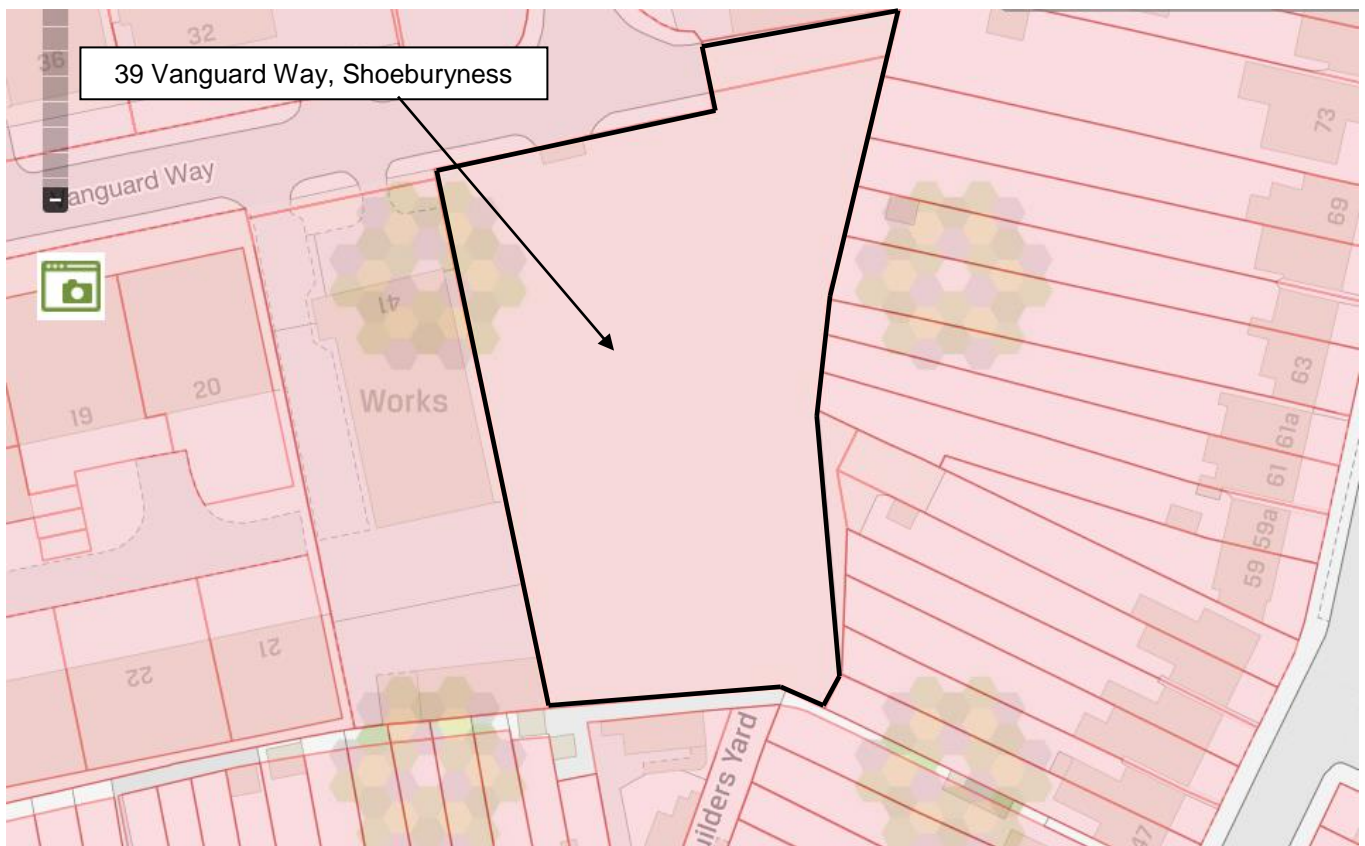


<b>Reference:</b>	19/00254/BRCN_B	
<b>Ward:</b>	Shoeburyness	
<b>Breach of Control</b>	Breach of planning conditions relating to planning permission 18/02157/FUL and unauthorised operational development	
<b>Address:</b>	39 Vanguard Way, Shoeburyness, Essex. SS3 9QY	
<b>Case Opened:</b>	15 <sup>th</sup> February 2019	
<b>Case Officer:</b>	Steve Jones	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site Location and description**

- 1.1 The site formerly contained a social club which has since been demolished. In the interim period, aerial photography and publicly available photographs show the site has been overgrown and used for trailer storage with some dilapidated fencing and equipment.
- 1.2 The site is bounded to the east by the rear gardens of dwellings at 45-79 Wakering Avenue. To the south are a commercial property and dwellings at 2-4 Friars Street.
- 1.3 The site is located within an industrial estate and is in an area identified in the Development Management Document (2015) as employment land.

## **2 Lawful Planning Use**

- 2.1 The authorised use of the site gained under planning permission 18/02157/FUL is for the storage of plant and equipment only, within Use Class B8 of the Town and Country Planning (Use Classes Order) 1987 (as amended).

## **3 Relevant Planning History**

- 3.1 19/01188/AMDT Application to vary condition 06 (height of storage) alterations to storage height and remove condition 10 (details of acoustic fence) deemed unnecessary in this location (Minor Material Amendment of planning permission 18/02157/FUL dated 13/06/2019) - Refused
- 3.2 18/02157/FUL Use of land as Commercial Storage Yard (B8) incorporating 12 bays with storage outbuildings, erect lighting columns, erect fencing/gates within and around the site boundary and lay out hardstanding area together with the formation of an additional vehicular access from Vanguard Way (Retrospective) - Approved
- 3.3 18/00807/FUL Erect security metal fencing and gates around site boundary of existing Commercial Storage Yard (Retrospective) – Not proceeded with as never validated
- 3.4 03/01430/FUL Erect building for the storage of non-ferrous and precious metals and overnight lorry parking (2281m<sup>2</sup>) and lay out 4 parking spaces. (Amended proposal) – Refused, appeal allowed.
- 3.5 02/00919/FUL Erect building for the storage of non-ferrous and precious metals and overnight lorry parking (2281m<sup>2</sup>) and lay out 4 parking spaces. – Refused.
- 3.6 89/1088 Erect single storey side extension at Maplin Social Club, 39 Vanguard Way. – Approved.

## **4.0 Background and efforts to resolve identified breaches to date**

- 4.1 In August 2017 a complaint was received that a metal palisade type fence about 2.5m high was being installed to the boundaries of this site.

- 4.2 Planning Enforcement staff visited the site and noted that a large area of it had been covered in hardstanding, that palisade type fencing had been erected around the entire site and also erected internally to create several smaller yards with gates which were accessed from a central roadway within the site via wide gates off Vanguard Way. Several small brick buildings were also present on site.
- 4.3 In January 2018 Planning wrote to the land owner but this letter was returned undelivered.
- 4.4 In May 2018 a retrospective planning application was received under reference 18/00807/FUL to 'Erect security metal fencing and gates around site boundary of existing Commercial Storage Yard'. That application was never validated but was effectively superseded by application 18/02157/FUL.
- 4.5 In October 2018 Enforcement Staff conducted further investigations into the historic use of the site and it was established that the lawful use was as a 'social club' deemed 'sui generis' for the purposes of the use classes (ie express planning permission would be needed to change either to or from that use). The site owner was e-mailed and the identified planning breaches were conveyed to them. These consisted of an unauthorised material change of use from sui generis to Commercial storage yard (B8), operational development due to erection of several small buildings approx. 2.8m high, formation of the hardstanding area and erection of the boundary treatment and fence divisions creating several smaller yards. A retrospective planning application was invited in an attempt to remedy the identified planning breaches.
- 4.6 In November 2018 retrospective planning application 18/02157/FUL seeking retrospective planning permission for use of the land as a Commercial Storage Yard (B8) incorporating 12 bays with storage outbuildings, erect lighting columns, erect fencing/gates within and around the site boundary and lay out hardstanding area together with the formation of an additional vehicular access from Vanguard Way was received. This sought to address the identified breaches. It included the provision of two containers. One shipping type container to the east side of the site close to Vanguard Way and a second metal construction to the east side of the site adjacent to the wall of the unit at 41 Vanguard Way.
- 4.7 On 15<sup>th</sup> February 2019 planning application 18/02157/FUL was approved subject to conditions. A copy of the officer report is at Appendix 'A'. Among the conditions imposed, those directly relevant to the breaches outlined in this report are:
- 4.8 Condition 07 – No part of the site shall be occupied for overnight residential accommodation, including within vehicles and caravans.
- 4.9 Condition 08 – No vehicles shall enter or leave the site and no work or other activity shall take place on the site on Sundays or Bank Holidays and all work and other activity and vehicle movements on other days shall be confined to the following hours: 0700 to 1900 Mondays to Fridays; 0800 to 1300 Saturdays.
- 4.10 Condition 10 – Within twelve weeks of the date of this planning permission, details of an acoustic fence, together with a timetable for its construction, to be erected along the east and south boundaries of the site, shall have been submitted for approval to the local planning authority. The fence shall thereafter be constructed in accordance with the agreed details and timescale and permanently retained thereafter.

- 4.11 Condition 12 – No burning of materials shall take place within the site at any time.
- 4.12 These conditions were imposed for amenity reasons.
- 4.13 From February 2019 regular complaints were received that the site occupiers were breaching the conditional approval mainly in respect of access to the site on Sundays and after 7pm weekdays in breach of condition 08, a person(s) living in a caravan in breach of condition 07 and the burning of materials in breach of condition 12.
- 4.14 On 20<sup>th</sup> February 2019 the site owner was contacted about the breaches and advised to make contact with all of the yard operators to remind them of the planning conditions. The site owner agreed to take such action.
- 4.15 Complaints relating to breaches of the planning conditions continued and on 1<sup>st</sup> April 2019 the site owner was again contacted about those plus the installation of spotlights in breach of condition 09 and access to the site outside of the approved hours. The owner was warned about the potential for formal action by the Council. The site owner stated action would be taken and it would appear the unauthorised spotlights were removed.
- 4.16 Complaints continued and on 29<sup>th</sup> May 2019 the site owner was emailed highlighting continuing complaints about bonfires / access to the site out of hours / people living on site in a caravan.
- 4.17 On 3<sup>rd</sup> June 2019 the site owner responded to the above email stating he would install CCTV cameras and speak to everyone responsible for the various yards.
- 4.18 On 20<sup>th</sup> June 2019 Enforcement Staff visited the scaffold yard within the site. In that particular yard was a caravan and the lessee of the site confirmed that someone did sleep in it overnight on occasions for the purpose of site security. They also stated they accessed the yard on some Sundays to load up equipment for jobs the following day. They were reminded this was a breach of the planning permission. It was also noted that some units had introduced shipping type containers as storage sheds and that a number of unauthorised outbuildings had been erected.
- 4.19 On 21<sup>st</sup> June 2019 the site owner was again emailed about the recent breaches. A response was received from the owner's planning agent stating that an application has been submitted to seek to vary/remove some of the conditions on the planning permission.
- 4.20 In June 2019 planning application 19/01188/AMDT was received which sought to vary condition 06 (height of storage) alterations to storage height and remove condition 10 (details of acoustic fence) deemed unnecessary in this location (Minor Material Amendment of planning permission 18/02157/FUL dated 13/06/2019).'
- 4.21 In August 2019 the above application was refused.
- 4.22 Since the February 2019 grant of planning permission Planning and Environmental Health have each received various third party logs relating to breaches of various conditions, mainly in respect of access to the site out of approved hours, the burning of bonfires and the caravan being occupied overnight.

## **5.0 The alleged planning breaches and the harm caused**

### **5.1 *Overnight residential occupation of a caravan (Breach of Condition 07)***

5.2 Several reports have been received from complainants that a caravan situated within the scaffolding company site is occupied overnight. This was confirmed by the lessee of that yard to be the case. As controlled by condition 07 the permitted use of the site is for the storage of machinery and materials not for residential purposes. Providing residential accommodation in the form of an on-site caravan would be harmful to the living conditions of people occupying the caravan. In the circumstances of this case this is unacceptable and does not comply with policy.

### **5.3 *Access to the site and work activity outside of the permitted hours (Breach of Condition 08)***

5.4 The above condition prohibits access to the site by vehicles and no work related activity on site on Sundays or Bank Holidays or outside the hours of 7am to 7pm Monday to Friday and 8am to 1pm on Saturdays.

5.5 Breaches of this condition have allegedly taken place on many occasions. The third party logs indicate a breach occurs several times a week whether caused by vehicle access or work such as angle grinding. These breaches impact harmfully on the amenities of the occupiers of neighbouring properties particularly with regard to noise and disturbance.

### **5.6 *No details of required acoustic fence submitted (or constructed) (Breach of Condition 10)***

5.7 Condition 10 required that 'within twelve weeks of the date of the planning permission, details of an acoustic fence, together with a timetable for its construction, to be erected along the east and south boundaries of the site, shall have been submitted for approval to the Local Planning Authority. The fence shall be constructed in accordance with the agreed details and timescales and permanently retained thereafter.'

5.8 The subsequent application to remove this condition 19/01188/AMDT was refused and no information has been received to indicate this decision has been appealed. Consequently there is a breach of condition 10 as no approval of details application has been received or approved.

5.9 The presence of an acoustic fence was fundamental to the decision to grant planning permission for the change of use. The absence of the acoustic fence significantly exacerbates the harm to residential amenity by the nature and appearance of activity and structures on this site. It is therefore recommended that the use should be required to cease until and unless the acoustic fencing has been installed.

### **5.10 *Bonfires on site (Breach of Condition 12)***

5.11 Several reports of bonfires have been reported to both Planning and Environmental Health Departments. Although separate controls are available under the provisions of Environmental Health (Control of Pollution) legislation, Condition 12 specifically stated that the burning of materials should not take place on site at any time.

This is to protect the amenity of the neighbouring residential properties particularly in respect of noise and smells. This is a lawful planning condition that meets the six tests for planning conditions in the circumstances of this case which is related to commercial type activity. Non-compliance with that condition is unacceptable and represents a harmful breach of planning control.

#### **5.12 *The installation of metal storage sheds***

5.13 Due to their degree of permanence and intended nature of use, the provision on site of 3 metal containers amounts to operational development requiring planning permission. 1 of the containers appears to be a shipping type container measuring about 6m long by 2.5m wide and 2.5m high. The remaining 2 vary in size from approx. 4m in length to approx. 7.3m in length and about 2.7m in height. Limited and sensitively sited containers may be acceptable in planning terms and two containers were approved under the 2018 permission, but the unauthorised placement of additional containers and metal sheds intensifies the activity on the site which, as explained at 5.6 above, is already operating in breach of the condition (no 10) requiring acoustic boundary fencing.

#### **5.14 *The installation of scaffold storage areas***

5.15 Two of the yards have constructed 3 structures from scaffolding and corrugated metal sheeting and plastic sheeting in order to create a dry storage area beneath. The structure in one yard measures approx. 10m in length by 4m wide and 3.5m high. One of the structures in the yard containing two structures, measures about 4m in each direction and the second structure which is a scaffold racking system, is approx. 8m in length and 3+m high and is directly backing onto gardens in Wakering Avenue. These structures amount to operational development for which there is no planning permission. The makeshift nature of these structures detracts harmfully from the character and appearance of the site. They again intensify the activity on the site which is operating in breach of the condition (no 10) requiring acoustic boundary fencing.

### **6.0 Harm caused by the above breaches as assessed against relevant planning policies and justification for enforcement action**

6.1 The various breaches of the planning control and implications of the issues arising have been assessed against the following policy background :

6.2 The National Planning Policy Framework (NPPF) (2019)

6.3 Core Strategy (2007) Policies KP1, KP2 (Development principles) CP1 (Employment Generating Development), CP3 (Transport and Accessibility) and CP4 (Environment & Urban Renaissance)

6.4 Development Management Document (2015): Policies DM1 (Design Quality) and DM3 (The Efficient and Effective Use of Land), DM 10 (Employment Sectors) , DM11 (Employment Areas) and DM15 (Sustainable Transport Management)

- 6.5 Whilst local and national planning policies give general support to employment generating development, particular to the issues raised in this report paragraph 124 and 127 of the National Planning Policy Framework seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 6.6 Policy KP2 of the Core Strategy seeks to secure improvements to the urban environment through quality design. Policy CP4 seeks to maintain and enhance the amenities, appeal and character of residential areas.
- 6.7 Policies DM1 and DM3 of the Development Management Document seek to support sustainable development which is appropriate in its setting, and that “protects the amenity of the site, immediate neighbours, and surrounding area, having regard to matters including privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”.
- 6.8 Policy DM8 covers residential standards and issues related to living conditions.
- 6.9 It is apparent from the nature, range and persistent pattern of breaches identified that the site is currently being poorly managed and that, despite the site owner stating that they would address the breaches through appropriate communication with the individual lessees of the yards within the overall site, they have shown little or no regard for the amenity of the local residents and future occupiers of the unauthorised caravan. Efforts to bring these ongoing breaches under control by regular contact with the site owner have not resulted in any improvement in the situation. Rather the original breaches of conditions have continued and new breaches, including further unauthorised operational development, have been identified. These are exacerbating the harm to the amenity of nearby residents. Overall the breaches are causing material harm to the living conditions and amenities of nearby residents contrary to the terms of the planning permission in place. This harm to amenity is unacceptable and contrary to policy.
- 6.10 Efforts to remedy the planning breach in respect of the owner’s failure to provide details of (and erect) an acoustic fence have come to no avail.
- 6.11 In view of the lack of response and action on the part the site owner it is considered necessary and justified to take enforcement action to seek to resolve the harm caused by the identified breaches.
- 6.12 In view of the protracted period for which these unresolved breaches have 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 developments. Particular to Condition 10, which required acoustic fencing to be erected to mitigate the environmental and amenity impacts resulting from the use retrospectively granted planning permission that would involve taking action to require cessation of the use of the site to the extent that the insufficiently controlled / mitigated operation is harming environmental conditions and amenity.

6.13 Taking enforcement action in this case may amount to an interference with the owner/occupiers' 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, proportionate and in the public interest to pursue enforcement action to control activity and address unauthorised breaches of conditions and operational development on this site.

## **7 Recommendation**

7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to;

- a) Remove the unauthorised containers from site as identified A, B & C shown at appendix 'C'
- b) Remove the unauthorised shelters constructed from scaffold as identified by D, E & F shown at Appendix 'C'.
- c) To cease the overnight residential use on site in breach of Condition 07 of planning approval 18/02157/FUL.
- d) To cease the use of the site outside of permitted hours as stated in Condition 08 of planning approval 18/02157/FUL. No access on Sundays or Bank Holidays and all work and other activity and vehicle movements on other days shall be confined to the following hours: 0700 to 1900 Mondays to Fridays; 0800 to 1300 Saturdays.
- e) Cease the use of the site as a Commercial Storage Yard (B8) until such time as an acoustic fence has been erected on the east and south boundaries as required under the original terms of Condition 10 of planning permission 18/02157/FUL in accordance with details which have previously been submitted to and approved in writing by the Local Planning Authority.
- f) To cease the burning of materials on site in accordance with Condition 12 of planning approval 18/02157/FUL.

7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and/or the service of a breach of condition notice 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 3 months is considered reasonable.



## APPENDIX 'A'

<b>Reference:</b>	18/02157/FUL
<b>Ward:</b>	Shoeburyness
<b>Proposal:</b>	Use of land as Commercial Storage Yard (B8) incorporating 12 bays with storage outbuildings, erect lighting columns, erect fencing/gates within and around the site boundary and lay out hardstanding area together with the formation of an additional vehicular access from Vanguard Way (Retrospective)
<b>Address:</b>	39 Vanguard Way Shoeburyness Southend-On-Sea
<b>Applicant:</b>	Mr Peter Hills
<b>Agent:</b>	BDA
<b>Consultation Expiry:</b>	24.01.2019
<b>Expiry Date:</b>	15.02.2019
<b>Case Officer:</b>	Robert Lilburn
<b>Plan Nos:</b>	18.132.01B, 18.132.02B, 18.132.03 and 18.132.04.
<b>Recommendation:</b>	GRANT PLANNING PERMISSION

## **1 The Proposal**

- 1.1 The application seeks planning permission retrospectively for the use of the site as storage (use class B8) with associated additional vehicular access, hard standing, outbuildings and fencing. The storage use is subdivided into twelve individual open-air bays, each incorporating a small 'store' building and enclosed by 2.4m high palisade fencing. The site measures some 3142sqm, with the compounds predominantly some 150sqm with two larger compounds of some 230sqm and 300sqm in area respectively.
- 1.2 The submitted plans show that eleven of the store buildings measure some 1.6m deep, 2.6m wide and 2.8m height. There is a larger store building to Bay 1 which would measure some 2.45m deep, 4.8m wide and 2.8m height. Two additional buildings situated within Bay 9 measure 2.4m by 2.4m and 6m by 2.4m respectively, and each 2.4m in height. There is also a shipping container adjacent the site entrance which measures some 2m by 5m and 2.4m in height and houses ancillary storage and services for the site.
- 1.3 The fencing and gates measure some 2.4m in height and are a galvanised steel 'palisade' specification. The site is accessed via an established vehicular access from Vanguard Way, leading on to a gravelled spine road from which bays 2-12 are accessed. 10 lighting columns of some 4.8m in height are situated along each side of the spine road.
- 1.4 Bay 1 is accessed separately from Vanguard Way with its own vehicular access which appears to have been formed as part of the development. The applicant has stated that there are no on-site employees associated with the development.

## **2 Site and Surroundings**

- 2.1 The application site was formerly host to a social club which has since been demolished. In the interim period aerial photography and publicly available photographs show the site has been overgrown and used for trailer storage with some dilapidated fencing and equipment.
- 2.2 The site is located within a purpose-built industrial estate. The site is within an area identified in the Development Management Document (2015) as employment land.
- 2.3 The site is bounded to the east by the rear gardens of dwellings at 45-79 Wakering Avenue; to the south is a commercial property and dwellings at 2-4 Friars Street.

## **3 Planning Considerations**

- 3.1 The key considerations in relation to the application are the principle of the development, design and character, impact on residential amenity, any traffic and parking implications and CIL.

## 4 Appraisal

### Principle of Development

**National Planning Policy Framework (2018), Policies KP1, KP2, CP1, CP3 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1, DM3, DM10, DM11 and DM15 of the Southend-on-Sea Development Management Document (2015) and advice contained within the Southend-on-Sea 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 encourages the effective use of land by re-using land that has been previously developed (para.117) and promote the development of under-utilised land and buildings.
- 4.2 Policies KP1 and KP2 seek to promote sustainable development, including appropriate regeneration and growth within the priority Urban Areas (including 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.
- 4.3 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.
- 4.4 Policy CP1 of the Core Strategy states that “Employment generating development should be located using a sequential approach in accordance with the spatial priorities and roles set out in Policies KP1. 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”. Policies DM10 and DM11 seek to support appropriate sites for employment opportunity in accordance with the spatial strategy.
- 4.5 The Southend-on-Sea Employment Land Review 2010 is a material consideration. It identifies the site location at Vanguard Way as suitable for retention for future employment purposes.
- 4.6 The development provides lock-up storage for commercial users. At the time of site visit this included portaloos, scaffolding, a mobile crane, a shipping container, a caravan, vans and small trailers. The use appears to support local small businesses. Although the storage use is relatively passive, as there is no staff in permanent attendance at the site, it accords with the policy objective of maintaining employment land in a ‘B’ class employment-related use.
- 4.7 The character of the use is consistent with the industrial estate context. As a matter of principle, the use of the site for commercial storage is acceptable and consistent with the objectives of the relevant development plan policies noted above.

### **Design and Impact on the character of the area**

**National Planning Policy Framework (2018), Policies KP1, KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and guidance contained within the Design and Townscape Guide (2009)**

- 4.8 Paragraph 124 of the NPPF states that *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”*.
- 4.9 The importance of good design is reflected in Policies KP2 and CP4 of the Core Strategy and also in Policies DM1 and DM3 of the Development Management Document. These policies seek to maintain and enhance the amenities, appeal and character of residential areas.
- 4.10 Policy DM1 seeks development that adds to the overall quality of the area and respects the character of the site, its local context and surroundings in terms of its architectural approach.
- 4.11 Policy DM3 seeks development that responds positively to local context. It also states that alterations and additions to a building will be expected to make a positive contribution to the character of the original building and the surrounding area.
- 4.12 The Design and Townscape Guide also states that *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments”*.
- 4.13 The development is relatively small-scale and consistent with the character and scale of the industrial estate of which it is a part. The fencing, buildings, and lighting columns are functional in appearance. The development is situated within the envelope of the industrial estate. Although the site borders a residential area, the operational development is well-integrated to the industrial estate backdrop.
- 4.14 The applicant has not provided details of the management of the storage uses. As open storage, there is potential for unsightly and unneighbourly forms of storage which would harm visual amenities. However, these matters can be controlled through the use of appropriately worded conditions and therefore would not be a bar to a grant of planning permission.
- 4.15 It is considered that the development is consistent with the above-noted policies with reference to design and character. The proposals are considered acceptable and policy-compliant in this regard.

### **Impact on Neighbour Amenities**

**National Planning Policy Framework (2018), Policies KP1, KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.16 Paragraphs 124 and 127 of the National Planning Policy Framework seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 4.17 Policy KP2 of the Core Strategy seeks to secure improvements to the urban environment through quality design. Policy CP4 seeks to maintain and enhance the amenities, appeal and character of residential areas.
- 4.18 Policies DM1 and DM3 of the Development Management Document seek to support *“sustainable development which is appropriate in its setting, and that protects the amenity of the site, immediate neighbours, and surrounding area, having regard to matters including privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”*.
- 4.19 The Design and Townscape Guide also states that *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments”*.
- 4.20 The neighbouring dwellings at Wakering Avenue have rear gardens a minimum length of some 28m. These adjoin the application site and are situated at a lower ground level. No.4 Friars Street is separated from the site by some 17m and an intervening yard.
- 4.21 There is a potential for harmful impacts to neighbouring and surrounding occupiers as a result of storage activities at the site. These could include, but may not be limited to, the following:
- Visual impact of storage at height;
  - Noise from loading and unloading of vehicles;
  - Noise from associated plant and equipment;
  - Use of lighting;
  - Dust, smells and other impacts arising from open storage of volume substances such as waste or minerals;
  - Potential for hazardous substances being stored;
  - Burning of waste.
- 4.22 The applicant has not set out the envisaged forms of storage at the site or methods of controlling possible impacts. However, a site visit indicated storage of plant, equipment and vehicles only.
- 4.23 The intensity of use of the site is limited to a degree by the subdivision into small compounds. There is a potential for vehicle movements arising which may affect the nearest dwellings at unsocial hours. It is considered appropriate that a condition relating to hours of operation would mitigate any material harm from associated noise.
- 4.24 It is considered that matters which may lead to potential disamenity from the types of storage could be controlled through suitably-worded conditions on planning permission. The proposal is a conforming use with its surroundings given its location within the identified envelope of the industrial estate.

- 4.25 There are existing noise-generating uses at the estate and a degree of associated noise is to be expected. It is considered that impacts such as noise can be maintained within acceptable parameters given the potential for suitably-worded conditions, the distance to the rear of the neighbouring dwellings and the existing industrial estate context.
- 4.26 Given the ability to control impacts of an open storage use through conditions, it is considered that any future amalgamation of the small compounds would not lead to material harm to nearby occupiers, subject to ongoing compliance with conditions. Permitted development rights are available in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of buildings associated with a storage use.
- 4.27 Given the proximity and potential for impacts on nearby residential occupiers, it is considered that a condition removing permitted development rights would be appropriate in order to allow consideration of these impacts and protection of amenities. Subject to conditions, the proposals are considered acceptable and policy-compliant in regard to amenities of residential areas.

### **Traffic and Transport**

#### **National Planning Policy Framework, Policies KP2 and CP3 of the Southend-on-Sea Core Strategy (2007), Policy DM15 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.28 Policy DM15 of the Development Management Document states that development will be allowed where there is, or it can be demonstrated that there will be, physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner. Policy CP3 of the Core Strategy seeks to improve road safety, quality of life and access for all.
- 4.29 Policy DM15 sets a maximum standard of one parking space per 150sqm site area. The standards would therefore require a maximum of 20 parking spaces for the development.
- 4.30 The submitted application form states that no staff are employed at the site. Each compound allows for vehicular access and a degree of undemarcated parking for those using them. The site is located within a purpose-built industrial estate.
- 4.31 No objections have been raised to the use or the new vehicular access. It is considered that the development is acceptable and compliant with policy objectives in regards to traffic and transport.

### **Community Infrastructure Levy**

#### **CIL Charging Schedule 2015**

- 4.32 The total new floor space created by the proposal is shown on the submitted plans as some 97.8sqm. As a commercial change of use, the development is not CIL liable under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.

## **5 Conclusion**

- 5.1 Having taken all material planning considerations into account, it is found that the proposed development is acceptable and compliant with the objectives of the relevant development plan policies and guidance. It would be integrated and compatible with the industrial estate setting. Subject to suitable conditions, it would be capable of maintaining visual amenities and the amenities of residents. It supports a degree of economic activity in an identified employment area. Therefore, it is recommended that planning permission is granted, subject to conditions.

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (2018)
- 6.2 Core Strategy Policies KP1 (Spatial Strategy) KP2 (Development Principles) CP1 (Employment Generating Development) CP3 (Transport and Accessibility) CP4 (Environment & Urban Renaissance)
- 6.3 The Southend-on-Sea Development Management Document (2015): Policies DM1 (Design Quality) DM3 (The Efficient and Effective Use of Land) DM10 (Employment Areas) DM11 (Employment Areas) DM15 (Sustainable Transport Management)
- 6.4 Design & Townscape Guide (2009)
- 6.5 CIL Charging Schedule 2015

## **7 Representation Summary**

### **Public Consultation**

- 7.1 27 neighbouring properties were notified and a site notice was posted. Nine representations have been received from eight parties, and are summarised as follows:
- Noise from machinery, vehicles, music and voices;
  - Burning of fires;
  - Additional noise to existing industrial estate;
  - Noise at all hours;
  - Impact on neighbour amenities and amenity of residential area;
  - Removal of fences and trees;
  - Use of large cranes close to dwellings;
  - Harm to health;
  - Damage to neighbouring properties.
- 7.2 These concerns are noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. Those remaining are found not to represent a reasonable basis to refuse planning permission in the circumstances of this case.

### **Highways**

- 7.3 There are no highway objections to this proposal.

## **Environmental Health**

- 7.4 Construction Hours Shall Be Restricted to 8am - 6pm Monday to Friday, 8am – 1pm Saturday and not at all on Sundays or Bank Holidays.
- 7.5 During Construction and Demolition, there shall Be No Burning Of Waste On Site.

## **8 Relevant Planning History**

03/01430/FUL: Erect building for the storage of non ferrous and precious metals and overnight lorry parking (2281m sq) and lay out 4 parking spaces (Amended Proposal). Refused; appeal allowed.

02/00919/FUL: Erect building for the storage of non-ferrous and precious metals and overnight lorry parking (2281m sq) and lay out 4 car parking spaces. Refused.

89/1088: Erect single storey side extension at Maplin Social Club, 39 Vanguard Way. Approved.

## **9 Recommendation**

**GRANT PLANNING PERMISSION** subject to the following conditions:

**01.The development hereby permitted shall be retained in accordance with the following approved plans: 18.132.01B, 18.132.02B, 18.132.03 and 18.132.04.**

**Reason: To ensure that the development is carried out in accordance with provisions of the Development Plan.**

**02.With the exception of operations associated with loading, unloading and parking, no machinery shall be operated on site.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**03.No assembly, dismantling or other industrial process shall take place on the site and the site shall not be used for any purposes falling within use class B2 of the Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any statutory amendment, modification or re-enactment or replacement thereof (as the case may be) for the time being in force).**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**04.Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), the site shall be used for the**



**storage of plant and equipment only, within use class B8; no open storage of soils, minerals, waste or other loose materials shall take place at the site at any time.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**05.No hazardous substances as defined in the Planning (Hazardous Substances) Regulations (2015) or any Order which amends or replaces that Order, shall be stored on the site.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**06.All material stored on site shall be situated below a height of 3m above existing ground level.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**07.No part of the site shall be occupied for overnight residential accommodation, including within vehicles and caravans.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**08.No vehicles shall enter or leave the site and no work or other activity shall take place on the site on Sundays or Bank Holidays and all work and other activity and vehicle movements on other days shall be confined to the following hours: 0700 to 1900 Monday to Fridays; 0800-1300 Saturdays.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**09.No external lighting shall be installed at the site, other than that shown on the approved plans, without the prior written agreement of the local planning authority. Full written details of any lighting to be installed, including position, height, specification and angle of orientation, shall be submitted for consideration prior to installation and shall be implemented thereafter solely in accordance with the approved details.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

- 10. Within twelve weeks of the date of this planning permission, details of an acoustic fence, together with a timetable for its construction, to be erected along the east and south boundaries of the site, shall have been submitted for approval to the local planning authority. The fence shall thereafter be constructed in accordance with the agreed details and timescale and permanently retained thereafter.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

- 11. Notwithstanding the provisions of Class H of Part 7 of Schedule 2 to the Town and Country Planning General Permitted Development Order 2015 (or any statutory amendment, modification or re-enactment or replacement thereof (as the case may be) for the time being in force), no extensions or buildings shall be erected at the site without the receipt of express planning permission.**

**Reason: To control development in close proximity to nearby dwellings, to protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

- 12. No burning of materials shall take place within the site at any time.**

**Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.**

**The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework. The detailed analysis is set out in a report on the application prepared by officers.**

## **Informatives**

- 1. You should be aware that in cases where damage occurs during construction works to the highway in implementing this permission that Council may seek to recover the cost of repairing public highways and footpaths from any party responsible for damaging them. This includes damage carried out when implementing a planning permission or other works to buildings or land. Please take care when carrying out works on or near the public highways and footpaths in the borough.**
- 2. You are advised that as the proposed development creates less than 100sqm new floorspace, and is a commercial change of use the development is not CIL liable under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.**

## APPENDIX 'B'

<b>Reference:</b>	<b>19/01188/AMDT</b>
<b>Application Type:</b>	<b>Minor Amendment</b>
<b>Ward:</b>	<b>Shoeburyness</b>
<b>Proposal:</b>	<b>Application to vary condition 06 (height of storage) alterations to storage height and remove condition 10 (details of acoustic fence) deemed unnecessary in this location (Minor Material Amendment of planning permission 18/02157/FUL dated 13/06/2019)</b>
<b>Address:</b>	<b>39 Vanguard Way, Shoeburyness, Southend-On-Sea</b>
<b>Applicant:</b>	<b>Mr Peter Hills</b>
<b>Agent:</b>	<b>Mr Iain Stobbs of BDA</b>
<b>Consultation Expiry:</b>	<b>25th July 2019</b>
<b>Expiry Date:</b>	<b>20th August 2019</b>
<b>Case Officer:</b>	<b>Robert Lilburn</b>
<b>Plan Nos:</b>	<b>18.132.01B, 18.132.02B, 18.132.03 and 18.132.04 submitted with application 18/02157/FUL</b>
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

### 1 Site and Surroundings

- 1.1 The application site is an open-air self-storage facility divided into twelve fenced-off compounds within a gated access route. It was granted planning permission retrospectively in application 18/02157/FUL.
- 1.2 The site had prior to the recent development been overgrown and used for trailer storage with some dilapidated fencing and equipment. It was formerly the site of a social club which was demolished.
- 1.3 The site is located within a purpose-built industrial estate. The site is within an area identified in the Development Management Document (2015) as employment land.
- 1.4 The site is bounded to the east by the rear gardens of dwellings at 45-79 Wakering Avenue; to the south is a commercial property and dwellings at 2-4 Friars Street.

### 2 The Proposal

- 2.1 The applicant seeks to amend Condition 6 of planning permission 18/02157/FUL. The condition reads:

“All material stored on site shall be situated below a height of 3m above existing ground level. Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3”.

2.2 The applicant is proposing that the 3m height limit should be modified to allow a 2.5m limit within 2m of the boundary fence and then a 3.5m-4m limit beyond that distance within the compound. The applicant states that the condition is unduly harsh when compared with householder permitted development rights for outbuildings.

2.3 The applicant seeks to remove Condition 10 of planning permission 18/02157/FUL. The condition reads:

“Within twelve weeks of the date of this planning permission, details of an acoustic fence, together with a timetable for its construction, to be erected along the east and south boundaries of the site, shall have been submitted for approval to the local planning authority. The fence shall thereafter be constructed in accordance with the agreed details and timescale and permanently retained thereafter. Reason: To protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3”.

2.4 The basis given is that an acoustic fence is unnecessary at this location and is an unreasonable burden of expense on the applicant. The applicant states that the storage yard is a very quiet site, and as it is used for storage with no noisy materials or vehicles, and a well-constructed fence around it, that the condition is unnecessary.

2.5 No plans or supporting statements have been submitted with the application except for those statements within the application form. The application has been submitted following planning enforcement enquiries.

### **3 Relevant Planning History**

18/02157/FUL: Use of land as Commercial Storage Yard (B8) incorporating 12 bays with storage outbuildings, erect lighting columns, erect fencing/gates within and around the site boundary and lay out hardstanding area together with the formation of an additional vehicular access from Vanguard Way (Retrospective). Approved.

03/01430/FUL: Erect building for the storage of non ferrous and precious metals and overnight lorry parking (2281m sq) and lay out 4 parking spaces (Amended Proposal). Refused; appeal allowed.

02/00919/FUL: Erect building for the storage of non-ferrous and precious metals and overnight lorry parking (2281m sq) and lay out 4 car parking spaces. Refused.

89/1088: Erect single storey side extension at Maplin Social Club, 39 Vanguard Way. Approved.

## **4 Representation Summary**

### **4.1 Public Consultation**

36 neighbouring properties were notified and a site notice posted. 3 letters of representation have been received as follows:

- Impacts on neighbour amenities of shadowing, privacy, noise;
- Noise sources include the numerous site gates opening and closing, scaffolding pole movements, crane movements, breaking of pallets and testing petrol mowers, as well as an unauthorised residential use of a caravan;
- Existing fence is inadequate to mitigate impacts of the development on residential neighbours and former wooden fence protected neighbours from general noise of the wider industrial estate;
- Breaches of planning conditions.

4.2 These concerns are noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. Those remaining are found not to represent a reasonable basis to refuse planning permission in the circumstances of this case.

### **4.3 Environmental Health**

The condition relating to an acoustic fence should be retained.

## **5 Planning Policy Summary**

5.1 The National Planning Policy Framework (NPPF) (2019)

5.2 Core Strategy Policies KP1 (Spatial Strategy) KP2 (Development Principles) CP1 (Employment Generating Development) CP3 (Transport and Accessibility) CP4 (Environment & Urban Renaissance)

5.3 The Southend-on-Sea Development Management Document (2015): Policies DM1 (Design Quality) DM3 (The Efficient and Effective Use of Land) DM10 (Employment Areas) DM11 (Employment Areas) DM15 (Sustainable Transport Management)

5.4 Planning Practice Guidance

## **6 Planning Considerations**

6.1 Paragraph 55 of the NPPF states that planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

6.2 These are described as the six tests. Planning Practice Guidance (PPG) states that any proposed condition that fails to meet any of the six tests should not be used. This applies even if the applicant suggests it, for example. (Paragraph: 005 Reference ID: 21a-005-20140306; Revision date: 06 03 2014).

- 6.3 The reasons given for the conditions were to protect the environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework, Core Strategy (2007) Policies KP2 and CP4, and Development Management Document (2015) Policies DM1 and DM3.
- 6.4 The main considerations in relation to this application are the appropriateness of the conditions in seeking to meet the objectives of the relevant development plan policies.
- 6.5 Since the application 18/02157/FUL was determined, the revised National Planning Policy Framework (2019) (NPPF) came into force, replacing a previous version of the NPPF. It is considered that the contents of the revised NPPF do not materially alter the assessment of the impacts of the proposal.

## **7 Appraisal**

- 7.1 With respect to the proposed amendment to Condition 6, the rationale given is that this would be similar to permitted development rights for residential outbuildings and that the limitation specified is therefore unduly harsh.
- 7.2 The residential permitted development rights under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) state that “the height of the building, enclosure or container [should not] exceed (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or 3 metres in any other case”.
- 7.3 It is considered that the principle does not apply equally to the character and use of the application site, in its relationship to the neighbouring residential area. The permitted development rights referenced by the applicant relate to dwelling houses and the typical development that would take place in that setting, rather than in an industrial setting which in this case is situated adjacent other dwellings.
- 7.4 The 4 metre height limit relates to a dual-pitch roof on a domestic outbuilding, and the condition in question relates to commercial storage, which is of an entirely different character. This is evidenced by the type of storage on site at present which includes scaffolding poles and portable toilets, for example.
- 7.5 It is considered that these have a materially different visual impact on neighbouring occupiers, compared to typical residential outbuildings. It is therefore not accepted that there is a logical case on the basis given.
- 7.6 Notwithstanding this it is considered that the proposed increase in height limit would unreasonably impact on neighbouring residential occupiers by introducing storage at height. This may include stacking of containers, for example.
- 7.7 It is considered that the visual impact above the boundary fence line would have the potential to be materially harmful to the outlook and amenities of neighbouring residential occupiers, the gardens of whom back on to the application site. It is considered that the condition is necessary, reasonable and in accordance with the six tests described in the NPPF.

- 7.8 With respect to the proposed removal of Condition 10, the development plan policies seek to maintain the character and quality of residential areas.
- 7.9 It is not possible to define at every level the character of materials stored at the site. The site is situated adjacent residential dwellings and gardens. It is noted that the gardens are relatively long between some 30m and 50m in length at Wakering Avenue.
- 7.10 While the site is situated within an identified Industrial Estate it has historically been disused in more recent times and was previously used as a social club. Its recent change of use has introduced the potential for new impacts on neighbouring occupiers, and as identified in the delegated report to application 18/02157/FUL these included noise impacts.
- 7.11 The site has been subject to planning enforcement enquiries. A neighbouring occupier has submitted an audio recording of activity at the site which demonstrates to an extent the potential for intrusive noise impacts. While these could be mitigated to a degree by the existing conditions on the planning permission relating to hours of use, given the material change of use that has taken place and the character of the use, that this alone would not be sufficient to protect neighbour amenities.
- 7.12 The site is used in part for the storage of scaffolding poles and of large vehicles. It is considered reasonable that the impacts of the use of the site are mitigated in order to protect neighbour amenities. The applicant has not submitted an acoustic assessment or noise survey and no evidence has been provided to support the claim that the site is virtually silent. It is considered that the condition is necessary and reasonable, and meets the tests described in the NPPF.

### **Community Infrastructure Levy (CIL)**

- 7.13 As a commercial change of use, the development would not be CIL liable under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.

## **8 Conclusion**

- 8.1 Having regard to all material planning considerations assessed above, it is considered that, by reason of the material impacts arising from the development on neighbouring occupiers in the adjoining residential area, the conditions are necessary in making the proposed development acceptable in light of the relevant development plan policies. The conditions are considered to meet the six tests for planning conditions. The application is therefore recommended for refusal on the basis that the variation and removal of conditions proposed would not maintain the quality of the adjoining residential area and lead to material harm on the amenities of neighbouring occupiers.



## **9 Recommendation**

**REFUSE PLANNING PERMISSION for the following reason(s):**

- 01. The proposed variation of Condition 6 of planning permission granted under 18/02157/FUL would lead to materially harmful visual impacts, having regard to the outlook of neighbouring residential occupiers at Wakering Avenue. This would be unacceptable and contrary to the National Planning Policy Framework (2019), Policies KP2 and CP4 of the Core Strategy (2007), Policy DM1 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).**
- 02. The proposed variation of Condition 10 of planning permission granted under 18/02157/FUL would lead to materially harmful noise impacts on neighbouring residential occupiers at Wakering Avenue. This would be unacceptable and contrary to the National Planning Policy Framework (2019), Policies KP2 and CP4 of the Core Strategy (2007), Policy DM1 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).**

**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.**

## **10 Informative**

- 1. As a commercial change of use, the development would not be CIL liable under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.**

Appendix 'C'

