sites. Moreover, the application site is not allocated as such in the Halton UDP (Halebank Action Area), nor in the Emerging DALP (Primarily Employment).

54) The applicant cannot rely on the existing lawful consent of the site. If any existing consent could development and change of use are proposed. The proposals do not involve any B1(a) Office development and are solely for waste operations. The waste type, amount of waste to be stored and processed, the introduction of open air storage, glass storage; processing of industrial, commercial, construction, demolition and excavation waste and the processing of RDF for export are materially different. Hence the application must be regarded as an application for ‘new waste development’. There is no ‘fallback’ position relating to the existing lawful use.

57) The applicant refers to a time (date unknown) when it was decided to develop a WTS to support the Ditton Road Depot. It is claimed that a property search was carried out. No evidence to confirm the format or results of that ‘property search’ is provided. As already stated, the burden of evidential proof in demonstrating the sequential approach rests with the applicant.

64) The applicant claims that the application site is identified in Policy WM5 of the JWDP. Technically, this is incorrect. WM5 identifies that the Industrial areas of Ditton and Widnes may be suitable for small-scale waste management uses. Figure 4.2 in the JWDP identifies the area as correlating to the areas designated for Employment purposes in the Halton UDP. Pickerings Road is not located within the Industrial area of Widnes or Ditton. It is located within the Hale Bank Action Area in accordance with the Halton UDP. Policy RG5 applies within Halebank Action Area and it does not permit B2 Industrial Use, nor the sui generis use proposed in this application. Therefore, the application site is not identified within policy WM5. In any event, Policy WM5 is relevant for small scale waste operations, not Sub-Regional sites, for waste from all over the City Region, such as that proposed in this instance. Map extracts are provided below as Figures 1-3 to confirm that the application site is not located in the area of search identified in JWDP Policy WM5.

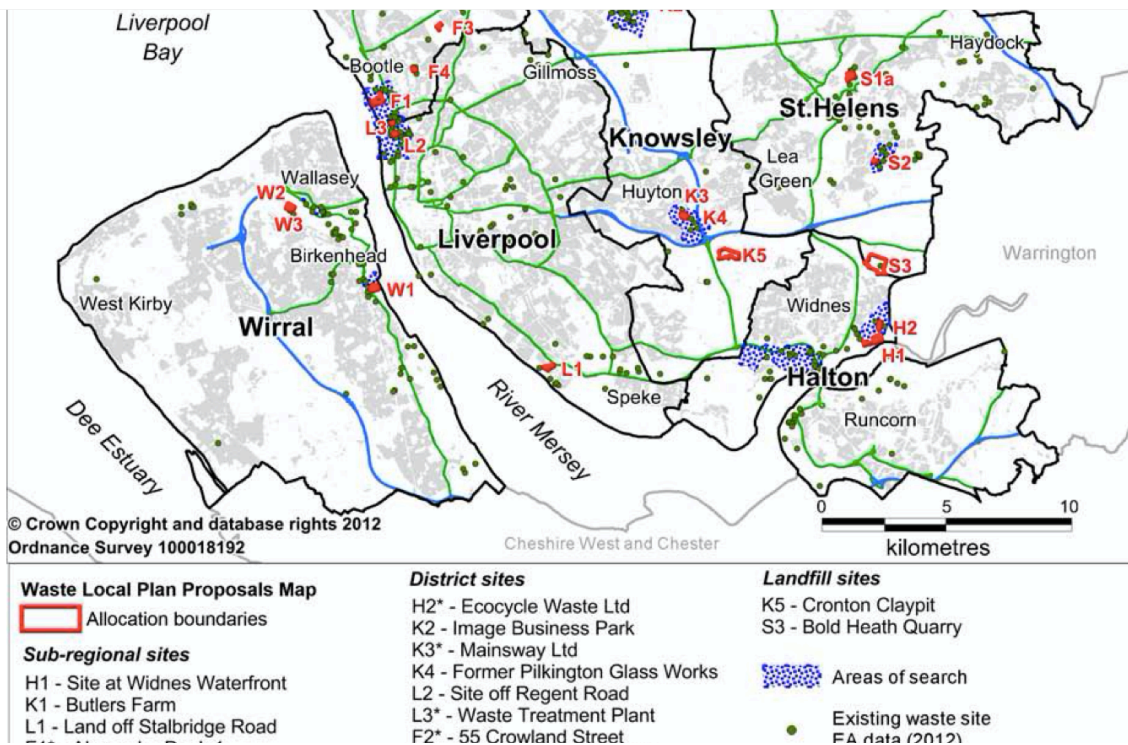


Figure 1: Figure 4.2 from JWDP- Area of search identified in blue

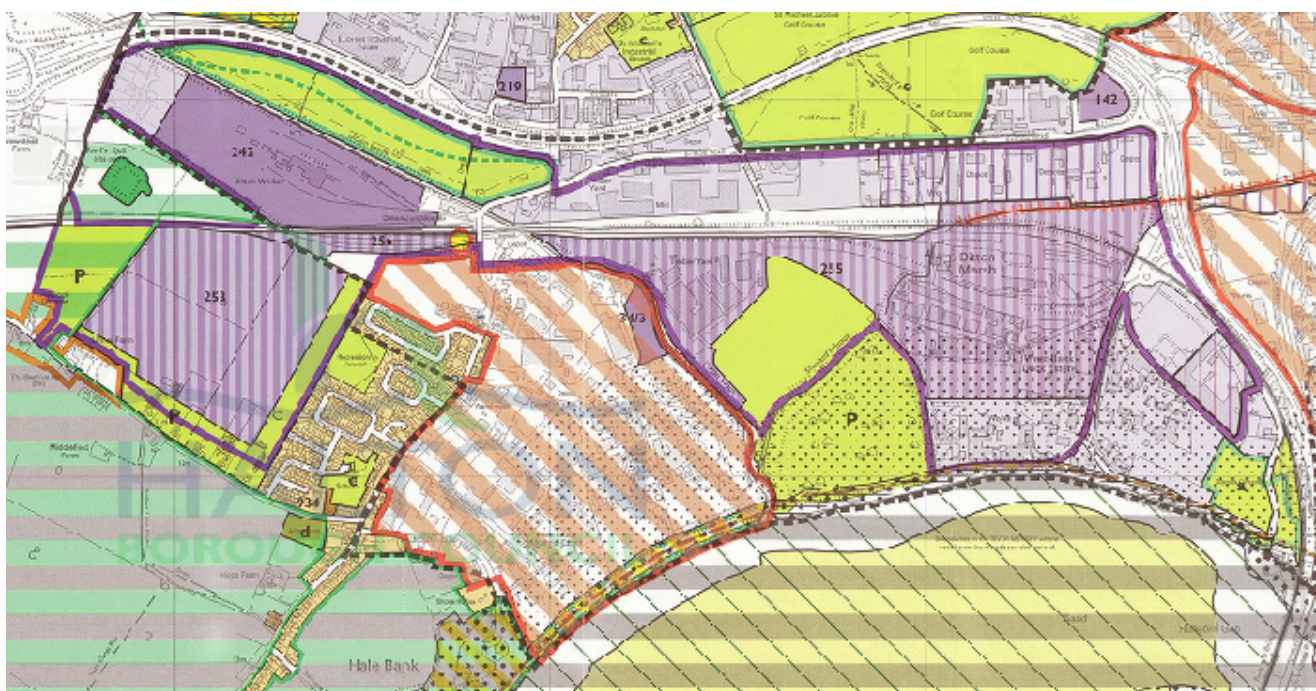


Figure 2: Halton UDP Map Extract indicating that Area of search in 4.2 correlates with Employment areas in Widnes and Ditton. Pickering's Road is not located within these designations



Figure 3: Close up extract of Figure 4.2 confirming that the application site is outside of the area of search

58-63) The applicant claims that the application site is protected from alternative uses by JWDP Policy WM7. Policy WM7 relates to “Existing operational **and** consented waste management sites”. Arguably WM7 does not apply to the application site, as although the use for waste management is consented, the site is not operational. Policy WM7 states operational and consented; not operational or consented, so for WM7 to apply, the site must be both.

In addition, it is not the case that WM7 prevents changes of use. There are three criteria allowing a change of use to non-waste uses, of which only one (or more) needs to be met to allow a change of use. The application site has no protection as a result of WM7 as it is not an existing, operational waste management site and because it is not located in an appropriate area, i.e. it is not an allocated site in the JWDP and is not located in an identified area of search.

65-68) The applicant makes contradictory assertions that the application site is needed to retain sufficient waste capacity followed by a statement that there is no pressing need for the existing uses because the loss of the 'scrap metal and vehicle dismantling use' would not result in any loss of capacity.

72-73) The applicant criticises the JWDP and incorrectly suggests that its policies are contradictory, which they are not. For the avoidance of doubt, the applicant was a stakeholder consulted in the preparation of the JWDP, which was prepared from approximately 2005-2013. The applicant would have had full cognisance of the policies, allocated sites and search area as well as the ability to make representations for the inclusion of alternative sites/areas. There is no evidence to indicate that Veolia made representations for the inclusion of the application site, which it now seeks to promote for development outside of the statutory development plan, within a plan-led system.

74-85) The applicant indicates that there is no intention to attempt to meet BREEAM Excellent Standard, nor to create a development designed to function with sustainable modes of transport.

86-90) The applicant highlights consideration for Veolia's business model, business plans and economies of scale which could increase Veolia's profitability. None of these are planning matters.

108-109) The applicant suggests that there is a fallback position to be considered in which it states that the previous use of the site had unrestricted planning permission. This is not correct. Having perused the site planning history, we note that planning permission granted for the site under reference 08/00598/COU indicates a maximum annual throughput of 2,200 tonnes (confirmed in Section 23 of the planning application). A throughput of 2,200 tonnes represents 1.76% of the amount indicated in the same section of Veolia's Application Form (125,000 tonnes per annum). The applicant claims that the previous operator of the site was handling 100,000 tonnes of waste per annum (this figure is also claimed in Paragraph 53). This figure relates to an Environment Agency Waste Permit. The Licensing regime is entirely separate from planning and has no bearing on planning decisions.

We accept that the previous use of the site could be reinstated without the need for planning permission. However, any such operator would be required to demonstrate (as a matter of fact and degree) that there was no material change in the waste type, nor any increase above an annual tonnage throughput of 2,200. As the applicant's proposals are materially different to the consented use, there is no fallback position.

In order to summarise our conclusions on the applicant's addendum statement, we find that the applicant has not and cannot demonstrate compliance with the policies of the JWDP on the basis that the application site is not allocated within the plan for new waste development as a sub-regional or district site and is outside of the areas defined as suitable for search once allocated sites have been taken up. As the proposals do not comply with the development plan, HBC must refuse planning permission.

Inconsistent and Inaccurate Supporting Information

In addition to there being extensive information omitted by the applicant, there are inconsistencies in the information provided rendering the various impacts of development impossible for HBC to assess.

These inconsistencies specifically relate to the annual amount of waste throughput and the traffic and transport impacts.

Both the Transport Assessment (dated Sept 2018, Paragraph 3.24) and Planning Documentation (dated May 2018, Paragraph 8.3.2) indicate that the total annual waste throughput would be 85,000 tonnes (45,000 general waste and recyclates and 40,000 demolition wastes). However, the Application Form (Section 22) disaggregates Commercial/Industrial waste streams (85,000 tonnes) from Construction, demolition and excavation waste streams (40,000 tonnes) thereby indicating a total annual figure of 125,000 tonnes.

The application form indicates that the proposed WTS would be open daily from 0700-1900 Monday to Friday and 0700-1500 on Saturdays, Sundays and Bank Holidays. The TA indicates that there would be 119 daily HGV movements M-F and 27 HGV Movements on Saturdays. The TA makes no reference to HGV Movements on Sundays and Bank Holidays and no reference to the impact of 'smaller skip vehicle movements' which the Planning Documentation states would be visiting on 'multiple occasions throughout the day' (Paragraph 8.3.3). These vehicular movements are unquantified and could have a significant impact on the safe and efficient operation of the highway.

The TA is fundamentally flawed and fails to adequately and accurately assess the impact of development on traffic and transport by only taking account of HGV movements, neglecting approximately 1/3 of waste throughput and overlooking the facility being operational seven days a week.

In addition, we note that the applicant has provided a technical note (dated 2 November 2018) in which the existing and proposed vehicular movements from the site are compared. As already stated, the figures for the proposal only include HGV movements and do not accurately reflect the total movement to and from the site including smaller skip vehicles.

The analysis indicates that the proposed level of HGV movement for the proposed development (119 each day) would compare favourably against 275 movements (total HGV and other). However the analysis is inaccurate and fundamentally flawed as the proposal has been compared against B2 (General Industry) and B8 (Storage and Distribution) uses operating seven days a week from 0700-1900.

Planning Use B2 and B8 do not accurately reflect the consented uses of the site (B1(a) offices and sui generis). Furthermore, the site was previously operational from 0900-1700 Monday to Friday and 0900-1200 on Saturdays. Bearing in mind that planning consent was previously granted for an annual tonnage of waste representing just 1.76% of that now proposed, it seems highly unlikely that the consented use would create more vehicular movement.

Conclusion

An inappropriate historic use of the application site has ceased, owing to the financial situation of the previous operator. The site is located within the Hale Bank Action Area in accordance with the adopted policies of the Halton UDP. The current site vacancy represents a redevelopment opportunity for land uses specified within UDP Policy RG5 (B1 (Office/Light Industrial); C2 (Residential Institutions) ; C3 (Residential); D1 (Non-residential Institutions) ; A1 (Retail) ; A3 (Restaurant/café) and D2 (Leisure and Assembly). The proposed use of the site does not conform with the acceptable uses defined in Policy RG5.

In addition, the proposed use of the site as a new WTS is contrary to all policies of the JWDP. The site is not allocated for use for waste management. Allocated sites are the priority for waste management development, with a sequential approach required to be demonstrated by the applicant (Policy WM1 and WM2). Not all allocated sites have been developed for waste management purposes, therefore the sequential exercise has not been satisfied. Moreover, the application site is not located within an area of search suitable for waste development after allocated sites have been taken up (WM5). In addition, the site is not protected for waste purposes as it is not an existing consented and operational waste management site (WM7).

The application is also inadequately supported by documentation required by WM12. The documentation which has been submitted is inaccurate, misleading and flawed. This was recognised in the High Court Judgement in which planning permission was quashed after HBC previously relied on the applicant's version of matters and made an unlawful decision to allow development.

Finally we reiterate Justice Lieven's Judgement that the correct application of planning policy would inevitably or highly likely result in a different outcome in the decision-making process, i.e. that planning permission would be refused. Paragraph 62 of the Judgement states:

62. I will quash the planning permission because I do not accept that the decision would inevitably or be highly likely to be the same. The proper application of the sequential test, after appropriate inquiries are made, is a critical step in the planning policy framework, lying behind the determination of the application. Unless and until that policy exercise is gone through it is not possible to know what decision the Council will make.

For all of these reasons, we urge HBC to not allow themselves to be misled and to correctly apply planning law and planning policy by refusing planning permission for the application proposal.

We thank you for the time taken to consider this letter of representation. We request that you inform us if any further information is provided by the applicant, to advise if the application will be heard at Planning Committee, with advance notice of the date of that meeting. In addition, we request a copy of the Council's decision in due course.

Yours sincerely,

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cc. Hale Bank Parish Council
Rt Honourable Robert Jenrick