



Appeal Decision

Inquiry held on 15-17 June 2010

Site visit made on 18 June 2010

by **Elizabeth C Ord LLB(Hons) LLM MA**
DipTUS

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

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Decision date:
5 October 2010

Appeal Ref: APP/Z4310/A/09/2117527

Land adjacent to Stalbridge Dock, Dock Road, Port of Garston, Liverpool.

- 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 Jack Allen Holdings Ltd. against the decision of Liverpool City Council.
- The application Ref 09F/1012, dated 5 May 2009, was refused by notice dated 16 September 2009.
- The development proposed is a Resource Recovery Park (RRP) including building construction and plant installation for the treatment, recycling and recovery of municipal and commercial wastes with an annual processing capacity of 150,000 tonnes. RRP to include: waste reception hall; autoclaves; recyclate sorting area; boilers and other ancillary equipment; weighbridges; balancing pond; associated landscaping/boundary treatment; internal vehicle access and onsite parking; ancillary offices/staff facilities; education/visitor centre.

Decision

1. I allow the appeal, and grant planning permission for a Resource Recovery Park (RRP) including building construction and plant installation for the treatment, recycling and recovery of municipal and commercial wastes with an annual processing capacity of 150,000 tonnes. RRP to include: waste reception hall; autoclaves; recyclate sorting area; boilers and other ancillary equipment; weighbridges; balancing pond; associated landscaping/boundary treatment; internal vehicle access and onsite parking; ancillary offices/staff facilities; education/visitor centre. This permission relates to the land adjacent to Stalbridge Dock, Dock Road, Port of Garston, Liverpool and is granted in accordance with the terms of the application, Ref 09F/1012, dated 5 May 2009 subject to the conditions set out in the attached annex.

Procedural matters

2. The application was validated by the Council on 13 May 2009 and re-validated and re-advertised in July 2009 on the basis of the submission of two additional elevational drawings, which did not form part of the original submission. The Council's decision took these amendments into account and I have also considered them in my determination. On 1 February 2010 the appellant submitted an amended plan AL(100) 09 Rev E, which was advertised to the public in the appeal notification letters that were posted to local residents. This amended plan does not alter the substance of the application and, applying the Wheatcroft Principles, I accept it.
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3. In accordance with the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (S.I. 1999/293) the appellant produced an Environmental Statement (ES) dated April 2009, a transport assessment dated September 2008 (revised July 2009) and a flood risk assessment dated September 2008. The adequacy of the ES is not in dispute and I have taken it into account in determining this appeal.
4. Whilst there were originally three reasons for refusal cited by the Council, two of these reasons have been resolved, namely the visual impact of the main building, and the use of green energy. I have no reason to disagree with this position.

Main issue

5. The main issue is whether the proposal, by means of its use or perception, would have a detrimental effect on the regeneration of Garston and, if so whether this is outweighed by its need.

Site and surroundings

6. This 5.35 hectare site consists of previously developed land containing concrete hardstanding, a storage building and vegetation. It was formerly used predominantly for rail sidings but is now underused and overgrown. It lies within Garston Docks, and the port, including the site, is allocated as "Port" and "developed Coastal Zone within the City of Liverpool Unitary Development Plan (LUDP), adopted in November 2002.
7. It is surrounded by mixed industrial, commercial and residential uses with housing juxtaposed alongside new and established industry, including dock activities, a freight terminal and a landmark gas holder. Within the nearby Garston and Weaver Industrial estates there are existing waste recycling facilities for solvents (classified as hazardous waste) and industrial drums and containers.
8. The wider area is also characterised by mixed uses. This is evidenced by more industry and commerce, including a large new printing works, new business and retail parks, a transport interchange and John Lennon airport. These uses are interspersed with housing development, schools, a new hospital, and community, leisure and health facilities.

The proposal

9. The process by which waste would be treated in the RRP is described in the Statement of Common Ground as follows:

The autoclave is an enclosed treatment process that is designed to sanitise waste by exposing it to high temperature and pressure by the use of steam. The high temperature (about 156 degrees centigrade) involved in the autoclave process ensures that all bacteria present in the waste is exterminated. The steam is drawn out of the autoclave through a sealed system whilst the autoclave is being de-pressurised. A small amount of steam may be evident when the autoclave is opened to remove the treated waste for sorting, but this would be captured through a hood and fan and out back into the system with the main volume of steam for reuse. It is considered that approximately 60 percent of the treated waste will be organic fibre; approximately 20 percent of

treated waste will comprise metals and plastics and the remainder will be residual fraction. The treated waste will be moved to storage and further sorting and stored prior to export. On the basis of these figures it is considered that 80 percent of waste treated at the RRP is capable of being recycled.

10. There would be no combustion of waste. The main parties agree that it is a clean technology that would not have any significant environmental or amenity impact.

Reasons

Regeneration of Garston

Background

11. Over many decades Liverpool has suffered from prolonged economic decline and falls in population, resulting in concentrations of deprivation and housing market failure in areas including Speke and Garston. According to national statistics¹, Liverpool is the most deprived local authority in England and the Speke/Garston ward is ranked as the most deprived ward nationally. However, in recent years, major regeneration projects have resulted in Liverpool exhibiting improved economic performance and a stabilisation of population numbers.
12. Garston specifically has changed dramatically over the last 10-15 years as a result of substantial public and private sector investment. There have been tremendous improvements in commercial and residential facilities and there is no doubt that Garston has transformed from a rundown area into a far more pleasant place to live and work. This regeneration has been housing led, resulting in an uplift in property values and a significant increase in the demand for dwellings.
13. Nonetheless, the strategic regeneration of Garston is not yet complete and there is still much to be done in order to enhance the community's prospects of being lifted further out of deprivation. It is of paramount importance that the good work that has been done continues, and that Garston's improved image is sustainably embedded in its local culture.
14. However, the situation is fragile. Residential development is still ongoing, including the construction of new housing estates close to the appeal site. The strategic housing development on the Council owned Dingle Bank, adjacent to the site, is yet to be started.

The perceived harm to regeneration

15. There is concern from the Council and many local residents that the perception of a RRP in close proximity to the proposed new housing would prejudice its delivery. In particular, the Council fears that the capital receipt it hopes to realise from the sale of Dingle Bank would not be forthcoming and this would adversely impact on Garston's economic and social improvements in the long term.

¹ The Indices of Deprivation 2007 (Revised April 2009).

16. The Council's objection is not that the RRP would create environmental or amenity problems, but that investors, including the house builders, and also people thinking of moving into the area to live, might be discouraged by the perception of a waste treatment plant close by. If people were put off living in Garston, then fewer houses would be bought and, in turn, the house builders would build less. This, the Council suggests, would in itself be harmful because it would impact on investment in Garston and its general economy.
17. However, upon close examination, there appears to be limited evidence to support these concerns. Whilst anecdotal accounts were given of potential new home owners declining to proceed with intended house purchases, only one document was produced by a house builder showing a cancelled purchase due to the RRP and this was based on a misunderstanding of it being an incinerator.
18. Although the house builders' agent indicated that the proposal would be likely to result in delay, if not a failure to deliver housing, this is simply an assertion. None of these developers have suggested that they would leave the area if planning permission for the RRP were granted.
19. In fact, on my site visit, there was evidence of considerable ongoing building activity in proximity to the site, and many newly built homes appeared to have been sold or were reserved. This is not indicative of a particularly depressed housing market. Although one house builder has reduced its build programme to match a fall in sales, I am not convinced that the reason for this is the RRP, as similar steps are being taken by builders in other parts of Merseyside. Rather, I take the view that any slow down is because of the current state of the market generally. Indeed, it was not disputed that many house builders around the country are taking similar measures due to the economy.
20. With regards to the impact on the potential Dingle Bank housing, there is uncertainty as to whether this site will be developed at all regardless of the appeal proposal. Despite being granted planning permission in relatively favourable economic times (2001 and renewed in 2004), no development has been forthcoming. Although several reasons have been suggested for this, including phasing and competition, there is little evidence to this effect, and the only apparent competition at the time of the planning permissions seems to have been from the Wimpey development in Banks Lane.
21. Whilst the Council's witness suggested that the site was not marketed once the application was lodged, there was a resolution by the City of Liverpool Executive Board in March 2008 to market the site immediately, in the knowledge of the proposal. This would appear to contradict the assertion made by the Assistant Executive Assistant for Regeneration that the proposal would make Dingle Bank virtually unsaleable. The e-mail produced at the inquiry to explain why marketing did not actually occur, shows that none of the reasons given relate to the appeal proposal.
22. I take the view that the most likely reason for the lack of interest in Dingle Bank is not the RRP, but the viability of the site. The valuation from Mason Owen, which is the only valuation before me, indicates that, largely due to the need for substantial earth movements and the costs of contaminated land remediation, the site currently has no value. The Council's witness accepted this at the inquiry. Whilst I acknowledge that valuations change with time and

the economic climate, at this stage, one can only speculate over the receipts that Dingle Bank might return at some future date. What is known, however, is that the witness from Bellway Homes Ltd. indicated at the inquiry that, if viability issues were addressed, his company would be willing to build on this site.

23. In summary, whilst I acknowledge the strength of feeling amongst local residents and other interested parties, I take the view that there is no reasonable basis for these fears. They are founded on misconceptions of the proposal's effects and are not supported by a robust evidence base. It is likely that, once the RRP is operational, the concerns about the possible impact on inward investment will fade, as the lack of any material harm on regeneration is realised. Consequently, in my opinion the proposal would have little impact on housing delivery and investment in general.

The benefits to regeneration

24. The proposal would bring £35m of investment to the area, and would generate much needed employment opportunities where there is high unemployment. It would bring new, clean industry to the area generating construction work and, once operational, it would create 41 permanent jobs. Furthermore, there would be indirect economic benefits due to the business it would generate.
25. The RRP would benefit existing industry and commerce. For example, it would support the viability of the port by way of rental payments and Royalties, as well as the use of the port facilities. Also, given the appellant's intention to transport some treated waste by rail, it would seem likely that the adjacent Freightliner facilities would be used. Overall, there would be wider commercial interaction with other businesses, which would contribute to the area's general vitality and viability and, consequently, its regeneration.

Policy

26. The Council's regeneration reason for refusal cites four policies in support. These are Policies LCR 1 and LCR 3 of the North West of England Plan Regional Spatial Strategy to 2021 (RSS), adopted in September 2008, saved Policy GEN 1 of the LUDP, and Policy Statement H5 of the New Housing Developments Supplementary Planning Document (SPD), adopted July 2005. Prior to this inquiry the Government announced its intention to abolish Regional Spatial Strategies² and followed this up on 6 July 2010 with their revocation. Consequently, the RSS Policies are no longer part of the Development Plan and, as they no longer exist in law, they can be given no weight.
27. Both parties were asked for their comments on the RSS's revocation in relation to its impact on this appeal, and both parties responded by indicating that it had no material effect on their respective cases. The Council also submitted that the evidence base on which the RSS was premised remains relevant in spatial terms. I accept the parties' submissions in this respect and I take the view that the RSS evidence base for the relevant Policies is a material consideration.

² Letter dated 27 May 2010 from the Rt. Hon. Eric Pickles MP, Secretary of State for Communities and Local Government.

28. Evidence that informed revoked RSS Policies LCR1 and LCR3 led to the setting out of priorities for the Liverpool City Region (LCR), the outer part of which includes Garston, (RSS Policy LCR3 relates specifically to the outer part of the LCR). From this basis plans and strategies were encouraged that promote economic development and address worklessness and urban renaissance, as well as seeking to expand the quality and choice of housing and the development of the Merseyside Ports.
29. The proposal would bring investment to the area, provide employment, and involve the use of the docks, hence satisfying these aims. For the reasons given above, the proposal would contribute to the urban renaissance of Garston and would not have a material adverse effect on the supply of housing or other inward investment. In my view the RRP is in accordance with the above aims.
30. LUDP Policy GEN1 seeks to reverse the decline in economic activity, investment and employment in Liverpool by focusing regeneration on Regeneration Areas, including Speke/Garston, by providing and servicing sites for economic development and investment, and by promoting and enhancing the role of the City's docks. Again for the reasons set out above the proposal meets these aims.
31. SPD Policy Statement H5 identifies Dingle Bank/Ship Street and Garston Village as strategic housing sites, fundamental to the delivery of the Housing Strategy and its key objectives. The RRP would not prevent this Housing Strategy proceeding. Additionally, its accompanying Sustainability Appraisal includes in its objectives the improvement of the economy, reducing unemployment and encouraging economic growth, all of which are satisfied by the proposal.
32. Although not included in this reason for refusal, the Council's witness suggested that the RRP would conflict with LUDP Policy EP 5(vi) which seeks to prevent waste related uses that might discourage investment in adjacent sites or in the area generally. For the reasons given above, I take the view that the proposal would not deter investment.
33. Therefore, in my opinion, the RRP is not in conflict with the Development Plan, the Housing Strategy for the area, or the aims of the evidence base which informed the above RSS revoked Policies. Overall, there are no Policy reasons for dismissing this appeal on regeneration grounds.

Conclusion on regeneration

34. There is very little evidence to show that the proposal would have an adverse impact on inward investment and the regeneration of Garston. Whilst I acknowledge that there is genuine concern within the local population about house builders ceasing to build and people deciding not to move into the area, I am not persuaded that this would be a consequence of the RRP. In my opinion it is an unfounded perception. On the contrary, I believe that the proposal would benefit Garston by providing jobs and contributing to the local economy. It is also compliant with Policy requirements. Therefore, on regeneration grounds, planning permission should not be refused.

Other potential harm

35. The visual impact of the development would be insignificant as the waste would be stored internally and the appearance of the building would be in keeping with this mixed use location. Activities on site would not appear visually intrusive, but would blend into the industrial surroundings of the adjacent freight terminal and working docks, which are visible in close views from many of the nearby dwellings. In fact, even in middle distance views, industrial features such as high piles of containers, cranes, and the nearby gas holder, are clearly seen from the public domain.
36. Moreover, the site would generally be screened from the nearby housing by landscaping and the topography of the land, thereby mitigating to an acceptable level any reduction in visual amenity. If Dingle Bank were ever to be developed, then it is likely that considerable landscaping would be required as part of that scheme, given its proximity to port activities. Indeed, this was the case with the 2001 and 2004 planning permissions, which specified the need for a 5m landscape belt as well as an acoustic barrier.
37. Concerns have been raised by interested persons about traffic impacts. However, the appellant's transport assessment shows that the highway network has the capacity to take the additional traffic that would be generated without causing congestion. Nor would there be any adverse safety implications of significance. The Council agrees with the methodology and conclusions within the transport assessment and I have no technical evidence before me to the contrary. Consequently, I accept its conclusions and I am reinforced in my view by the lack of objections from the highways authorities.
38. I believe that the site is ideally placed with respect to its transport links. Not only does it benefit from being in proximity to the main A561 thoroughfare, which leads on to the motorway network, but it also lies adjacent to port and rail freight facilities, both of which would be used for exporting materials. With respect to the likely routing of traffic and the specific objection from some residents to the use of Aigburth Hall Road and Banks Road, I understand that neither of these roads would be routes for RRP traffic.
39. With regards to pollution, there are no objections from either the Council or any statutory consultees and the ES demonstrates that environmental impacts would be mitigated to an acceptable extent. In terms of noise and vibration, this would be nominal when assessed against existing background levels and, in any event could be controlled by way of condition. Negative air pressure within the RRP would suck in smells and air borne particles. Any dust or odour from the general plant and associated vehicles would have an insignificant effect on air quality and residential amenity. Problems with pests, such as rats, mice and flies would be limited due to all waste being stored internally, and then only for short periods before treatment and export. There would be no adverse impact on the area's ecology and the extensive landscaping proposed, together with the balancing pond, could support wildlife. I have no technical evidence before me to contradict the ES and, therefore, I accept all of these conclusions.
40. Although health related issues have been raised, there is little evidence before me to support such fears and, therefore, I give this limited weight. As for the

concern that the RRP is unproven technology, I understand that there is another similar plant in the country and that the autoclaving process is used in other applications. With regard to the proximity to John Lennon Airport, there is no objection from the Airport, subject to a bird control condition being imposed.

41. Anecdotal evidence has been presented of the possibility of parents moving children out of nearby schools, and the new planned academy being put at risk. However, I find it unlikely that such drastic measures would result from a development that would generate no material environmental effects and would not significantly harm amenity. In relation to the fear about uncontrolled expansion, any future expansion would be subject to planning permission and would need to be assessed by the Council.

Need

42. There is a need for additional waste management and treatment facilities to reduce the Council's and Merseyside's reliance on landfill. This need arises out of the requirement of Waste Local Authorities and Waste Disposal Authorities to achieve Government recycling and recovery targets and the landfill diversion targets driven by the EU Landfill directive. This is accepted by the Council.
43. According to the appellant's unchallenged evidence, it appears likely that the North West Region and Merseyside will not achieve the required levels of recycling and composting set out in the Updated Regional Waste Strategy for England's Northwest (February 2010). In order to cater for its waste disposal needs the Merseyside Waste Disposal Authority (MWDA) has had to purchase considerable numbers of Landfill Allowance Trading Scheme (LATS) credits from other authorities at a cost reported as running into millions of pounds. The need for these LATS credits could be substantially reduced if the proposal came forward.
44. Without new facilities Liverpool and Merseyside are unlikely to meet their targets for both municipal and commercial wastes. The proposal would treat such waste from the locality of Liverpool and parts of Merseyside. By managing this waste it would move it up to the higher end of the waste hierarchy³ as set out in the Waste Strategy 2007, achieving approximately 80% recycling and recovery of the waste input.
45. Unlike other Merseyside authorities, the Council has not identified a sub-regional site for inclusion in the emerging Joint Merseyside Waste Development Plan Document. Based on the scores in the Preferred Options document, the appeal site achieves the second best score (15 points) out of the sites listed. Other selected sites within the wider area lie close to dwellings and the Council's witness, in cross examination, acknowledged that new housing could co-exist with waste facilities in principle. Consequently, I take the view that proximity to housing, even in a Regeneration Area, need not be a bar to selection.
46. The appellant has considered alternative sites and its review of alternatives was expressed as being exemplary by the Merseyside Environmental Advisory

³ The waste hierarchy in descending order is: reduction, reuse, recycling and composting, using waste as a source of energy, disposal.

Service, the body responsible for undertaking MWDA site identification studies. The appellant's review demonstrates that the appeal site is the most suitable for a RRP.

47. The MWDA does not have a contract with the appellant to treat waste although the Authority is currently going through a procurement process for new waste services and facilities. The appellant has indicated that the proposed site could be made available to the MWDA.
48. In policy terms the RRP meets the overall objective in paragraph 1 of Planning Policy Statement 10: *Planning for Sustainable Waste Management* (PPS10) by using waste as a resource. It also satisfies the locational tests set out in Annex E of PPS10 and, in this regard, I note the advice in the Companion Guide⁴, which does not refer to any stand-off distances for this type of facility. The Guide suggests that, with the advancement in mitigation techniques, some waste facilities may be considered as light industrial in nature and therefore compatible with residential development. Whilst I am not suggesting that the proposal is light industrial, I am of the opinion that it could exist cheek by jowl with residential properties. Overall it is compliant with PPS10 and, furthermore, it is supported by the waste policies within the LUDP.

The fallback position

49. The appeal site lies wholly within the Associated British Ports (ABP) Port of Garston, which operates 24 hours a day. Accordingly the parties agree that part 17 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) applies. Consequently, ABP could develop the appeal site in connection with port activities at any time without the need to apply for planning permission.
50. In the absence of the appellant being granted planning permission, and in the event of ABP choosing not to work the site itself, it is likely that other commercial activity would come forward on the appeal site. This is evidenced by ABP management confirming their intention that the site remains a productive part of the dock estate, contributing to the commercial viability of the port. It is also reflected by the appellant's option to take a 30 year lease of the site and the grant of other leases of dock land to various businesses.
51. Whilst ABP has indicated that it intends to make available port land for housing, this is largely towards the north of the port and not the south where the appeal site lies. Those commercial activities which are currently in the north could be rationalised and potentially re-located to the south.
52. Therefore, it seems likely that the appeal site, and the port land adjacent to it, will remain industrial regardless of the RRP. If the RRP were not to come forward then there is a real possibility of the appeal site being leased for some other commercial activity or ABP using the site for its own purposes in the event of rationalization taking place.

⁴ Planning for Sustainable Waste Management: *Companion Guide to Planning Policy Statement 10*, para.7.31.

The law on perception and the overall balance

53. There is no doubt that there is strong local feeling about this proposal, as reflected by the thousands of objections received and the vocal opposition demonstrated at the inquiry. However, public opposition in itself is not a material consideration. There would be no significant environmental harm or detriment to amenity, and there is limited evidence of any material effect on regeneration. The only identified harm is the RRP's perceived impacts as opposed to its actual impacts. This begs the question whether a development can, in law, be reasonably refused on the basis of public perception alone.
54. The case of *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment* [1994] Env. LR is authority for the proposition that public concern is a material consideration but, if not justified, it cannot be conclusive. This was the finding of a unanimous Court comprising Glidewell, Hobhouse and Hoffmann LJs. It follows that, if the concerns about housing investment were unjustified, then these concerns could not be sufficient in themselves to dismiss this appeal. This must be right and stands to common sense. To conclude otherwise would unreasonably put at risk any development through the spreading of misinformation. In this case, I take the view that the fears about the possible investment effects of the RRP are indeed unjustified.
55. However, the case of *Newport County Borough Council v. Secretary of State for Wales and Browning Ferries Environmental Services Ltd.* [1997] EWCA Civ, albeit relating to a costs order, resulted in a different finding. This was a split decision with Hutchinson and Aldous LJs stating that "*A perceived fear by the public can in appropriate (perhaps rare) occasions be a reason for refusing planning permission...*", although Staughton LJ disagreed and dissented. In any event, this leaves open the question as to what are "appropriate/rare occasions". In my view they should not include circumstances where a proposal is beneficial and perfectly acceptable apart from the instance of popular misconception and speculation.
56. In the case of *West Midlands Probation Committee v. Secretary of State for the Environment and Walsall Metropolitan Borough Council* [1997] EWCA Civ, Pill LJ reviewed both of the above cases, from which the following proposition emerged "*Justified public concern in the locality about emanations from land as a result of its proposed development may be a material consideration.*" Therefore, the perceived impact of the proposal on the regeneration of Garston may be a material consideration if this concern is justified. However, the suggestion that public concerns do not need to be logical to carry weight, cannot be right, as illogical concerns cannot be justified. As stated above, I take the view that the concerns raised are unjustified.
57. Therefore, on reviewing the case law, it seems to me that there is little legal support for turning down development on the sole basis of unjustified perception. In any event, the weight I attribute to what I find to be largely baseless perception, is limited. Balanced against this is the weight to be attributed to the proposal's benefits. This development brings with it important employment and economic advantages and fulfils an identified need for a waste facility. These are considerations to which I give substantial weight. Accordingly, I find that the planning balance is clearly in favour of allowing the appeal.

Conditions

58. The parties submitted a list of conditions at the inquiry, which they agree should be imposed if the appeal is successful, save for three conditions over which there is some dispute. Apart from one of these disputed conditions, I have imposed all other conditions on this list as set out in the annex to this decision. The justification for each condition is explained immediately below the condition to which it is attached.
59. I have made minor amendments to some of the conditions to comply with Circular 11/95, in the interests of clarity, precision and enforceability. In order to ensure certainty, this includes removing the ability of the Council to change any particular condition without an application under S73 of the Town and Country Planning Act 1990.
60. With regard to Condition 35 the Council argue that because, in its submission, the proposal is sui generis, there is no need to refer to the Use Classes Order. However, I prefer the appellant's submission that the process falls within Class B2 and, therefore, it is appropriate to make reference to that class.
61. The Council suggests that a condition should be imposed requiring the appellant to enter into an agreement under S278 of the Highways Act 1980 to carry out repair works to the already failing public highway. However, Circular 11/95 makes it clear that a condition cannot require a planning obligation or similar agreement to be entered into. In any event, there is insufficient evidence before me to persuade me that this would be reasonable, as the disrepairs are existing and the need for repairs is not a consequence of the proposal. Therefore, I have declined to impose such a condition.
62. The Council requires a condition controlling the mode of transport of materials from the site. Whilst the appellant disputes the need for this, I take the view that it is necessary in the interests of sustainability. Each party has put forward an alternative proposed condition to meet this requirement. I favour the appellant's suggestion as it provides more flexibility and is reasonable in the circumstances of this case. I have, therefore, imposed it at Condition 40.

Conclusion

63. For the reasons given and having regard to all other matters raised, I conclude that the appeal should be allowed.

Elizabeth C. Ord

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Cannock of Counsel	Instructed by the solicitor for Liverpool City Council
He called	
Mark Loughran	Development Control Manager with Liverpool City Council
BA(Hons), Dip TP	

FOR THE APPELLANT:

Jeremy Cahill QC	Instructed by Peter Coe
He called	
Peter Coe MRICS, Dip.	Of Cirrus minerals and waste management consultancy
Estate Management	
Peter Frampton	Of Framptons Chartered Town Planning Consultants
BSc(Hons), Dip TP,	
MRICS, MRTPI	

INTERESTED PERSONS:

Bernard Brett	Local resident
Simon Artiss	Bellway Homes Ltd
Cllr. Mary Rasmussen	Councillor for Speke/Garston ward
Professor Max Klein	Local resident and professor of physics at Liverpool University
Geoff Poole	Deputy headmaster of local school and local resident
Bill Gall	Local resident and trustee of Cressington Park Committee
Cllr. Peter Millea	Local councillor and local resident
Kay Gibbard	Local resident
Cllr. Paula Keaveney	Local councillor and local resident
Mr. P. Tunstall	Local resident
Jean Danks	Local resident
Mr. B. Gaton	Local resident
Barbara Moulton	Local resident
Roz Dawson	Local resident
Mr. Keight	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Notification letters and lists of addressees - Council
- 2 Draft suggested conditions - Council
- 3 Merseyside and Halton Joint Waste Development Plan Document - appellant
- 4 Garston photo locations - appellant
- 5 Gillmoss Materials Recovery Facility drawing ref.1 - appellant
- 6 Hornsey Street Waste Management Facility drawing ref. 1A - appellant
- 7 Appellant's response to proposed abolition of Regional Strategies
- 8 Letter from Emery Planning Partnership on behalf of Lovell Partnerships and South Liverpool Housing Group
- 9 Opening submissions - Council
- 10 Inner City Solutions letter and plans - Council
- 11 Summary of Mark Loughran - Council
- 12 Specification for remediation of Dingle Bank - appellant
- 13 Note from Barbara McVey – local resident
- 14 Note of appearances for the appellant
- 15 Statement of Mr Brett
- 16 Letter and enclosures from Bellway Homes Ltd.
- 17 Letter from Mr. and Mrs. Roberts
- 18 Extracts from Regional Spatial Strategy - Council
- 19 Legal authorities - appellant
- 20 Supplementary Statement of Common Ground – Council & appellant
- 21 e-mail re: Dingle Bank - Council
- 22 Cressington Grange layout plan - appellant
- 23 Photographs – Geoff Poole
- 24 Map showing receptors – Geoff Poole
- 25 Freedom of information request – Geoff Poole
- 26 Extracts Planning Encyclopaedia - Council
- 27 Statement of Geoff Poole
- 28 Letter from Roger Bateman
- 29 1st page application to English Partnerships – Cllr. Millea
- 30 Statement from professor Max Klein
- 31 Statement of Bill Gall
- 32 e-mail from Cllr, Oglethorpe and folder of documents
- 33 Statement of Jennifer Wilson
- 34 List of application plans - appellant
- 35 Statement of Mrs. Danks
- 36 Suggested Conditions – Council and appellant
- 37 CLG guidance on flexibility for planning permissions - Council
- 38 Memorandum from Highways Development Control - Council
- 39 Photographs - Robert Barlow
- 40 Letter from Barbara and Barnard Eaton
- 41 Site visit itinerary – Council and appellant
- 42 Closing submissions - Council
- 43 Closing submissions - appellant
- 44 Submissions regarding revocation RSS - Council
- 45 Submissions regarding revocation RSS - appellant

Annex

Conditions attaching to application Ref 09F/1012 dated 5 May 2009 relating to land adjacent to Stalbridge Dock, Dock Road, Port of Garston, Liverpool.

1. The development hereby permitted shall be commenced before the expiration of 3 years from the date of this permission.

REASON: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

2. The development hereby approved shall be carried out in accordance with the following drawings and documents:

(i) Drawing Numbers:

RRP 2-1

RRP 2-2

RRP 3-1 Rev B 20-3-09

RRP 3-2A Rev D 29-6-09

RRP 3-3 Rev C 20-3-09

RRP 3-4 Rev C 20-3-09

RRP 3-5 Rev B 20-3-09

RRP 3-6 Rev C 20-3-09

RRP 3-7 Rev B 20-3-09

RRP 3-9A Rev D 29-6-09

RRP 3-10 Rev B 20-3-09

RRP 3-11 Rev B 20-3-09

RRP 7-2

Amended plan AL(100)09 Rev E 28-1-10 submitted 1st February 2010

(ii) Supporting Documents:

Environmental Statement Volume 1

Environmental Statement Volume 2 (Parts 1 and 2)

Environmental Statement Volume 3 Non Technical Summary

Transport Assessment September 2008 (revised July 2009)

Flood Risk Assessment and Surface Water Management September 2008

REASON: To ensure that the development is carried out in accordance with the approved plans and within the parameters of the grant of planning permission.

3. Prior to commencement of development, details of the following shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is occupied/brought into use:
 - (i) bin storage facilities for waste generated by the facility and ancillary uses
 - (ii) all ground surfaces not built upon
 - (iii) all new boundary treatment, gates and means of enclosure
 - (iv) all new windows and doors to be installed as part of the development

- (v) location, design, height, orientation and luminance of any external lighting
- (vi) location, design and orientation of CCTV systems

REASON: These details are not included in the application and the Council wishes to ensure that they are satisfactory in accordance with Policy HD18 of the Liverpool Unitary Development Plan.

- 4. Prior to commencement of development, samples or specifications of all materials to be used in the external construction of this development shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details to the written satisfaction of the local planning authority before the development is occupied/brought into use.

REASON: To ensure a satisfactory external appearance in accordance with Policy HD18 of the Liverpool Unitary Development Plan.

- 5. Prior to commencement of development, full details of any security measures to the front elevation of the premises such as the installation of roller shutters, grilles or screens, shall be submitted to and approved in writing by the local planning authority. For the avoidance of doubt, any roller shutter boxes shall be recessed behind the fascia panel and the roller shutter shall have a stove-enamel or similar finish in a colour to be agreed in writing with the local planning authority prior to installation. The scheme shall be implemented in accordance with the approved details before the development is occupied/brought into use.

REASON: To ensure a satisfactory external appearance in accordance with Policy HD18 of the Liverpool Unitary Development Plan.

- 6. Prior to commencement of development, including any works of demolition, a detailed construction method statement shall be submitted to and approved in writing by the local planning authority. The statement shall include:
 - (i) commencement and anticipated completion dates
 - (ii) hours of operation for construction work
 - (iii) measures to control noise and dust
 - (iv) details of site compounds, storage of plant and materials
 - (v) temporary highway works or closures
 - (vi) access for construction traffic
 - (vii) parking of vehicles of site operatives and visitors
 - (viii) wheel washing facilities
 - (ix) a scheme for recycling/disposing of waste resulting from demolition and construction works.

The scheme shall allow for review as necessary and be implemented thereafter in accordance with the approved statement.

REASON: It is in the interests of the amenity of the surrounding occupiers and in accordance with Policy GEN8 of the Liverpool Unitary Development Plan.

7. Prior to commencement of development, a landscaping plan including full details of the number, size, species, root treatment or container type and location of trees and shrubs to be planted and the treatment of all ground surfaces not built upon shall be submitted to and approved in writing by the local planning authority. The plan shall be implemented as approved.

REASON: These details have not been submitted with the application and the Council wishes to ensure they are satisfactory in the interests of visual amenity in accordance with Policy HD23 of the Liverpool Unitary Development Plan.

8. (i) The approved landscaping scheme shall be completed either
(a) not later than the first planting season following the first use of the development for the approved purpose or
(b) during the appropriate planting season progressively as the development proceeds, in accordance with a programme to be agreed in writing with the local planning authority.
(ii) Any trees or shrubs which die, become diseased, damaged or are removed within 10 years of planting shall be replaced with trees and shrubs of similar sizes and species or as may otherwise be agreed with the local planning authority in the first available planting season thereafter, all works to be carried out to BS 4428: 1989 "Code of Practice for General Landscape Operation".

REASON: It is in the interests of visual amenity and in accordance with Policy HD23 of the Liverpool Unitary Development Plan.

9. Prior to commencement of development, a management plan for the continuous maintenance of areas of soft landscaping, for 10 years from the commencement lifetime of the development, shall be submitted to and approved in writing by the local planning authority, which shall include measures for the maintenance of all trees to be located within the application site; the management plan shall be implemented in full as approved thereafter.

REASON: To safeguard visual and residential amenity, and highway safety in accordance with Policy HD18 of the Liverpool Unitary Development Plan.

10. All vehicular access and egress to and from the site associated with the transportation of waste shall take place between 7am and 6pm Monday to Saturday only and all such vehicles remaining overnight within the yard shall turn off their engines outside of these times.

REASON: To ensure that nearby occupiers are not adversely affected by the development in accordance with Policy HD18 of the Liverpool Unitary Development Plan.

11. The premises shall not be operational between midnight Saturday and midnight Sunday.

REASON: To avoid on-site storage of waste during times when vehicles to and from the site are not operational

12. No unloading, loading or handling of waste associated with the facility shall take place outside the building.

REASON: In the interests of residential amenity in accordance with saved LUDP policy E3: Port Development.

13. The resource recovery park shall not exceed a total annual through put of 150,000 tonnes of waste and this shall be from municipal and/or commercial sources only.

REASON: The application has been assessed on the basis of this figure, as proposed by the applicants, and any increase in this would need to be assessed further in terms of its impacts on residential amenity and highways safety.

14. Prior to commencement of development, details of an acoustic insulation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is occupied/brought into use.

REASON: To safeguard the amenity of occupiers in accordance with Policy HD18 of the Liverpool Unitary Development Plan Policy.

15. The rating level of the noise emitted from any plant shall not exceed the existing background noise level. The noise level shall be determined at the nearest noise sensitive premises as indicated on Drawing RRP 8-1 Environmental Statement Section 8 Volume 2 Part 1. The measurements and assessments shall be made according to BS4142 1997. Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

REASON: To safeguard the amenity of adjacent occupiers in accordance with Policy EP11 of the Liverpool Unitary Development Plan.

16. Prior to commencement of development, a lux contour diagram shall be submitted to and approved in writing by the local planning authority. The submitted diagram shall demonstrate that all floodlighting fittings shall be orientated so that measurements taken at the boundary of the site with Dingle bank and from any nearby habitable roomed windows of existing dwelling units do not exceed 6 lux, and, in the event of this luminance figure being exceeded, the fittings shall be re-orientated to the written satisfaction of the local planning authority. The approved scheme of external lighting shall be implemented in accordance with the approved details before the development is occupied/brought into use.

REASON: To safeguard the amenity of adjacent existing and future occupiers in accordance with Policy GEN8 of the Liverpool Unitary Development Plan.

17. No part or phase of the development hereby permitted shall commence until;
a) An investigation and assessment methodology, including analysis suite and risk assessment methodologies has been completed and submitted to and approved by the local planning authority in writing, prior to any site investigations.

b) A site investigation and assessment has been carried out by competent persons to determine the status of contamination including chemical, radiochemical, flammable or toxic gas, asbestos, biological and physical hazards at the site and submitted to the local planning authority. The investigations and assessments shall be in accordance with current Government and Environment Agency recommendations and guidance and shall identify the nature and extent of any contaminants present, whether or not they originate on the site, their potential for migration and risks associated with them.

The assessment shall consider the potential risks to:

- i. human health,
 - ii. controlled waters,
 - iii. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - iv. adjoining land,
 - v. ecological systems, and
 - vi. archaeological sites and ancient monuments.
- c) A detailed remediation scheme (if required), has been submitted to and agreed in writing with the local planning authority. This scheme shall include an appraisal of remedial options, implementation timetable, works schedule, site management objectives, monitoring proposals and remediation validation methodology. The scheme once completed must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

REASON: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with Policy EP2 of the Liverpool Unitary Development Plan.

18. After development commences and prior to occupation;

- a) Following completion of the measures identified in the approved remediation scheme and prior to occupation of any part of the development, a verification report which shall confirm the adequacy of remediation must be prepared and submitted to and approved in writing by the local planning authority.
- b) If any potentially contaminated material not previously identified is discovered, this must be reported in writing to the local planning authority and a further assessment and a revised remediation scheme should be undertaken and approved in writing by the local planning authority. This revised scheme should be carried out as approved. If no contamination is found then this should be detailed in the remediation verification report.

REASON: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with Policy EP2 of the Liverpool Unitary Development Plan.

19. The development hereby permitted shall be carried out entirely in accordance with the approved Flood Risk Assessment (FRA) (April 2009, 404-1351-00005) and the following mitigation measures detailed within the FRA:

- Provision of a surface water infiltration system including an infiltration/attenuation pond.

REASON: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site in accordance with the requirements of PPS 25 (Development and Flood Risk) and Policy EP13 of the Liverpool Unitary Development Plan.

20. Development shall not begin until the detail design of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is brought into use.

REASON: To prevent increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

21. The development hereby permitted shall not be commenced until such time as a scheme to install trapped gullies has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

REASON: To ensure a safe form of development that poses no unacceptable risk of pollution to the water environment, in accordance with saved LUDP policy EP12- Protection of Water Resources.

22. The development hereby permitted shall not be commenced until such time as a scheme to install roof drainage sealed at ground level has been submitted to, and approved in writing by the local planning authority. The scheme shall be implemented as approved before the development is brought into use.

REASON: To ensure a safe form of development that poses no unacceptable risk of pollution to the water environment, in accordance with saved LUDP policy EP12- Protection of Water Resources.

23. The development hereby permitted shall not be commenced until such time as a scheme to treat and remove suspended soils from surface water run-off during construction works has been submitted to, and approved in writing, by the local planning authority. The scheme shall be implemented as approved before the development is brought into use.

REASON: To ensure a safe form of development that poses no unacceptable risk of pollution to the water environment, in accordance with saved LUDP policy EP12- Protection of Water Resources.

24. Prior to commencement of development, a scheme for the disposal of foul and surface waters shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

REASON: To ensure a satisfactory means of drainage in accordance with LUDP policy EP12 of the Liverpool Unitary Development Plan.

25. The development hereby permitted shall not be commenced until such time as a scheme to install oil and petrol separators has been submitted to, and approved in writing, by the local planning authority. The scheme shall be implemented as approved before the development is brought into use.

REASON: To prevent pollution of controlled waters in accordance with Policy EP12 of the Liverpool Unitary Development Plan.

26. Prior to the commencement of development a bird risk management plan shall be submitted to and approved in writing by the local planning authority and fully implemented as approved thereafter. For the avoidance of doubt, this should include details in relation to the balancing pond, proposed planting and access of birds to internal areas.

REASON: To minimise the impact of the development on aviation and specifically in relation to John Lennon Airport.

27. All waste materials generated by the development post commencement of operations, whether to be discarded as refuse or recycled, shall be stored within the approved purpose built structure (as per condition 3) and, for the avoidance of doubt, no waste material shall at any time be stored outside the designated facility and all waste material shall be kept within the curtilage of the premises until collected.

REASON: To safeguard amenity and maintain the quality of the street environment in accordance with Policy EP9 of the Liverpool Unitary Development Plan.

28. Prior to commencement of development, a survey shall be undertaken to identify any invasive species present. In the event that any invasive species are found a method statement detailing how they will be dealt with shall be submitted to and approved in writing by the local planning authority. Any mitigation measures required shall be implemented in accordance with the approved details before the development is occupied/brought into use.

REASON: In the interests of ecological stability and in accordance with Policy GEN8 of the Liverpool Unitary Development Plan.

29. Prior to the occupation of any part of the development, a Framework Travel Plan shall be submitted to and approved in writing by the local planning authority. Following approval of the Framework Travel Plan and within 6 months of the occupation of the development, a Full Travel Plan shall be submitted and approved in writing by the local planning authority. The applicants, its successors in title, and their respective agents shall use reasonable endeavours to seek the support and agreement of individual operators to achieve the objectives and targets in the plan. The plan shall be reviewed at 2 yearly intervals between the local planning authority and the applicant, if required in writing by the local planning authority.

REASON: To promote alternative forms of safe transport other than the private car in the interests of sustainability and in accordance with Policy GEN6 of the Liverpool Unitary Development Plan.

30. Prior to commencement of development, an Access Strategy shall be submitted to and approved in writing by the local planning authority. The Access Strategy shall set out design and operational proposals for ensuring the needs of those with mobility or sensory impairments are appropriately considered and addressed. The strategy shall be implemented in accordance with the approved details and completed to the written satisfaction of the local planning authority before the development is occupied/brought into use.

REASON: To ensure that appropriate provision is made for people with special access requirements in accordance with Policies T7 and HD19 of the Liverpool Unitary Development Plan.

31. Parking of vehicles in connection with the use hereby permitted shall take place within the site and the spaces allocated for that purpose, as shown on the approved plans accompanying this application, shall be used exclusively to meet this requirement.

REASON: It is in the interests of highway safety and to avoid congestion on adjoining streets in accordance with Policy GEN6 of the Liverpool Unitary Development Plan.

32. Prior to commencement of development, full details of the proposed access to and layout of the car park shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and completed to the written satisfaction of the local planning authority before the development is occupied/brought into use.

REASON: The City Council wishes to ensure that these details are satisfactory in the interests of road safety and visual amenity and in accordance with Policies GEN6 and T12 of the Liverpool Unitary Development Plan.

33. Prior to commencement of development, details of secure covered cycle parking facilities incorporating the use of Sheffield stands shall be submitted to and approved in writing by the local planning authority. The scheme shall be

implemented in accordance with the approved details before the development is occupied/brought into use.

REASON: The City Council wishes to support cycling as a sustainable mode of transport in accordance with Policy T6 of the Liverpool Unitary Development Plan.

34. Areas of future planting must be protected within a construction exclusion zone to ensure that no damage occurs to the soil structure which will hamper the establishment of new planting. The construction of the protective fencing must comply with BS 5837 2005 (Trees in relation to construction Recommendations).

REASON: It is in the interests of visual amenity, and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990, in respect of the planting and preservation of trees.

35. The premises shall be used as a resource recovery park and for no other purpose including any other purpose within Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or any provision equivalent to that Class in any statutory instrument revoking, re-enacting or modifying that Order.

REASON: The application has been assessed on the basis of the specific merits of the proposal. Other proposals within use class B2 may have differing environmental effects that would need to be assessed in accordance with saved LUDP policy E3: Port Development.

36. All HGV access to and from the development must be from Dock Road and via the junction of Dock Road with Garston Way.

REASON: In the interests of highway safety and residential amenity in accordance with saved LUDP policy E3.

37. Prior to the commencement of development, full details of all existing and proposed ground levels should be submitted to and agreed in writing by the local planning authority and the proposal shall be implemented in accordance with these agreed details thereafter.

REASON: For the avoidance of doubt in the interests of visual amenity in accordance with saved UDP policy HD18.

38. Prior to the first use of the building for the purpose hereby granted a community access statement relating to the ancillary educational facility shall be submitted to and agreed in writing by the local planning authority. This shall include details of operation for the facility including services and delivery within an identified timeframe. The agreed details shall be implemented in full thereafter.

REASON: In the interests of amenity for local residents in accordance with saved UDP policy C3.

39. A scheme for de-centralised energy supply shall be submitted to the local planning authority for their written approval prior to the commencement of development. The development shall not be brought into operation until the decentralised energy supply measures as approved have been completed.

REASON: In the interests of environmental sustainability.

40. The development shall not take place until a scheme providing for the export from the site of plastics, metals and fibre by rail and/or sea has been submitted to and agreed in writing by the LPA. Transport of materials from the site must be undertaken in accordance with the approved scheme.

REASON: In accordance with sustainability principles contained within PPS1 and PPS10.