

**HALEBANK PARISH COUNCIL**  
***ALWAYS PUTTING THE PEOPLE OF HALEBANK FIRST***

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Andrew Plant  
Planning Department  
Halton Borough Council  
Municipal Building  
Kingsway  
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24 May 2023

Dear Mr. Plant

**Re - Planning application 23/00187/WST**  
**Proposed erection (partially retrospective) of an industrial building at Veolia (ES) UK Ltd,**  
**(Former site of Bryan (Victoria Ltd), Pickering's Rd, WA8 SXW)**

[1] Halebank Parish Council would wish to formally object to this application for the retrospective construction of a building to be used for the purposes of the processing of construction and demolition waste and scrap metals.

[2] Firstly we note that this is a highly unusual application as the applicant is seeking consent solely for the completion of a currently non-consented but partially built structure. The application does not seek planning permission for the actual use of the building, as it is the applicant's contention that lawful consent already applies to the site with respect to historic activity carried out by its former owner.

[3] Furthermore, the application states that the site is "currently being used for the processing of construction and demolition waste and scrap metal." Somewhat paradoxically, the application states that it is not "for a waste management development." Clearly, this is a fundamental contradiction that calls into question the integrity and good faith of the application.

[4] The Parish Council would contend that the site is not being used for the processing of construction waste but is being used primarily as a vehicle and storage depot by the applicant.

According to evidence from the previous owners, processing of building waste on this site ceased more than a decade ago.

[5] The Parish Council contends that the activity envisaged by the applicant, necessitating the construction of the proposed building, would be a very substantial expansion and intensification of waste processing activity, entirely beyond the scope of any historic or lapsed use, and should therefore require a new planning application.

[6] In view of the planning history of the site, and in particular, the 2019 Judicial Review (Case No/1023/2019), and the Planning Appeal decision (APP/DO650/W/20/3251697), the applicant has chosen this highly contrived and inappropriate planning route, on the basis that they knew that a consent for a waste operation on this site would be in contravention of key policies WM1 and WM5 in the Merseyside and Halton Joint Waste Local Plan (JWLP).

### **Planning history and relevant policy,**

[7] In 2018 the applicant applied for the construction of the presently half completed structure as part of an application for a waste processing operation on this site. Following advice from the Council's specialist advisers, the Merseyside Environmental Advisory Service (MEAS), Halton Council Planning Officers advised approval of the application, as being compliant with the relevant JWLP policies. Halebank Parish Council objected to the application on the basis that it was not compliant with policies WM1 and WM5, in that the site was neither allocated as a waste site within the JWLP, nor was it located within an Area of Search.

[8] In legally challenging the decision, through an application for Judicial Review (JR), Halebank Parish Council argued that Planning Committee members had not been given sufficient information to establish whether the applicant had fully investigated the availability of allocated sites, or sites within the Area of Search, and consequently the necessary sequential test had been followed.

In Judgement, Mrs. Justice Lieven, concluded:

Para 55

*"The core point is that the sequential test in WM1 cannot be satisfied by a simple acceptance of a developer's assertion that no other site is suitable, without some material to support that assertion, and a proper consideration of whether the assertion was justified. If the developer's assertion alone was sufficient then WM1 and the sequential test would be a wholly meaningless exercise devoid of purpose, because any developer could, and probably would, just say that they wanted their site because it met their requirements and therefore allocated sites were not suitable. In these circumstances the site selection hierarchy so carefully set out in the Waste Management policies in the JWLP would have no effect....."*

Para 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. "*

[9] Following judgement MEAS drafted an updated advice note to Chief Planning Officers within Merseyside and Halton reinforcing and clarifying the sequential test requirements for policies WM1 and WM5 within the JWLP. Notwithstanding the judgement, and the quashing of the planning consent (or the revised MEAS guidance), Veolia appealed against the non-determination of the planning application by Halton Council following its resubmission of the application. Despite support from Halton Council, the Appeal was dismissed.

In key paragraphs of his decision, the Inspector concluded:

*23. "In its consultation responses MEAS has indicated that the appeal site falls within the HIDW area of search, a view echoed by the appellant and the Council in their Appeal Statements. However, in my view, that is not the case. this is a view shared by Hale Bank Parish Council. It appears to me that the appeal site falls well outside the 'fuzzy' boundary of the HIDW area of search shown on Figure 4.2. Furthermore, this spatial relationship is confirmed with reference to the areas of search boundaries shown in detail within supporting document PS-044: Areas of Search Development in the waste local plan, which is referred to in the notes accompanying Figure 4.2. The appeal site is situated towards the southwestern corner of Halebank Industrial Estate and, in my view, is well outside the boundary of the HIDW area of search, which at the closest point is a significant distance to the northeast towards the far side of Widnes Business Park. Contrary to the view of the appellant and others, in my judgement, the appeal site is not located in the vicinity of the area of search and so would not accord with JWLP Policy WM5.*

*24. Furthermore, the appellant has not demonstrated that the area of search is not suitable for the development proposed. In its Appeal Statement, the appellant has confirmed that at the time when the decision was taken to develop a transfer station, its standard property search identified a number of potentially appropriate sites in addition to the appeal site. However, based on the evidence presented, it is not clear whether any of those other sites were within, or within the vicinity of, the HIDW area of search.*

*25. JWLP Policy WM1 indicates that developers must clearly demonstrate that both allocated sites and areas of search are not suitable for the development proposed before unallocated sites will be considered. For the reasons set out above, I consider that this has not been done."*

[10] It has therefore been established beyond question that this site is neither an allocated site, nor a site within an Area of Search. It can therefore only be approved for a waste-related activity, in circumstances, where it is clearly established that there are no allocated sites, or sites within an Area of Search, suitable and available for development. The applicant is fully

aware that such sites are suitable and available, and as a result would be unable to fulfill the requirements of the sequential test. Consequently, an application for the processing of construction and demolition waste on this site would inevitably be refused.

[11] Following the unsuccessful planning appeal, in correspondence with Halebank Parish Council in October 2021, Donald McPhail (Chief Operating Officer, Veolia UK) stated:

*"As you are aware, we proceeded with construction of a waste transfer station having secured the necessary planning permission. That permission was subsequently struck down and the redetermination was unsuccessful. **Based on the comments from the Inspector, we don't propose to submit a planning application for a further WTS on that site.***

*I note your reference to the comment David made about a resumption of demolition and construction waste. At the time of David's response, that was the intention. You will recall that our application for the transfer station included for open air processing of C&D waste, so in light of the history of the site that was consistent. However, as we have also indicated we have been considering other options for the site.*

*Subsequently we have been considering the needs of our business. **We have been considering non-waste-based uses of the site so in order to release the site from waste uses it is necessary to demonstrate that there are alternative waste sites available. That has been confirmed.***

[12] This undertaking not to pursue waste-based uses on this site, including what they regard as the lawful processing of construction waste, is highly significant, as is the acknowledgement that there are alternative sites available, and that the site was not being used for processing construction and demolition waste. The current application and claims concerning use of the site fly in the face of Mr McPhail's assurances and seriously call into question the good faith and trustworthiness of the applicant.

[13] It is also relevant that in the course of the Judicial Review proceedings the applicant submitted that the prior use of the site by its former owner, established a lawful waste processing use (para 24). The judgement, however, clearly upholds the applicability and centrality of policies WM1 and WM5 with respect to this site, and despite the flawed approach to implementation, this was clearly also the view of MEAS and Halton Council with respect to the previous application.

## **Conclusion**

[14] This application is a contrived attempt by a twice disappointed multi-national waste company to find a way around the planning system and impose their will on a community who have successfully resisted legally flawed planning proposals.

[15] There is strong logic and core planning principles underpinning the Joint Waste Local Plan (JWLP). Allocated sites and Areas of Search have been carefully identified, evaluated and

scored on the basis of location, accessibility, proximity to residential areas and environmental impact.

[16] This fact that this site is neither allocated, nor within an Area of Search, reflects the fact that it is close to an established residential neighbourhood and can only be accessed through predominantly residential roads. There is an objective reason why this site is not allocated or suitable for a waste operation and that has been recognised in both the JR and Planning Appeal decisions. The argument that it was not scored because of an historic waste use, and is therefore exempt from policies WM1 and WM5, was explicitly refuted by the JR judgement.

[17] Halebank Parish Council therefore objects to the application on the following grounds:

- The building for which retrospective permission is being sought, is to be used for the processing of waste on a site that is neither an allocated site within the JWLP, nor within an Area of Search, and therefore contravenes core policies WM1 and WM5.
- The applicant has failed to provide any evidence satisfying the sequential test to establish that allocated sites are neither suitable nor available. (Indeed, they confirm in correspondence with Halebank Parish Council that alternative sites are available). There is therefore no evidence or policy justification for such a waste processing use on the site, or the construction of a building for that purpose.
- The applicant has falsely claimed that the proposed activity is currently being carried out on the site that is in fact being used primarily for vehicle parking and storage. The application therefore is not, as stated in the application, the continuation of a current use, but involves a change of use requiring planning permission.
- Relative to the historic waste activity by a former owner, this application envisages a very substantial expansion and intensification of waste processing, necessitating the construction of a large bespoke building, that properly requires planning permission.
- The activity will have a potentially significant detrimental impact on the residential amenity of the community of Halebank and neighbouring businesses arising, from increased HGV traffic movements, adverse impact on air quality, potential noise and dust pollution. The nature of the application and the paucity of submitted information inhibits effective evaluation of these and other potential adverse impacts. Significantly, Donald McPhail's letter to Halebank Parish Council in 2021 recognises that *"in terms of traffic generation, you will recall that the proposed WTS application would have generated less traffic than the existing lawful use."*

[18] Halebank Parish Council wishes to give notice, that in the event of planning permission being granted, it will legally challenge any such decision through an application for Judicial Review

Yours sincerely

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Clerk/RFO to Halebank Parish Council  
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