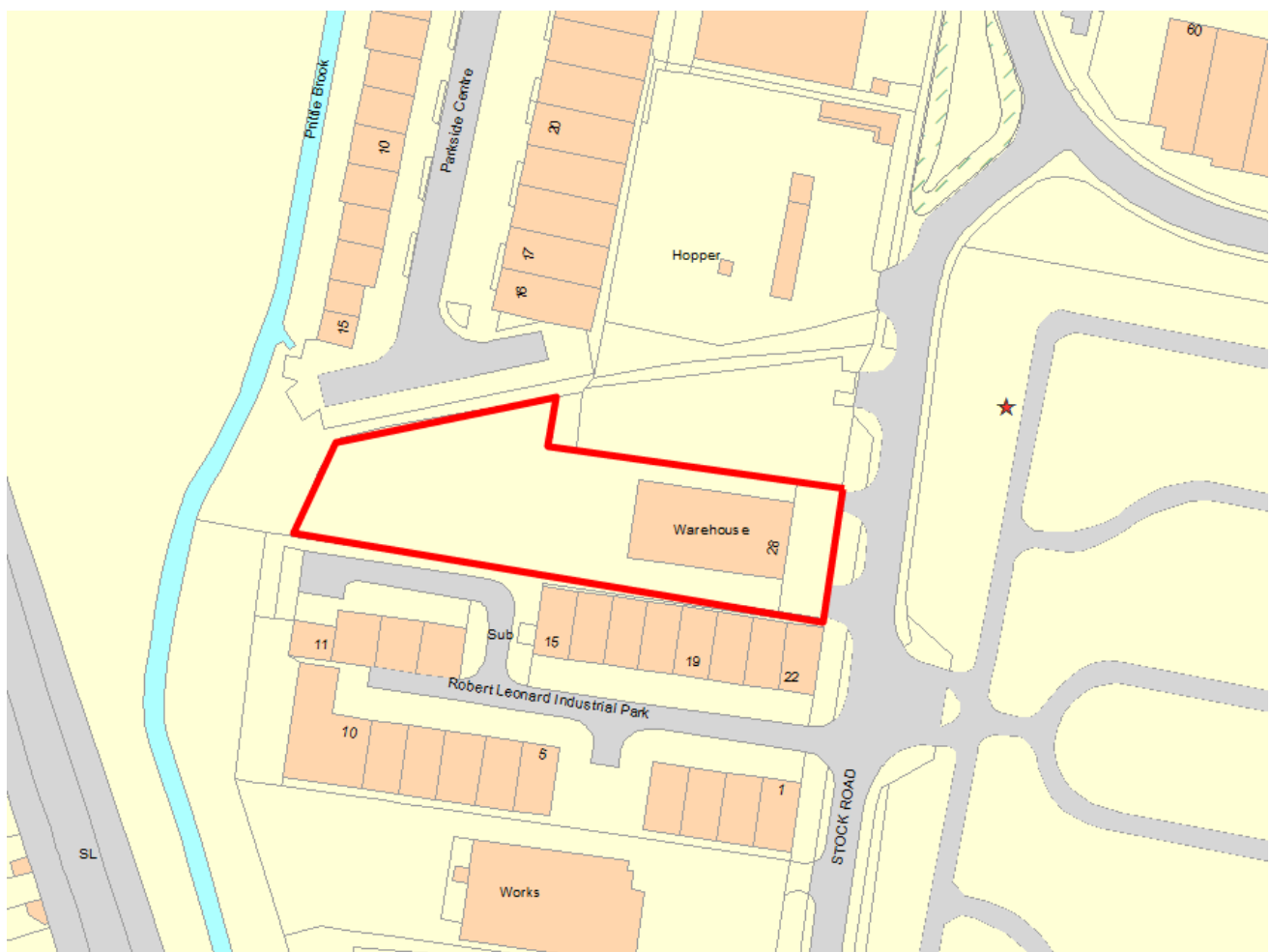


Reference:	19/00008/UCOU_B	
Ward:	St Lukes	
Breach of Control:	Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erection of temporary modular buildings, raised height of perimeter walling and formation of storage bays	
Address:	28 Stock Road, Southend-On-Sea, Essex, SS2 5QF	
Case opened :	8 January 2019	
Case Officer:	Patrick Keyes	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site location and description

- 1.1 This site is in the west end of Temple Farm Industrial Estate, situated between a line of trees next to the London to Southend Victoria railway line and Sutton Road cemetery.
- 1.2 To the west of the nearby railway line is a residential area, with Thornford Gardens the closest residential road. The site is immediately next to a complex of small commercial units to the south, Robert Leonard Industrial Park, with a further row of similarly sized units to the north at Potters Way. There are HQ offices and higher technology businesses located in the immediate vicinity as well as two established concrete mixing plants.
- 1.3 The use at No 28 is operated in conjunction with a similar use at 25 Stock Rd a short distance to the south, the latter benefitting from planning permission. The overall aggregate handling activity expanded/ transferred onto No 28 around 2015/2016 and is now operated across both Nos 25 and 28.
- 1.4 The site is identified on the policies map of the Development Management Document as being part of an Employment Area. It is situated some 20m from the Prittle Brook, which is identified as a 'main river' by the Environment Agency.

2 Lawful Planning Use

- 2.1 The former lawful use of the site was as a 'coachworks' considered to fall under Use Class B1. Planning permission has previously been granted for the use of the site for the processing of scrap metal and recycling yard under the terms of application 09/00966/FUL but not implemented.

3 Relevant Planning History

- 3.1 17/01236/FUL: Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three temporary modular buildings and storage bays (Retrospective). Refused
- 3.2 15/01676/FUL: Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three portacabins and storage bays. Refused.
- 3.3 09/00966/FUL: Change of use of coachworks as premises for the processing of scrap metal and recycling yard (Amended Proposal). Approved.
- 3.4 08/00757/FUL: Change of use of coachworks as premises for the processing of scrap metal and recycling yard. Refused.
- 3.5 02/01192/FUL: Erect single storey building to be used as workshop at the rear for vehicle repair and paint spraying. Approved.

4 The alleged planning breach and the harm caused

- 4.1 Despite refusal of retrospective planning application 17/01236/FUL, which sought change of use from coachworks (Class B1) to aggregate handling (Class B2) and

erection of three temporary modular buildings and storage bays, the site continues to operate for such unauthorised purposes in conjunction with the lawful use of No 25. The unauthorised use of No 28 is harmful to the amenities of neighbouring residents and businesses, and the general environmental quality of the area. This is due to noise disturbance, and dust generated at the site, which is exacerbated in cumulative terms in conjunction with the ongoing lawful operation at 25 Stock Road. A copy of the officer report for the refused application 17/01236/FUL is attached as appendix 1.

5 Background and efforts to resolve breach to date

- 5.1 Planning application 17/01236/FUL was submitted following a previous refusal of planning permission, under application 15/01676/FUL. That earlier application sought permission for 'Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three temporary modular buildings and storage bays'. It was refused on the following grounds:

"1. The proposed development, by virtue of its layout and appearance, would be of detriment to the character and appearance of the application site and the surrounding area. The proposal would therefore be contrary to the NPPF, policies KP2 and CP4 of the Core Strategy, Development Management DPD policy DM1 and advice contained within the adopted Design and Townscape Guide (SPD1).

2. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed use would not cause harm to the amenities of neighbouring residents by virtue of noise and dust generated at the site as a result of the proposed use of the land. The proposal is therefore contrary to the National Planning Policy Framework and policy DM1 of the Development Management DPD".

- 5.2 The key differences between the submitted details in refused application 17/01236/FUL and those in the earlier refused application 15/01676/FUL were that the 2017 application was accompanied by :
- an acoustic assessment;
 - a dust suppression specification;
 - a copy of an Environment Agency permit in relation to waste operations.
- 5.3 The 2017 planning application sought, without success, to provide mitigation measures to deal with the identified environmental harm. Significant opportunity was given to the applicant during the processing of that application to address weaknesses in both the environmental impact surveys and mitigation measures proposed to address the identified issues. During that time and up to the current time complaints have been received by Regulatory Services/ Environmental Health about the impact of dust on the surrounding environment particularly its effect on nearby businesses.
- 5.4 No appeal has been submitted against the refusal of the retrospective 2017 planning application.

6 Harm caused by the breach as assessed against relevant planning policies and justification for enforcement action

- 6.1 The officer's report for planning application 17/01236/FUL setting out its reasons for refusal is attached at Appendix 1.
- 6.2 The officer's report sets out a full analysis of the policy and other material considerations. It finds that the principle of the use of the site for aggregate handling is acceptable and that there is no material harm to highway safety thereby complying in those regards with the National Planning Policy Framework (2019), Core Strategy (2007) Policies KP1, KP2, KP3, CP1, CP3 and CP4, Development Management Document (2015) Policies DM1, DM3, DM10, DM11, DM14 and DM15, and the advice contained within the Design and Townscape Guide (2009).
- 6.3 However despite having been given opportunity to seek to do so during the course of the 2017 planning application, the applicant has failed to date to evidence that noise, disturbance and dust impacts from the use are not materially harmful to surrounding occupiers and the situation on site continues to generate regular complaints to Regulatory Services in this regard. This harm is unacceptable and contrary to the objectives of the National Planning Policy Framework (2019), Core Strategy (2007) Policies KP2, KP3 and CP4, Development Management Document (2015) Policies DM1 and DM3 and the advice contained within the Design & Townscape Guide (2009)
- 6.4 Furthermore, the appended report explains that the applicant has been unable to agree terms for a cessation of the established use of their site at 25 Stock Road to which the site at No28 is situated in close proximity. The cumulative impacts of similar operations at the lawful site (No 25) and this unauthorised site (No 28) site have caused reported nuisance in terms of dust, and it has not been demonstrated that there is not a materially harmful impact on residential occupiers, business users and the general standard of the environment in the wider surrounding area in terms of noise, dust and disturbance. This is unacceptable and contrary to the objectives of the above policies and any benefits from the use at No 28 do not clearly outweigh the identified harm.
- 6.5 Efforts to remedy the identified harm through consideration of the amended 2017 application have been to no avail as that has not overcome the continuing harm. In view of the nature and extent of weaknesses in that application so far as mitigation of impact is concerned it was considered that conditions could not reasonably be imposed to overcome the identified harm.
- 6.6 In view of the protracted period for which this unresolved breach has continued and the nature and impact of continuing harm which it is causing, it is considered necessary and justified to take enforcement action to seek to address the environmental harm and negative effect on amenity caused by the unauthorised development. That would involve taking action to require cessation of the use of the site for those unauthorised purposes to the extent that the insufficiently controlled/ mitigated operation at No 28 is harming environmental conditions and amenity. The 2017 planning application was also refused because it was considered that the proposed siting and appearance of a pair of raised modular buildings/ containers alongside the site's northern boundary would be detrimental to the character and appearance of the site and surrounding area.
- 6.7 The unauthorised pair of demountables/ containers, used as offices for the aggregate handing facility, is now positioned along the site's northern boundary just

rearward of the main storage building associated with the use. Other works have been carried out at the site without planning permission including the raising of the height of perimeter enclosures mainly through the erection of solid metal fencing. Walled bays have been erected within the site to contain aggregate materials and external working areas including concrete crushing equipment. Given the primarily industrial/ business nature of the surroundings, that use for aggregate handling in itself has not been found to be unacceptable in principle on this site (it was not a reason for refusal of the 2017 application) and that the taller perimeter enclosures better contain activity on the site including acting as a screen for the demountable buildings/ containers which were differently sited within the site when the 2017 permission was refused, it is not proposed that those unauthorised developments in themselves warrant inclusion within an enforcement notice because, judged on their merits they do not cause material harm to local character, amenity or any similar interests of acknowledged importance.

- 6.8 Taking enforcement action in this case may amount to an interference with the owner/occupier's human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient, and proportionate and in the public interest to pursue enforcement action to require the unauthorised use as an aggregate handling facility to cease.

7 Recommendation

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to require:
a) cessation of the unauthorised use of the site for an aggregate handling facility
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case a compliance period of 4 months is considered reasonable for the cessation of the use.

Appendix 1 – Officer Report in application reference 17/01236/FUL

Reference:	17/01236/FUL
Ward:	St Lukes
Proposal:	Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three temporary modular buildings and storage bays (Retrospective)
Address:	28 Stock Road, Southend-On-Sea, Essex, SS2 5QF
Applicant:	Mr P. Cook (W.H. Roads)
Agent:	Mr N. Kenney (The Draughtsman)
Consultation Expiry:	09.10.2017
Expiry Date:	16.10.2017
Case Officer:	Robert Lilburn
Plan No's:	<p>Site Location Plan</p> <p>Existing Layout 485 SR/NAK/001 REV A</p> <p>Existing Elevations 485 SR/NAK/002 REV A</p> <p>Proposed Layout and Elevations 485 SR/NAK/003 REV A</p> <p>Sections & Axonometrics 485 SR/NAK/004 REV A</p> <p>Construction Notes 485 SR/NAK/005 REV B</p>
Recommendation:	REFUSE PLANNING PERMISSION

1 The Proposal

- 1.1 Planning permission is sought retrospectively for the change of use of the site to a place of aggregate crushing and handling with associated operational development.

The following operational development is shown on the submitted plans:

- elevation alterations associated with the re-purposing of the former office/workshop/storage building as a dry screening shed;
- installation of 6m high box-profile fence, high level palisade fence and access gate;
- formation of 7no. storage and aggregate bays to south-west end of site by erection of concrete-block walls;
- formation of 2no. aggregate bays to east end of site by erection of three concrete-block walls;
- installation of 70 ton silo;
- installation of weigh bridge;
- installation of 2no. temporary modular building to east end of site;
- installation of 1no. high-level temporary modular building, supported on 3.6m high concrete-block supports;
- installation of screener/grader.

An area for crushing and screening is proposed at the west edge of the site. Dust-suppression cannons are noted on the submitted layout plan.

- 1.6 The application has been submitted following a previous refusal of planning permission, in application 15/01676/FUL. The application was for 'Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three temporary modular buildings and storage bays'. It was refused on the following grounds:

"1. The proposed development, by virtue of its layout and appearance, would be of detriment to the character and appearance of the application site and the surrounding area. The proposal would therefore be contrary to the NPPF, policies KP2 and CP4 of the Core Strategy, Development Management DPD policy DM1 and advice contained within the adopted Design and Townscape Guide (SPD1).

2. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed use would not cause harm to the amenities of neighbouring residents by virtue of noise and dust generated at the site as a result of the proposed use of the land. The proposal is therefore contrary to the National Planning Policy Framework and policy DM1 of the Development Management DPD".

- 1.7 The key differences between the submitted details in the application under consideration and those in the refused application 15/01676/FUL are:

- The application is accompanied by an acoustic assessment;
- The application is accompanied by a dust suppression specification;
- The application is accompanied by a copy of an Environment Agency permit in relation to waste operations.

No changes to the previously proposed layout and designs are shown.

2 Site and Surroundings

- 2.1 The application site is located in the west end of Temple Farm Industrial Estate, wedged between a line of trees adjacent the London to Southend Victoria railway line and Sutton Road cemetery.
- 2.2 The site is identified on the policies map of the Development Management Document as being part of an Employment Area. It is situated some 20m from the Prittle Brook, which is identified as a 'main river' by the Environment Agency.
- 2.3 To the west of the nearby railway line lies a residential area, with Thornford Gardens being the closest residential street. The site is immediately adjacent a complex of small commercial units to the south, Robert Leonard Industrial Park, with a further row of similarly sized units to the north at Potters Way. There are HQ offices and higher technology businesses located in the immediate vicinity as well as two established concrete mixing plants.
- 2.4 It is understood that the former lawful use of the site was as a 'coachworks' which has been described as use class B1. Planning permission has previously been granted for the use of the site for the processing of scrap metal and recycling yard under the terms of application 09/00966/FUL.

3 Planning Considerations

- 3.1 The main considerations of this application are the principle of the development, effects on the environmental quality of the area, impacts on neighbouring occupiers, design and the impact on the street-scene, and traffic and transport implications.

4 Appraisal

Principle of Development

National Planning Policy Framework (2018), Core Strategy (2007) Policies KP1, KP2, KP3, CP1, CP3 and CP4, Development Management Document (2015) Policies DM1, DM3, DM10, DM11, DM14 and DM15, and the advice contained within the Design and Townscape Guide (2009)

- 4.1 Government guidance with regard to planning matters is set out in the National Planning Policy Framework (NPPF). The NPPF states that there are three dimensions to sustainable development: economic, social and environmental. The NPPF encourages the effective use of land by re-using land that has been previously developed (para.8).
- 4.2 The NPPF at section 17 recognises the importance of aggregates supplies, including the provision and the decentralisation of supply, handling and storage sites. At Paragraph 204 the NPPF recognises the impacts of such operations and requires that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality.

- 4.3 Policies KP1 and KP2 seek to promote sustainable development, including appropriate regeneration and growth within the identified industrial areas, and Policy KP2 seeks to put land and buildings to their best use. Policy CP4 seeks the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend, including maintaining and enhancing the amenities, appeal and character of residential areas.
- 4.4 Policy DM1 seeks design quality that adds to the overall quality of an area and respects the character of a site and its local context. Policy DM3 of the Development Management Document (2015) seeks the efficient and effective use of land, provided it responds positively to local context and does not lead to over-intensification.
- 4.5 Policy CP1 of the Core Strategy states that *“Industrial and distribution uses will be supported on existing and identified industrial/employment sites, where this would increase employment densities and/or reinforce their role in regeneration”*. Policy DM11 of the Development Management Document states that *“The Borough Council will support the retention, enhancement and development of Class B uses within the Employment Areas”*. The Southend-on-Sea Employment Land Review 2010 identifies Temple Farm industrial estate as suitable for retention for future employment purposes.
- 4.6 The use for which planning permission is sought generates impacts in terms of noise, vibration, dust and visual impacts. The associated large vehicle movements generate their own impacts of fumes, noise and vibration and highway safety implications.
- 4.7 The aggregate handling use provides an economic function, for example in supporting construction. High transportation costs of the inputs and outputs require a degree of decentralisation. It is therefore reasonable to expect that such a use should be accommodated to a degree, where suitable opportunities exist and there is no material harm or any such harm identified is clearly outweighed by the benefits of the use.
- 4.8 Policy DM11 of the Development Management Document seeks to protect employment sites by retaining Class B uses unless there is no reasonable prospect of a site being used for the designated employment use. The use of the site as sought supports employment and economic activity.
- 4.9 The Southend borough is tightly defined with limited opportunities for the provision of such ‘unneighbourly’ types of use. Policy DM10 of the Development Management Document seeks to direct low density type of uses to the existing employment areas. In the broadest sense, as part of an Industrial Estate the site is likely to be a sequentially preferable location for this type of use.
- 4.10 The industrial estate is characterised by a mixture of uses as noted at 2.3 above. The use has previously been carried on at 25 Stock Road, which is situated to the south of the site at the other side of Robert Leonard Industrial Park. The application has been made further to the applicant moving the operation from 25 Stock Road.
- 4.11 In light of the above, the use is not uncharacteristic of the immediate area. As a

matter of broad locational principle, the site is an appropriate location for such a use.

- 4.12 The applicant has stated that it is intended to surrender the waste permit for no.25 Stock Road, which is under separate ownership. This intention is acknowledged. However, no.25 benefits from an established use in the same manner as that for which planning permission is now sought. The applicant has been unable to enter a legal agreement to ensure that the operations do not continue at 25 Stock Road in the event that planning permission is granted for the application at hand. Accordingly, as submitted the proposal offers no mechanism of control to prevent Nos.25 and 28 Stock Road both operating as aggregate handling facilities, irrespective of ownership.
- 4.13 The site is identified as potentially contaminated land. Policy DM14 requires that an appropriate Contaminated Land Assessment be carried out to inform remedial works where necessary. This issue has not been addressed in the submitted plans and supporting information. However the matter has not formed a reason for refusal on the previous application relating to the site and would be controlled though conditions.
- 4.14 The site is acceptable for B2 purposes of the character described as a matter of broad principle. However the acceptability of the proposal depends on the specific impacts on the quality of the surroundings and these are considered further below.

Design and visual impacts

National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policies DM1 and DM3, and the advice contained within the Design and Townscape Guide (2009)

- 4.15 At Paragraph 130, the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Development Management Document, and the Design and Townscape Guide, advocate the need for new development to respect and complement local character.
- 4.16 In the Council's Development Management Document, Policy DM1 states that development should *"add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features."*
- 4.17 Policy KP2 of Core Strategy states that new development should *"respect the character and scale of the existing neighbourhood where appropriate"*. Policy CP4 of Core Strategy requires that development proposals should *"maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development"*.
- 4.18 The surrounding area features a variety of commercial land uses, including a modern employment complex to the North, conventional light industrial units and offices to the South and relatively untidy land uses much further to the South,

including a similar aggregate handling operation and a civic waste processing facility. A heavily landscaped cemetery is located to the East of the site and to the West of the site is a railway line, the other side of which is a residential area. The former use of the site as a coach works involved the use of a large building at the site, which has been retained, but the majority of the operations would have occurred to the rear of the site, behind tall gates and fencing.

- 4.19 The application proposes the provision of palisade fencing at the site frontage, of unspecified height. This fencing is proposed to be positioned on the highway-facing elevation of Stock Road and the adjacent fencing to the south of the application site and therefore, provided that the fencing is in-keeping with the height and design of the neighbouring properties, it is considered that the proposed fencing can be accepted. The fencing in situ is a dark colour-coated metal box-panel form of around 2m height and is also acceptable. The gates match in colour, are visually permeable and are acceptable in appearance. Although the gates are visually permeable, it is considered that they adequately screen the operations within the site.
- 4.20 The 6 metre tall fencing on the west and north boundaries of the site is considered to be of functional design and visually impactful. The fencing successfully screens the walls, equipment, temporary modular buildings and banded materials on site and plays a role mitigating the noise and dust that is created by the operation. The posts and panels are finished in neutral colours which blend to a degree with the trees and shrubs around the site. The height of the fence is marginally above the commercial units at Potters Way, similar to the taller trees around the site and to the height of the main building within the application site.
- 4.21 The layout of the proposed aggregate bays means that seven are located at the rear of the site, thereby having a limited impact on the character and appearance of the wider area. Two are provided at the frontage of the site and these are separated from the public frontage by the entrance and exit gates, meaning that they are on a largely uninterrupted view from the street.
- 4.22 The site is within a commercial area, and although the operations are consistent with this character, it would ordinarily be encouraged to screen open storage from public view as it may be deemed unsightly. However in this instance, the relative prominence of the associated open storage is limited as it is merely glimpsed through the gates, is a small feature within the bays laid out and is seen in an entirely industrial context. This aspect of the proposal is, on balance, acceptable.
- 4.23 The positioning of the proposed silo is considered to be suitably discreet and it is noted that it would be largely enclosed, thereby having a limited visual impact. The plant would be visible from the frontage of the site, but would not cause significant visual harm that would exceed a visual impact that would reasonably be expected at a commercial site.
- 4.24 The applicant has proposed the provision of two temporary modular buildings at the site, one of which would be provided in a raised position to enable additional space to be utilised at ground level. One temporary modular building has been positioned to the front of the site.
- 4.25 To the rear the high-level temporary modular building would make a prominent

feature of a structure that would have a temporary appearance. This would be an unsightly feature and lend the site a makeshift appearance that would be harmful to the appearance of the site or the surrounding area.

- 4.26 Concerns were raised under application 15/01676/FUL with respect to the height of boundary treatments and the position of two of the aggregate bays, and the appearance of the proposal formed a reason for refusal. The plans have not altered from the proposals within that submission. The development is largely acceptable in character and appearance terms in the industrial estate context. However it is considered that reason for refusal 01 of application 15/01676/FUL has not been satisfactorily overcome due to the proposed high-level temporary modular building.
- 4.27 In this instance, despite the commercial character of the surrounding area, it is considered that the proposed development would have an unacceptable visual impact through the proposed high level temporary modular building and would be unacceptable and contrary to the objectives of the development plan policies in this regard.

Impact on Neighbouring Properties

National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2, KP3 and CP4, Development Management Document (2015) Policies DM1 and DM3 and the advice contained within the Design & Townscape Guide (2009)

- 4.28 Policy DM1 of the Development Management Document states that development should *“Protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.”*
- 4.29 The closest residential properties to the application site are located 95 metres to the west of the site, at the opposite side of the railway line, with the back gardens being approximately 81 metres from the edge of the application site.
- 4.30 Due to the separation distance, topography and intervening tree cover, the development does not cause a material impact in terms of loss of light or privacy to those residential occupiers that are closest to the site. It is considered that the separation distance would ensure that the tall structures and boundary treatments would not be materially perceptible in the outlook of these residential properties.
- 4.31 The use of land has potential to generate significant noise and as such it is considered that the Local Planning Authority should satisfy itself that the proposed use of land would not cause noise disturbance to the harm of the nearby residential properties and commercial premises. It is noted that the applicant currently operates a similar use at another site within Stock Road which is 64 metres from the closest neighbouring properties and has been the subject of noise complaints and investigations by the Council’s Environmental Health Team, despite the presence of the railway line between the residential and commercial uses. Therefore, it is considered that this is a material consideration that is of significant relevance to the proposals.
- 4.32 A noise assessment has been submitted as part of the application, compiled by

Sound Acoustics Limited dated April 2016. The Council's Environmental Health Officer has assessed the details submitted. The noise survey has been based on the assumption that the operations at 25 Stock Road will cease when 28 Stock Road is put into use. No provision has been made for the site to continue being used for similar purposes although it is understood that activities are currently being carried out on both sites and have been for some time.

- 4.33 Approval of the application would not alter the lawful use of no.25 Stock Road and as such that site could continue to generate noise whether used independently or not from the operation at no.28 which is the subject of this application. The applicant has not demonstrated that a cumulative impact would not be materially detrimental to nearby occupiers. The applicant has stated that a benefit of the proposal is that the application site is located further away from the nearby residential properties. It is considered that any benefit arising in this respect is far outweighed by the potential for harm caused by the cumulative effect of both sites in noise-generating operation.
- 4.34 The submitted noise assessment has not been accompanied by a plan to show the noise measurement positions. The measurement results from the background noise surveys have also not been supplied.
- 4.35 The noise assessment included manned and unmanned components. At the times of the manned survey some plant on site was not working to its full capacity. The survey states that all equipment was understood to have been in operation at the times of the unmanned survey. However this assumption cannot be verified and officers are not satisfied that the readings taken are reflective of the normal or worst-case scenarios.
- 4.36 The highest LA_{max} reported during the unmanned survey was 93dB, however the manned survey states that the maximum level recorded at the site during the survey period was 94dB. Given this discrepancy, it is not possible to agree that the readings are typical of the worst-case noise scenarios. In the absence of a fully detailed noise assessment, it is not possible to establish whether the development would cause noise disturbance to neighbouring residential properties.
- 4.37 The recommendations of the acoustic report detail mitigation measures to be provided in the form of the 6m high boundary fence. However, the applicant has not demonstrated that this would provide a noise reduction. The report also recommends a 3m high acoustic screen to be installed at the applicant's existing site 25 Stock Road, but this proposal falls outside of the scope of this application.
- 4.38 The submitted proposals are also unable to address the cumulative noise impacts of both the application site and the applicant's former premises at 25 Stock Road. There has been a history of complaints to Environmental Health relating to noise arising from the operation of the sites and causing a disamenity to residents. This history of complaints is a material consideration. In the absence of a legal agreement which would be required to control the relationship of the current proposal to any future operation at 25 Stock Road, it is not possible to establish to a satisfactory degree that the development in combination with the existing use of 25 Stock Road would not lead to materially harmful noise impacts to nearby receptors, especially given the close proximity of the two sites to one another.

- 4.39 Waste operations at the site have been shown in submitted documents to benefit from an Environment Agency permit. Conditions of the permit relate to noise from the site. This is covered by a separate regulatory framework and does not outweigh the concerns identified above.
- 4.40 The more sensitive receptors are nearby residents especially at Thornford Gardens, but there would also be a degree of impact on businesses and general quality of the environment around the industrial estate. This is unacceptable and contrary to Policies KP1, KP2 and CP4 of the Core Strategy and Policies DM1 and DM3 of the Development Management Document.
- 4.41 The use would also have the potential to create impacts on surrounding occupiers from airborne dust. The applicant has indicated that an 'Air Spectrum Mobile Dust Cannon' would be used at the site. The cannon would spray a mist of water to suppress dust. The supporting information is considered insufficiently precise as there is no detail of how and where the equipment would be used. As such it has not been possible to be satisfied that the equipment, in addition to the 6m high fencing, would be adequate to prevent the spread of dust outside the application site. Furthermore there has been a history of complaints over some three years to Environmental Health, relating to dust arising from the operation of the sites. This has affected businesses and residents in the vicinity of the site and having been identified as arising from both the application site and no.25 Stock Road. The fences have been in situ in that time as has a sprinkler system. This history of complaints is a material consideration.
- 4.42 In the absence of an assessment, or a legal agreement in relation to operations at 25 Stock Road it is not possible to establish to a satisfactory degree that the development in combination with the existing use of 25 Stock Road would not lead to materially harmful cumulative dust impacts to nearby receptors, especially given the close proximity of the two sites to one another. These include nearby residents and businesses, in particular technology businesses which may be sensitive to contamination. The general quality of the environment around the industrial estate and in the wider area is also a key consideration. This is unacceptable and contrary to Policies KP1, KP2 and CP4 of the Core Strategy and Policies DM1 and DM3 of the Development Management Document.
- 4.43 Within the course of the current application, significant opportunity has been given to the applicant to robustly address the noise and dust impact issues described above, including by appointing suitable qualified advisors in these fields. Despite considerable opportunities having been given, neither the survey methodology nor impact mitigation considerations have been satisfactorily addressed.
- 4.44 It has not been demonstrated that the development in isolation or cumulatively in conjunction with no.25 Stock Road maintains the amenities of surrounding occupiers or the quality of the area to a satisfactory degree. A material degree of harm has been identified from the operations in situ as a result of noise and airborne dust. The development does not address the previous reasons for refusal in this respect. The benefits of the use do not clearly outweigh these concerns and is therefore found unacceptable and contrary to the objectives of the above-noted policies in this regard.

Transport Management and Highway Safety

National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2, CP3 and CP4, Development Management Document (2015) Policy DM15, and the advice contained within the Design & Townscape Guide (2009)

- 4.45 Policy DM15 of the Development Management Document and Policy CP3 of the Core Strategy seek to maintain highway safety for all users, and to improve road safety and quality of life for all.
- 4.46 The site would previously have been accessed by large vehicles. The surrounding commercial area is arranged to enable access by large vehicles. It is therefore considered that the proposed use of the site would not cause harm to highway safety. The potential cumulative effect of the use of the site together with no.25 Stock Road, in terms of vehicle movements on the road network, has not warranted an objection in this case. Parking provision within the site is adequate and no objection is raised on this basis. The proposal is therefore acceptable and policy compliant in these regards.

Community Infrastructure Levy

- 4.47 The proposed development would see the creation of less than 100 square metres of new floor space and the proposal would retain a commercial use of the site. It is found that the development is not CIL liable

Conclusion

- 4.48 Having taking all material planning considerations into account, it is found that the principle of the use of the site for aggregate handling is acceptable. However despite having been given ample opportunity to seek to do so, the applicant has been unable to evidence that the noise and dust impacts from the use are not materially harmful to surrounding occupiers. This is unacceptable and contrary to the objectives of the development plan policies. Furthermore, the applicant has been unable to agree terms for a cessation of the established use of their former site at 25 Stock Road to which the site is situated in close proximity. The cumulative impacts of similar operations at both sites have caused reported nuisance in terms of noise and dust, and it has not been demonstrated that there is not a materially harmful impact on residential occupiers, business users and the general standard of the environment in the wider surrounding area. This is unacceptable and contrary to the objectives of the development plan policies, and any benefits from the use do not clearly outweigh the identified harm. The appearance of the proposed high level temporary modular building would also be unacceptable. The development conflicts with the objectives of the development plan policies, and has not satisfactorily overcome the previous reasons for refusal.

5 Planning Policy Summary

- 5.1 National Planning Policy Framework (2018)
- 5.2 Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles) KP3 (Implementation and Resources) CP1 (Employment Generating Development) CP2 (Town Centre and Retail Development) CP3 (Transport and Accessibility) CP4 (Environment & Urban Renaissance)

5.3 Development Management Document (2015): Policies DM1 (Design Quality) DM3 (The Efficient and Effective Use of Land) DM10 (Employment Sectors) DM11 (Employment Areas) DM14 (Environmental Protection) DM15 (Sustainable Transport Management)

5.4 The Southend-on-Sea Design & Townscape Guide (2009)

5.5 CIL Charging Schedule 2015

6 Representation Summary

Highway Authority

6.1 There are no highway objections to the proposal. Consideration has been given to the previous use of the site which would generate a considerable amount of traffic movements. The proposal will not have a detrimental impact on the public highway.

Environmental Health Officer

6.2 The above application is for a change of use from B1 to B2 – aggregate handling and associated works. A noise assessment has been submitted as part of the application, compiled by Sound Acoustics Limited dated April 2016.

6.3 The noise survey has been based on the assumption that the operations at 25 Stock Road will cease when 28 Stock Road is put into use. No provision has been made for the site to continue being used for similar purposes although I understand that activities are currently being carried out on both sites and have been for some time. Although the application details that the applicant would be transferring the current waste license, this would not prevent the current or a new occupier of that site applying for a new waste licence. It is therefore considered that the noise assessment should be based on the assumption that both sites are in operation, unless we have reason to be satisfied that this will not be the case. It is not possible to impose a condition to limit the use of both sites as only 28 Stock Road has been included in the application.

6.4 No location plan detailing the noise measurement positions has been provided. A plan detailing the locations of where the measurements were taken from needs to be submitted to allow us to fully assess the noise report. It details measurements were taken at 25 Stock Road and that background noise readings were taken from near to Southend Rugby Club. These locations need to be clearly identified and the measurement results from the background noise surveys that were undertaken should also be submitted as these have not been included in the noise report.

6.5 The manned noise survey demonstrates that some plant on site was not working to its full capacity. It is 'understood' that all equipment was in operation when the survey equipment was unmanned, but this assumption cannot be verified. We therefore cannot be satisfied that the readings taken are reflective of the normal or worst-case scenarios.

6.6 The highest L_{Amax} during the unmanned survey was 93dB. This reading and other comparable readings around that time would have influenced the loudest hour (15:00 to 16:00 on 31/03/16) which has been used as the basis for much of the

written assessment. However, the manned survey demonstrates that the max level recorded at the site during that survey period was 94dB. This therefore demonstrates that noises occur which exceed those which have been measured during the unmanned survey. For both of these reasons it is not possible to agree that the readings are “typical of the worst-case operations” as suggested by the report.

- 6.7 The recommendations of the report detail mitigation is to be provided in the form of a 6m high boundary fence however there is uncertainty over the noise reduction of this barrier. This detail is required. It also recommends extending the barrier along the Western, Northern and Southern boundaries; however it is unclear from the plans if this has been/will be implemented. The report also recommends a 3m high acoustic screen to be installed at the existing site (25 Stock Road) to reduce cumulative noise levels however as previously advised we are unable to impose conditions at this site as it is not included in the application.
- 6.8 It appears that there has been no assessment of the noise generated by the dust suppression cannons. The submitted document indicates the noise rating level of 82dB measured at 3 metres. This would need to be included in the assessment.
- 6.9 No air quality assessment has been provided. A 6m high fence/barrier and dust suppression cannons to suppress dust have been indicated however an air quality assessment including dust mitigation measures is required to be submitted and approved. The Council’s Environmental Protection Team has recently had to visit the site due to complaints of excessive noise and dust from the site. At the time of a site visit dust was witnessed and no suppression methods were in use.
- 6.10 Finally the site is identified as potentially contaminated land. This issue has been raised previously however it does not appear to have been addressed. Until this information is submitted the application cannot be appropriately assessed.

Environment Agency

- 6.11 No comments. The applicant would require an environmental permit.

Public Consultation

- 6.12 16 neighbouring properties were notified of the proposal and a site notice was posted at the site. One letter of objection has been received which raises concerns about the dust, lorries driving against the flow of traffic and damage to the road surface.

7 Relevant Planning History

- 7.1 15/01676/FUL: Change of use from coachworks (Class B1) to aggregate handling (Class B2) and erect three portacabins and storage bays. Refused.
- 7.2 09/00966/FUL: Change of use of coachworks as premises for the processing of scrap metal and recycling yard (Amended Proposal). Approved.
- 7.3 08/00757/FUL: Change of use of coachworks as premises for the processing of scrap metal and recycling yard. Refused.

- 7.4 02/01192/FUL: Erect single storey building to be used as workshop at the rear for vehicle repair and paint spraying. Approved.
- 7.5 Other planning history relates to developments that are ancillary to the former use of the site and are therefore considered to be of little relevance to the application.

8 Recommendation

REFUSE PLANNING PERMISSION for the following reasons:

1. It has not been demonstrated to the satisfaction of the Local Planning Authority that the use can be carried on without it resulting in material harm to the amenities of neighbouring residents and businesses, and the general environmental quality of the area by virtue of noise disturbance, and dust generated at the site, and in cumulative terms in conjunction with the ongoing operation at the nearby site known as 25 Stock Road. The development is therefore unacceptable and contrary to the objectives of the National Planning Policy Framework (2018), Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).
2. The proposed development, by virtue of the siting and appearance of the raised temporary modular building, would be of detriment to the character and appearance of the site and the surrounding area. The proposal would therefore be contrary to the National Planning Policy Framework (2018), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and advice contained within the adopted Design and Townscape Guide (2009).

9 Informatives

You are advised that as the proposed developments create less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See www.southend.gov.uk/cil for further details about CIL.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development, should the applicant wish to exercise this option in accordance with the Council's pre-application advice service.

Appendix 2 – Photographs of 28 Stock Road













