

<b>Application Number: ESS/48/22/CPT</b>	<b>Case Officer: Shelley Bailey Ext: 03330 136824</b>
<b>Site: Benfleet Scrap Co Ltd, Brunel Road, Manor Trading Estate, Benfleet, Essex, SS7 4PS.</b>	
<b>Description: Application for a Certificate of Lawfulness for a Proposed Use or Development for: Installation of replacement plant for aluminium recycling consisting of a super chopper and rasper with linking conveyors.</b>	
<b>Applicant: Benfleet Scrap</b>	
<b>Secretary of State Referral: No</b>	<b>Date: 1<sup>st</sup> August 2022</b>

## 1. BACKGROUND & SITE

The application site is 0.86ha in size with vehicular access onto Brunel Road. A 5m high wall currently surrounds the eastern and southern boundaries, with a buffer of between 1.5m-2.5m between it and the site boundary.



The site is situated on the eastern edge of Manor Trading Estate, with other industrial units located to the west and open Green Belt land to the east and north.

The Heston Day Lodge and Robert Drake Primary School are located to the south east.

The site is currently occupied by Benfleet Scrap Ltd, specialising in the recycling of aluminium for the domestic, commercial and industrial sectors.

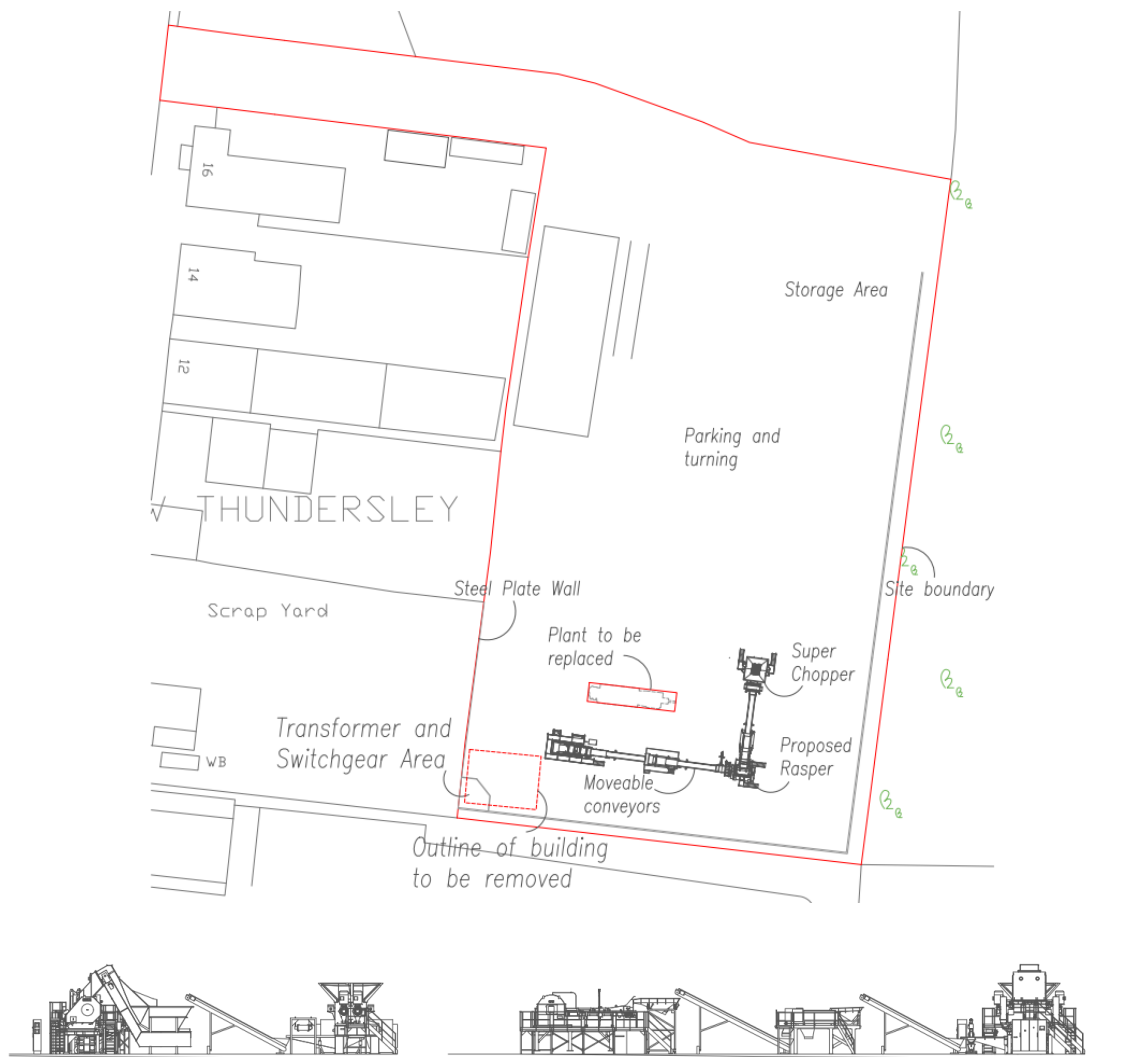
Previous planning permissions relating to the site have been granted by Castle Point Borough Council, as follows:

- Ref CPT/16/02/FUL – Use for waste recycling and recovery and as a waste transfer station – Approved March 2002.
- Ref 18/0834/FUL – Construction of wall to south and east boundaries (part retrospective) – Approved Nov 2018.
- Ref 19/0013/COM – Construction of wall to south and east boundaries (part retrospective) – Enforcement Notice appeal allowed.

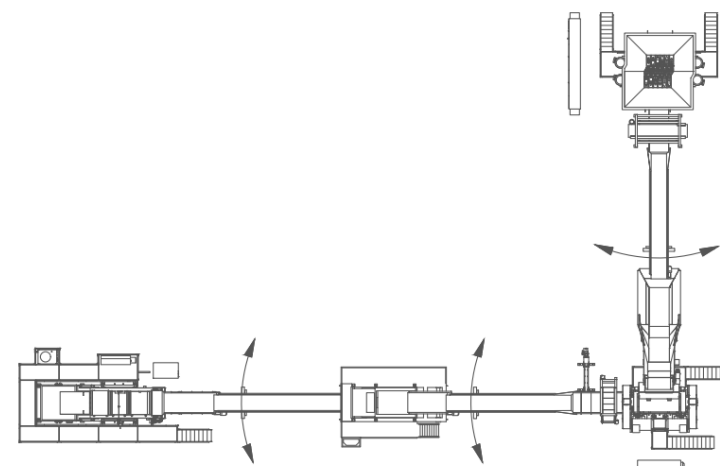
## **2. PROPOSAL**

The application is for a Certificate of Lawfulness for a Proposed Use or Development (CLOPUD) for the installation of replacement plant for aluminium recycling. The replacement plant would comprise:

- A super chopper (4.9m high x 5.1m wide x 4.6m long). This is a pre-chopper designed as the first step in the recycling process;
- A multi-purpose rasper (5.3m high x 3.5m wide x 4.6m long). This is for initial and secondary size reduction of materials to approximately 20-80mm;
- An overband magnet to remove ferrous material from the aluminium;
- A tumble back feeder to ensure continuous flow into the multi purpose rasper;
- Linking conveyors;
- Separators (eddy current and ex-ray).



Elevations



Plan

An existing building in the south west corner of the site has been removed and is proposed to be replaced with a transformer and switch gear building. However, these elements do not form part of this application.

### **3. LEGAL CONTEXT**

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application or appeal process.

This particular application relates to section 192 of the Town and Country Planning Act 1990. In determining an application for a prospective development under section 192, a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun.

A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.

It is noted that a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

### **4. CONSULTATIONS**

The Statement of Community Involvement suggests, in summary, that public consultation on CLOPUD applications is undertaken only in exceptional circumstances and that statutory consultees are consulted if the case officer decides it is relevant.

Planning Practice Guidance states, at paragraph 008:

‘There is no statutory requirement to consult third parties including parish councils or neighbours’.

This is because the matters to be determined are solely matters of evidence and law.

The Guidance goes on to say:

‘It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.’

In this case, it was considered appropriate that Castle Point Borough Council, who would usually be a statutory consultee on all planning applications, should be informed that the application had been received and given the opportunity to comment, given that the application site benefits from an extant planning permission granted by that Council.

Responses summarised as follows:

CASTLE POINT BOROUGH COUNCIL – Provides an analysis of the proposals under Part 7, Class L of the Town and County Planning (General Permitted Development) (England) Order 2015. The analysis considers that it is not clear if the structure to the rear of the main building represents the extension or alteration of the main building or plant and machinery. If this structure is an extension or alteration of the main building or plant and machinery, the floor space it occupies must be considered in the determination of the application.

This structure has a footprint of some 74 sq.m (being some 6m by 12.3m). The plant to be replaced has a stated footprint of some 44.857 sq m. As this is to be removed from the site the floorspace of this plant may be disregarded, however, the new plant has a stated footprint of 50.76 sq m. When this is added to the post 2002 floorspace identified above, the area occupied by buildings, plant or machinery on the site would appear to exceed the original area occupied by buildings, plant or machinery by more than 100 square metres.

Under these circumstances the proposal would not represent permitted development. Should the applicant be able to demonstrate that the structure identified above was not provided under the provisions of Part L, this matter may be reconsidered.

## **5. APPRAISAL**

The applicant has applied for a CLOPUD in this instance on the basis that planning permission is not required. Specifically, that the proposed development would be ‘permitted development’, therefore benefitting from deemed consent by virtue of Part 7, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

It is considered that, as the application site represents an operational waste facility, the proposal would be appropriately considered under Class L.

Accordingly, Part 7, Class L (Development at waste management facilities) of the Town and County Planning (General Permitted Development) (England) Order 2015 states:

***‘Permitted development***

*L. Development carried out on land used for the purposes of a waste management facility consisting of -*

*(a) the extension or alteration of a building; and*

*(b) the installation of replacement plant or machinery.’*

In this case, the applicant has sought to prove that the proposed development constitutes ‘replacement plant’.

Class L provides limitations, as follows:

***‘Development not permitted***

***L.1 Development described in Class L is not permitted if -***

***(a) the gross floor space occupied by the replacement plant or machinery would exceed by more than 15% the gross floor space of the plant or machinery it replaced;’***

The applicant has provided a floor space of 44.857m<sup>2</sup> for the existing plant to be replaced and a total floor space of 50.76m<sup>2</sup> for the proposed replacement plant.

Therefore the gross floor space occupied by the replacement plant would exceed the gross floor space of the plant it replaces by just over 13%.

This element of Class L has been complied with.

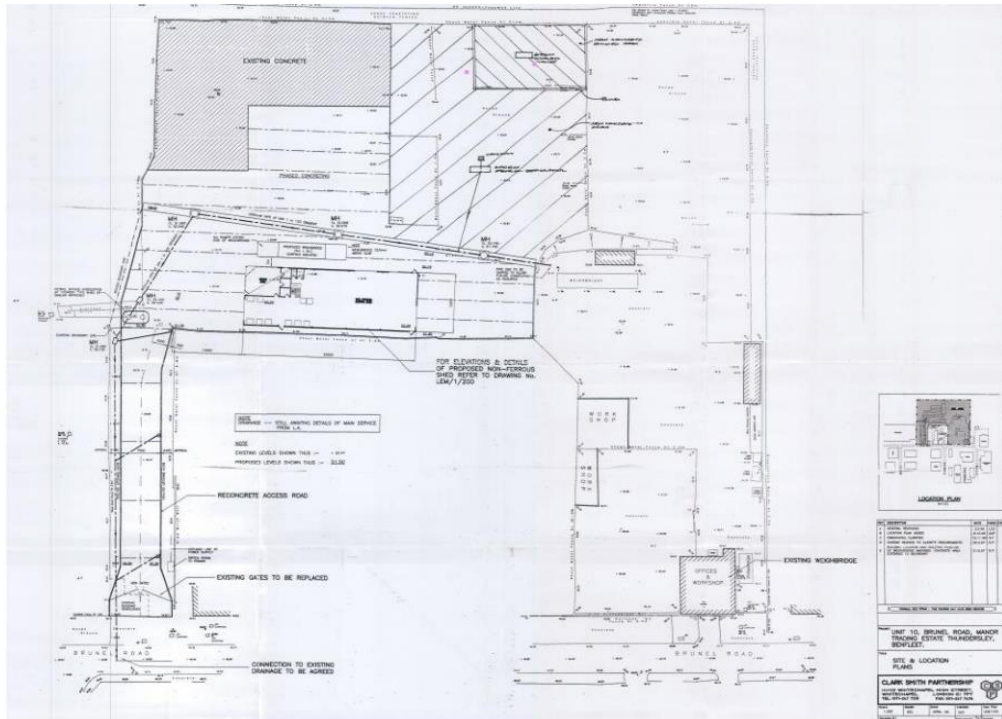
***‘(b) the development under Class L (together with any previous development under Class L) would result in the area occupied by buildings, plant or machinery on the site exceeding the original area occupied by buildings, plant or machinery by more than -***

***(i) 50%; or***

***(ii) 100 square metres, whichever is the lesser;’***

The 'original' area occupied by buildings, plant or machinery would usually be established by looking back at the original planning permission.

Planning permission ref CPT/16/02/FUL does not reference a list of approved plans within the conditions attached to it. However, there is a site layout plan attached to the public record on Castle Point Council's website, as below:



The statement in support of that application stated:

*'The planning application includes no new development; the yard and offices would be used in their existing state.'*

The office building referred to is still on site and has a floor space of 414.54m<sup>2</sup>. It is stated that it has not been altered or extended since this permission was granted. The 'original' area occupied by buildings, plant or machinery would therefore be considered to be in excess of 500m<sup>2</sup>.

The development under Class L (together with any previous development under Class L) is therefore subject to a limitation of 100m<sup>2</sup>, it being the lesser provision.

As stated, the proposed replacement plant has a floor space of 50.76m<sup>2</sup>. This

would leave an area limit of 49.24m<sup>2</sup> for any previous development under Class L.

In this respect, it is noted that a further building was erected in the south-west of the site, but that this has now been demolished and can be disregarded.

It is further noted that, as raised by Castle Point Borough Council, an additional 'structure' has been constructed/placed to the south of the main building. The 'structure' is not shown on the site layout plan accompanying permission ref CPT/16/02/FUL and no consent has been identified for it.

Aerial photos show the structure was not in place in 2014 but was in place in 2018. The applicant has confirmed that it was put there by the current operator due to security concerns.

The size is stated by the applicant to be approximately 6x10m (60m<sup>2</sup>). It is stated to be a 'container' used for copper storage, approximately 3.6m in height. It has a removable 'lid'.

For development to be considered previous development under Class L, it would need to be classed as '*the extension or alteration of a building*' or '*the installation of replacement plant or machinery.*'

In this respect, the 'container' is not considered to be replacement plant or machinery. The applicant has stated that it is also not a building.

Case law exists where inspectors have come to differing conclusions over whether a container is a building. For the purposes of this decision, it is not considered necessary to reach a conclusion on this point. It would only be necessary to consider whether there has been the extension or alteration of a building, as this would be the only allowable previous development under Part L.

In this respect, the 'container' is not attached to the existing main building and is not considered to be an extension or alteration of it.

On the evidence provided, it is therefore considered that the development under Class L (together with any previous development under Class L) would not result in the area occupied by buildings, plant or machinery on the site exceeding the original area occupied by buildings, plant or machinery by more than 100m<sup>2</sup>.



***‘(c)the height of any building as extended or altered would exceed -***

***(i)if within 10 metres of a boundary of the curtilage of the site, 5 metres; or***

***(ii)in all other cases, the height of the building being extended or altered or 15 metres, whichever is the lower;’***

This section is not applicable as it relates to buildings.

***‘(d)the height of any replacement plant or machinery would exceed -***

***(i)if within 10 metres of a boundary of the curtilage of the site, 5 metres; or***

***(ii)in all other cases, 15 metres;’***

The replacement plant would be located over 10m from the boundary. The height is stated to be a maximum of 5.3m.

This element of Class L has been complied with.

***‘(e)any part of the development would be within 5 metres of any boundary of the curtilage of the site;’***

No part of the proposed plant would be located within 5m of the boundary.

This element of Class L has been complied with.

***‘(f)the development would lead to a reduction in the space available for the parking or turning of vehicles;’***

The development would not lead to any reduction in space available for parking or turning of vehicles.

This element of Class L has been complied with.

***‘(g)the development would be -***

***(i)on article 2(3) land; or***

***(ii)in a site of special scientific interest;***

***(h)the building is a listed building or is within the curtilage of a listed building; or***

***(i)the site is, or contains, a scheduled monument.'***

None of the above is applicable to the proposed development.

This element of Class L has been complied with.

It is therefore considered that the proposed development would not conflict with the limitations imposed by Part 7, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

## **6. CONCLUSION**

It is therefore considered that the proposed development would constitute 'replacement plant', which would qualify as permitted development by virtue of Part 7, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

It is considered that, on the evidence provided, should the proposed development have commenced on the application date, it would have been lawful for planning purposes.

## **7. RECOMMENDATION**

That a Lawful Development Certificate for the proposed development (the installation of replacement plant for aluminium recycling consisting of a super chopper and rasper with linking conveyors) be issued as below:

Essex County Council hereby certifies that on the 22<sup>nd</sup> June 2022, the development described in the First Schedule of this Certificate proposed on the land specified in the Second Schedule and edged red on the plan ref 7854-01 Rev A titled Location Plan dated Jan 22, attached to this Certificate, is lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

1. The proposed development is considered to be permitted development by virtue of Part 7, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). A specific grant of planning permission is therefore not required.

### **First Schedule**

Installation of replacement plant for aluminium recycling consisting of a super chopper, a multi-purpose rasper, an overband magnet to remove ferrous material from the aluminium, a tumble back feeder to ensure continuous flow

into the multi purpose rasper, linking conveyors, and separators (eddy current and x-ray), as described in the planning application form dated 24<sup>th</sup> May 2022, accompanying planning statement by SJK Planning dated June 2022 and 'Appendix 1', together with Drawing refs:

7854-01 Rev A – Location Plan – dated Jan 22;  
7854-02A – Block Plan – dated June 22;  
2854-03 – Plan as proposed – dated Feb 22.

For the avoidance of doubt, the transformer and switchgear area do not form part of this certificate.

### **Second Schedule**

Benfleet Scrap Co Ltd, Brunel Road, Manor Trading Estate, Benfleet, Essex, SS7 4PS as outlined in red on drawing ref 7854-01 Rev A titled Location Plan dated Jan 22.

### **DECISION**

**By virtue of the powers delegated to me I hereby accept and approve the above recommendations**

Signed by:   X  

03/08/2022

  X   

Signed by: Richard Greaves  
for Chief Planning Officer (County Planning and Major Development)