

Town & Country Planning Act 1990

**Rebuttal Proof of Evidence of Simon Thelwell
London Borough of Havering**

Appeal Site: Frog Island, Ferry Lane, Rainham, Essex, RM13 9YH

**Public Inquiry: 14th – 16th May 2024
Appeal by S Walsh & Son Limited**

**Planning Inspectorate References:
APP/B5480/C/22/3305409**

1. Introduction

- 1.1 Having received and read the proofs of evidence from the appellant, I feel it has been necessary for me to prepare this rebuttal proof. I have also read a draft rebuttal proof prepared by the Council's Public Protection Officer which will be submitted at the first opportunity following this submission. In effect, the information provided in the appellants proofs amounts to the necessary supporting documentation to accompany a planning application for a development of this scale and nature with information that has not been available to the LPA nor those the LPA would consult on such a planning application (including the Public Protection Officer), before now.
- 1.2 I therefore provide commentary on each of the proofs submitted, identifying the relevant paragraph(s), addressing only the key points that we wish to bring to the Inspector's attention at this time.

2. Proof of Mark Walton

- 2.1 Para 1.17 – It is incorrect to say that 70% of the waste processed is from the ELWA area. Using data from the 2022, Interrogator, only 34.55% of the waste processed is from the ELWA area.
- 2.2 Para 1.20 – This paragraph confirms that the containers have such a degree of permanence that they are, in their own right, development requiring planning permission.
- 2.3 Para 1.22 – No evidence has been provided that there have been regular inspections by the EA. It cannot be concluded that the conditions of the Permit have been complied with. Since completing my proof, I have learned that the EA visited the site on 2nd April 2024 and found the operations to be creating dust plumes and operating in contravention of the Permit, in particular:
- Stockpiles of waste above the 3m limit outlined in the DMP
 - Conveyor heights in excess of the maximum 2.56m stated on the DMP
 - Requiring that dust netting be repaired and extended
 - Requiring that all dust suppression equipment be put into use

See Exhibit Rebuttal 1 for copy of the EA findings

- 2.4 Para 2.5.17 – The evidence base for the Waste Plan is that the ELWA area receives significantly more C,D&E waste than it produces – see further comment below in Para 2.12 of this rebuttal proof.
- 2.5 Para 3.2.4 – As confirmed on the drawings submitted and stated elsewhere in the appellants proofs as well as the recent photographs in the Council's proofs and the EA visit, the DMP has not been complied with and stockpiles are in excess of 3m in height.
- 2.6 Para 3.2.5 – The DMP measures can only seek to control an open air processing operation in the best practical manner and cannot be said to

ensure that there would be no material adverse effects from dust emissions. The fact that the operator fails to comply with matters such as stockpile heights and drop heights calls into question whether conditions would ever be suitable. As per London Plan policy, the processing operations should be enclosed.

- 2.7 Para 3.2.10 – “as far as practicable” is not the right test for a new operation that needs planning permission. The conclusion that there are no adverse impacts is not shared by the Local Planning Authority, on advice from the Public Protection Officer (Rebuttal Proof to be submitted), local businesses and employees. Since completing the proof, the EA has sent through details of complaints received so far from local businesses in 2024 (see Exhibit Rebuttal 2). The businesses also conducted their own survey in 2021 to ascertain the source of the dust problems they were experiencing (see Exhibit Rebuttal 3).
- 2.8 Para 3.3.5 –
- Bullet point 1 – The planting does not appear to be within the red line of the site, but on land owned by GLA Land and Property.
- Bullet point 3 – The use of containers as a boundary is completely inappropriate even if painted – it will still appear as a stack of containers. Further, due to their construction, rust and water marks will quickly form through the paint and add to the unsightliness. Netting also degrades quickly and becomes unsightly.
- Bullet point 3 – A screening barrier 3 containers high would suggest that stockpiles would be in excess of 3m as suggested in the DMP.
- Bullet point 5 – along the northeastern boundary, there does not appear to be sufficient room between the containers and the boundary to allow for tree planting or for trees to survive. A more detailed planting plan is required.
- 2.9 Para 3.4.6 – A conclusion that there are opportunities for employees to arrive by foot or public transport is not accepted. The site is a considerable distance from public transport reflecting the PTAL rating. The suitability of cycle routes to the site has not been assessed, nor does the proposal seek to make improvements to cycle routes to the site.
- 2.10 Para 3.5.17 – The JWDP and London Plan seek that, as a starting point, materials should be recycled and used on development sites, followed by processing for export on site, followed by processing as near as possible to the waste source. Given the amount of waste processed and the geographic spread of the waste source, it is likely that the operation here provides an economic or logistical incentive to not processing on site or near to the waste source, so it cannot be concluded that the site contributes to the waste hierarchy other than by ensuring that waste is recycled.
- 2.11 Para 3.5.23 – No evidence has been provided that the operation is needed for waste produced in East London.

2.12 Para 3.5.26 – The evidence base to the waste plan (using 2019 Waste Interrogator data) is that significantly more C,D&E waste is received by facilities in the ELWA area than is generated. As an update to this, using the 2022 data, that position is still the case – the amount of C,D&E waste processed in the ELWA area was 3,332,751 tonnes against 960,740 generated. The conclusion from the evidence base was that no more C,D&E capacity was needed in the area.

The conclusion from the evidence base was that ELWA did not need any more C,D&E capacity.

The following sites within ELWA processed more than 50k tonnes in 2022:

| Site Name | Tonnes Received |
|---|-----------------|
| 75 - 77 Chequers Lane | 54000 |
| Albright Transfer Station | 74556 |
| Barking Eurohub | 155414 |
| Barking Riverside Recycling Centre | 308652 |
| Central Park Dagenham | 303735 |
| East Hall Farm Inert Landfill | 110537 |
| Frog Island | 184018 |
| I O D Skip Hire Ltd | 52616 |
| JRL Environmental | 51229 |
| Marshgate Sidings | 179555 |
| Perry Road Recycling Facility | 208535 |
| Plaistow Wharf EPR/CP3035QC | 69924 |
| Recycled Material Supplies | 228355 |
| S U C Exc Uk Ltd | 62244 |
| Silt Lagoons, Rainham and Wennington Marshes - EPR/EP3035JG | 317799 |
| Thunderer Road | 57038 |
| Wennington Quarry Inert Landfill | 235459 |

2.13 Para 3.5.29 – The information in this paragraph is not correct. The Rainham Recycling Facility is located at Rainham Quarry where the mineral resource on-site has been exhausted. The site benefits from a temporary planning permission to process minerals from a nearby extraction site (East Hall Farm) and to process waste during the duration of extraction from this site. The owners, Brett Aggregates, have interests in other future mineral extraction sites in the Borough and would be looking to continue to use the Rainham Quarry site for mineral and C,D&E processing.

2.14 Para 3.5.30 – Mowhawk Wharf is not listed on the 2022 Waste Interrogator.

2.15 Para 3.5.31 – Thames Wharf is not listed on the 2022 Waste Interrogator.

2.16 Para 3.5.36 – The idea that there is no alternatives to the current facility is not relevant to the points that I have made in my proof. The relevant consideration

is that significantly more waste is processed in the ELWA area than originates from within it – see further paragraph 2.17 below.

2.17 Para 3.5.37 – The facility at Frog Island exceeds any need identified. In order to demonstrate that there is no nearer facility to the waste arising, there would need to be an exercise assessing the capacity of all the sites in the wider region – no such evidence has been presented. The crucial point in regard to need is that it has not been demonstrated that there is such a need to justify an open air processing facility which results in dust nuisance and is visually unattractive, reasons which weigh against the proposal.

2.18 Para 3.6.7 – As mentioned previously, it is not clear whether all the proposed landscaping is on the site or could be satisfactorily achieved.

2.19 Para 3.6.13 – The realisation of a continuous Riverside walk is a long term aspiration supported by planning policy. Realisation only becomes possible if land is safeguarded when there is a planning application on the relevant site. The LPA have been consistent in requiring this on proposals that adjoin the River Thames, including:

U0004.06 – Land west of Fairview Industrial Estate, off Marsh Way

P0197.03 – Shanks Waste, Creek Way

P1364.17 – Land at Frog Lane

The requirement is not to provide the path as part of the permission, unless it is adjacent to an existing part of the path, but to safeguard the land for future pedestrian/cycle use.

2.20 Appendix B – The plan is very unclear and there does not appear to be room between the containers and boundary for tree planting.

3. Proof of Nigel Mann

3.1 Para 3.2.5 – No evidence of regular inspections, nor monitoring have been provided. See para 2.3 above regarding EA visit on 2nd April 2024.

3.2 Para 3.3.1 – A single site visit on a day with low wind speed would not likely give an impression of the general issues that the operations may be causing. Indeed, just over 2 weeks after the 14th March site visit, the EA attended the site and found there to be clear evidence of dust soiling beyond the site and a number of breaches of the Dust Management Plan (see Rebuttal Exhibit 1).

3.3 Paras 3.3. 2 – 3.3.3 – See further comment below regarding dust impacts.

3.4 Section 5.3 – The Council's Public Protection Officer has viewed the proof and I have discussed the conclusions in relation to dust with him. The proof fails to deal with the issue of dust deposition and whether/how this has been monitored. In particular:

- PM10 and PM2.5 monitoring is a sampling of the air quality and not looking at deposition of dust monitoring. The particles of dust deposited in the area are likely to be greater than PM10 and PM2.5 (these size particles having significant health impacts) and not picked up by the monitoring equipment that has been used.
 - The monitoring on 14 March was not undertaken at the points that are likely to suffer most from dust generating activities.
- 3.5 Given the new evidence provided in this proof which has not been previously available to the LPA, a Rebuttal Proof from the Council's Public Protection Officer is in preparation and anticipated to be submitted next week at the earliest opportunity.
- 3.6 It is clear from the reports from businesses and the recent EA visit is that there are plumes of dust coming from the activities taking part on the site with deposition of dust/particles on cars and equipment as well as within buildings when windows are open.

Dust Management Plan

- 3.8 Para 1.5 – This paragraph confirms that the DMP can only be compliant with Permit section 3 – “or where that is not practicable, to minimise, those emissions”
- 3.9 Para 3.5 – This is incorrect as the receptor track/footpath is right next to the site not 400m away.
- 3.10 Para 3.10 – It is not agreed that adjacent users are transient. There are seating areas and there will be more seating areas established in the near future.
- 3.11 Para 3.12 – This section fails to acknowledge that nearby buildings would have windows open.
- 3.12 Para 4.2 – The abatement measures set out in the DMP do not appear to consider a number of measures that could be employed including:
- It does not appear that the relocation of operations in the site has been considered.
 - It does not appear that the enclosure of the activities has been considered
- I can only conclude that this is because such considerations may not be “practicable” in terms of the permit condition, but that is not the issue in the context of a planning application, where the question is whether there will be material adverse impacts.
- 3.13 In relation to the maximum stockpile height of 3m, this is contradicted in the Planning Proof and Landscape proof, where stockpiles are shown to be in excess of 7.5m and photos show much larger stockpiles than this. It is not clear why this mitigation measure has not been adhered to nor why it is so

difficult to adhere to. The only conclusion I can come to in relation to this is that the throughput of site is too great to be able to even comply with the DMP.

- 3.14 The daily log book has not been produced in evidence. If it does exist, it should have been produced.
- 3.15 No details have been provided in any of the evidence that the DMP has ever been enacted.

4. Proof of Robin Smithyman

- 4.1 Para 2.1.2 – The Current Situation drawing does not show the AOD of the road and surroundings which is significantly lower – 4.8-5m AOD.
- 4.2 Para 2.1.8 – This paragraph confirms that stockpiles are significantly in excess of the 3m required by the DMP.
- 4.3 Para 2.1.10 –
 - a) No detail has been provided as to whether there is room for the planting
 - c) shipping containers are not an acceptable visual barrier. Netting quickly becomes unsightly adding to the unattractive appearance of the site
 - e) there would need to be a very extensive tree screen to block containers that are stacked 3 high
- 4.4 Para 5.15 - There is no drawing KD.FRG.2.D.009 submitted with the proof or elsewhere with the evidence. There has been no consideration of whether the containers themselves would be visually appropriate and the impact of the stacked containers on views of the site and the character of the area which has undergone and continues to undergo significant improvements. Containers are susceptible to rust and any painted finish would not provide a satisfactory appearance in the long term. Furthermore the extent of the “screen” does not deal with views across the Thames looking northwest from the Thames Path and river walk.
- 4.5 Para 5.1.11 –
 - a) It has not been demonstrated that strengthening the planting along the Ferry Lane boundary is possible given the limited space between the containers and boundary of the site. Detailed plans should be provided to show how this could be achieved.
 - b) The proposed scrub block, due to its location, would have limited visual benefit
 - c) See comment at para 4.4 regarding the shipping container screen
 - d) Even if the proposed screening was acceptable, the stockpiles will still be visible from the footpath and seating areas on the Thameside path which run

right up to the site boundary. As set out in my Proof, work to these areas to provide improvements and facilities for visitors and employees is about to commence – details of the improvements are shown in Exhibit Rebuttal 4.

- 4.6 Para 5.1.16 – It is not agreed that the improvement in views would be so significant. In effect, a current adverse view of randomly placed containers and stockpiles of material would be replaced with a new view of containers piled on top of one another. It is significant that no visuals have been provided of the “mitigated” view from this receptor.
- 4.7 Para 5.1.17 – It does not appear that the view from upper floors facing windows has been taken into account.