



REGULATORY SERVICES COMMITTEE

20 August 2015

REPORT

Subject Heading:

P0384.15: Creek Way, Rainham

Construction of new Data Centre.
Received 23 March 2015

Ward

South Hornchurch

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Policy context:

Local Development Framework
The London Plan
National Planning Policy Framework

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for	[x]
People will be safe, in their homes and in the community	[x]
Residents will be proud to live in Havering	[x]

SUMMARY

The application seeks outline permission for the erection of a new Data Centre in an industrial area of the Borough. Permission for the development was previously refused because the site is in an area which is at risk of flooding and insufficient information had been provided with regard to flood management. The new application addresses these issues to the satisfaction of the Environment Agency and the Council's Flood and Water Management Engineer.

On balance the proposal is considered to be acceptable and it is recommended that planning permission is granted subject to conditions and the applicant entering into a Section 106 Agreement.

RECOMMENDATIONS

That the Committee notes that the development proposed is liable for the Mayor's Community Infrastructure Levy (CIL) in accordance with London Plan Policy 8.3 and that the applicable fee would be £150,000, subject to indexation. This is based on the creation of 7,500 square metres of new gross internal floor space (7,500 x £20 = £150,000).

That the proposal is unacceptable as it stands but would be acceptable subject to the applicant entering into a Section 106 Legal Agreement under the Town and Country Planning Act 1990 (as amended), to secure the following:

- A public right of way along the riverside path through the east part of the site and which is shown on drawing 2477/23.
- To pay the Council's reasonable legal costs in association with the preparation of a legal agreement, prior to completion of the agreement, irrespective of whether the legal agreement is completed.
- Payment of the appropriate planning obligations/ monitoring fee prior to completion of the agreement.

That the Head of Regulatory Services be authorised to enter into a legal agreement to secure the above and upon completion of that agreement that the Committee delegate authority to the Head of Regulatory Services to grant planning permission subject to the conditions set out below:

1. Reserved Matters

The development hereby permitted may only be carried out in accordance with detailed plans and particulars which shall previously have been submitted to and

approved by the Local Planning Authority, showing the appearance of the buildings and the landscaping (herein after called "the reserved matters").

Reason: The particulars submitted are insufficient for consideration of the details mentioned and the application is expressed to be for outline permission only.

2. Reserved Matters Applications

Application/s for approval of the reserved matters shall be submitted to the Local Planning Authority within three years from the date of this permission.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004)

3. Time Limit

The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matter to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

4. In Accordance with Plans

The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans detailed on page 1 of the decision notice approved by the Local Planning Authority.

Reason: The Local Planning Authority consider it essential that the whole of the development is carried out and that no departure whatsoever is made from the details approved, since the development would not necessarily be acceptable if partly carried out or carried out differently in any degree from the details submitted. Also, in order that the development accords with Development Control Policies Development Plan Document Policy DC61.

5. Construction Logistics Plan

No development shall take place until a Construction Logistics Plan has been submitted to and approved in writing by the Local Planning Authority. The scheme shall consider the cumulative impacts of construction traffic for the area in terms of likely additional trips and mitigation required. Heavy Goods movements should be optimised to avoid the AM and PM peak hours where possible in order to reduce highway impact on the Transport for London Road Network and in the vicinity of the site. The approved scheme shall be implemented and retained for the life of the development.

Reason: In the interests of highway safety and amenity. The Plan Construction Logistics is required to be approved prior to commencement to ensure that there is minimal impact on the road network from the commencement of development.

6 Car Parking

Before the building(s) hereby permitted is first occupied the area set aside for car parking shall be laid out and surfaced to the satisfaction of the Local Planning Authority and retained permanently thereafter for the accommodation of vehicles visiting the site and shall not be used for any other purpose.

Reason: To ensure that car parking accommodation is made permanently available to the standards adopted by the Local Planning Authority in the interest of highway safety, and that the development accords with the Development Control Policies Development Plan Document Policy DC33.

7. Electric Vehicle Charging Points

No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority detailing the provision and use of electric vehicle charging points to the 25 parking spaces. The approved scheme shall be implemented prior to the occupation of the Data Centre and shall apply to at least 20% of parking spaces with a further 10% of spaces having passive provision.

Reason: In the interests of sustainable development and in accordance with Policy 5.2 of the London Plan. The scheme must be submitted prior to commencement of development to ensure that it can be implemented as a part of the approved scheme.

8. Archaeology

a) No development other than demolition to existing ground level shall take place until the applicant (or their heirs and successors in title) has secured the implementation of a programme of archaeological evaluation in accordance with a written scheme which has been submitted by the applicant and approved by the local planning authority in writing and a report on that evaluation has been submitted to the local planning authority.

b) If heritage assets of archaeological interest are identified by the evaluation under Part A, then before development, other than demolition to existing ground level, commences the applicant (or their heirs and successors in title) shall secure the implementation of a programme of archaeological investigation in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the local planning authority in writing.

c) No development or demolition shall take place other than in accordance with the Written Scheme of Investigation approved under Part (B).

d) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part (B), and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

Reason: Heritage assets of archaeological interest may survive on the site. The planning authority wishes to secure the provision of appropriate archaeological investigation, including the publication of results, in accordance with Section 12 of the NPPF. The programme must be implemented prior to development to avoid the disturbance of archaeological remains.

9. Drainage

Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

Reason: The development may lead to sewage flooding; submission of a strategy prior to commencement will ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community.

10. Contaminated Land 1

No works shall take place in relation to any of the development hereby approved (except works required to secure compliance with this condition) until the following Contaminated Land reports (as applicable) are submitted to and approved in writing by the Local Planning Authority:

a) A Phase I (Desktop Study) Report documenting the history of this site, its surrounding area and the likelihood of contaminant/s, their type and extent incorporating a Site Conceptual Model.

b) A Phase II (Site Investigation) Report if the Phase I Report confirms the possibility of a significant risk to any sensitive receptors. This is an intrusive site investigation including factors such as chemical testing, quantitative risk assessment and a description of the site ground conditions. An updated Site Conceptual Model should be included showing all the potential pollutant linkages and an assessment of risk to identified receptors.

c) A Phase III (Risk Management Strategy) Report if the Phase II Report confirms the presence of a significant pollutant linkage requiring remediation. A detailed Remediation Scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to all receptors must be prepared, and is subject to the approval of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works, site management procedures and procedure for dealing with

any previously unidentified contamination. The scheme must ensure that the site does not qualify as contaminated land under Part 2 of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

d) Following completion of the measures identified in the approved remediation scheme mentioned in 1(c) above a "Verification Report" that demonstrates the effectiveness of the remediation carried out, any requirement for longer-term monitoring of contaminant linkages, maintenance and arrangements for contingency action must be produced and is subject to the approval in writing of the Local Planning Authority.

Reason: Insufficient information has been supplied with the application to judge the risk arising from contamination. Submission of an assessment prior to commencement will ensure the safety of the occupants of the development hereby permitted and the public generally. It will also ensure that the development accords with Development Control Policies Development Plan Document Policies DC54 and DC61.

11. Contaminated Land 2

a) If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed by the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unexpected contaminant shall be dealt with has been submitted to and approved by the Local Planning Authority. The remediation strategy shall be implemented as approved.

b) Following completion of the remediation works mentioned in (a) above, a 'Verification Report' must be submitted demonstrating that the works have been carried out satisfactorily and remediation targets have been achieved.

Reason: To ensure that any previously unidentified contamination found at the site is investigated and satisfactorily addressed in order to protect those engaged in construction and occupation of the development from potential contamination.

12. Contaminated Land – Landfill Gas

Prior to the commencement of any works shall take place in relation to any of the development hereby approved (except works required to secure compliance with this condition)

a) A Site Investigation shall be undertaken to assess the level and extent of any landfill gas present, together with an assessment of associated risks. The investigation shall be in accordance with a scheme submitted to, and approved in writing by the Local Planning Authority.

b) If during development works any contamination should be encountered which was not previously identified in the Site Investigation then works should halt immediately and the Local Planning Authority consulted to agree appropriate further action.

Reason: The site is situated on or within 250 metres of a current or historic landfill site or gravel pit. Insufficient information has been supplied with the application to judge the risk arising from landfill gas. Submission of an assessment prior to commencement will ensure the safety of those developing the site, the occupants of the development hereby permitted and the public generally. It will also ensure that the development accords with Development Control Policies Development Plan Document Policies DC54 and DC61.

13. Flood Risk

The development shall be built in compliance with the approved Flood Risk Assessment dated June 2015 by Herrington Consulting.

Reason: To prevent the risk of flooding and to ensure that the development accords with the Development Control Policies Development Plan Document policies DC49 and DC61.

14. Energy

The development should be built in compliance with the approved Energy Strategy dated January 2015 by Pemqx.

Reason: To reduce the energy demands of the development and to ensure that the development accords with the Development Control Policies Development Plan Document policy DC49 and Policy 5.2 of the London Plan.

15 Boundary Treatment

Prior to the commencement of the development hereby approved, details of all proposed walls, fences and boundary treatment shall be submitted to, and approved in writing by, the Local Planning Authority. The boundary development shall then be carried out in accordance with the approved details and retained permanently thereafter to the satisfaction of the Local Planning Authority.

Reason: Insufficient information has been supplied with the application to judge the appropriateness of any boundary treatment. Submission of this detail prior to commencement will protect the visual amenities of the development, prevent undue overlooking of adjoining property and ensure that the development accords with the Development Control Policies Development Plan Document Policy DC61.

16. Cycle Storage

The development shall not be occupied until cycle storage arrangements which have been previously submitted to and approved in writing by the Local Planning Authority have been provided. The approved facilities shall be retained for the life of the development.

Reason: In the interests of encouraging sustainable transportation measures and in accordance with Policy DC35 of the Development Control Policies Development Plan Document.

17. Cyclist Changing Facilities

The development shall not be occupied until showering and changing facilities for cyclists have been provided, details of these shall have been previously submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be retained for the life of the development.

Reason: In the interests of encouraging sustainable transportation measures and in accordance with Policy DC35 of the Development Control Policies Development Plan Document.

18. Ecology

The proposed development shall be undertaken in accordance with the recommendations set out in Section 5 of the submitted ecological appraisal dated January 2015.

Reason: To protect the Site of Nature Conservation Importance

INFORMATIVES

1. Should the development be used to store critical infrastructure data, it is recommended that the applicant seek the advice of the Metropolitan Police Counter Terrorism Security Advisors (CTSAs) who can be contacted via the Metropolitan Police Designing Out Crime Officers (DOCOs). The DOCOs can be contacted via docomailbox.ne@met.police.uk or 0208 217 3813.
2. Written schemes of investigation will need to be prepared and implemented by a suitably qualified archaeological practice in accordance with English Heritage Greater London Archaeology guidelines. They must be approved by the planning authority before any on-site development related activity occurs.
3. Discharge fee - A fee is required when submitting details pursuant to the discharge of conditions. In order to comply with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, which came into force from 22.11.2012, a fee of £97 per request or £28 where the related permission was for extending or altering a dwellinghouse, is needed.
4. Statement Required by Article 35 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015: No significant problems were identified during the consideration of the application, and therefore it has been determined in accordance with paragraphs 186-187 of the National Planning Policy Framework 2012.

5. The planning obligations recommended in this report have been subject to the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the obligations are considered to have satisfied the following criteria:-
- (a) Necessary to make the development acceptable in planning terms;
 - (b) Directly related to the development; and
 - (c) Fairly and reasonably related in scale and kind to the development.

REPORT DETAIL

1. Site Description

- 1.1 The application site is a triangular shaped area of land located approximately 1 km to the southwest of Rainham village. It is accessed via Creek Way, which runs east from the corner where Marsh Way turns south into the Fairview Industrial Park. The site has an area of approximately 1.13 hectares area and comprises an enclosed area of open grassland.
- 1.2 The site is located within an established industrial area. Its western boundary runs alongside Creek Way, which is an unadopted highway providing access to waste management facilities at Frog Island on the north bank of the River Thames. The south eastern boundary of the site runs alongside Rainham Creek, whilst the north east boundary adjoins the A13.
- 1.3 The site is located on land designated as a Strategic Industrial Location and within Flood Zone 3a. The site is also designated as a Metropolitan Site of Nature Conservation Importance.

2. Description of Proposal

- 2.1 This planning application seeks outline planning consent (access, layout, and scale, with appearance and landscaping reserved) for the erection of a data centre. The data centre would comprise a two storey building, with a footprint of 3660sqm, and a maximum height of approximately 14.5m. The submitted information indicates that the building would have a curved roof.
- 2.2 The building would be accompanied by an 850sqm external plant area at its northern side, along with a yard. The plant area would be screened by metal sheeting measuring approximately 12m in height.
- 2.3 The proposal also includes a security hut measuring 37sqm in area, and around 4m in height, along with vehicle parking, manoeuvring areas, and perimeter boundary fencing.

3. History

- 3.1 P1517.14 Construction of new Data Centre. Permission was refused on 3/2/15 because insufficient information had been submitted to demonstrate that the proposal would not cause significant harm in terms of flood risk and drainage arrangements.

4. Consultation/Representations

- 4.1 This application was advertised by site notice and in the local press. Notification letters were sent to 22 neighbouring addresses. No representations have been received as a result of this consultation.

London Fire Brigade Water Team – No objection.

Metropolitan Police – Requested an informative relating to critical infrastructure data.

Greater London Archaeological Advisory Service – No objection, requested a condition relating to a programme of archaeological investigation.

Highways England – No objection.

Natural England – No objection.

Environment Agency - No objection, have commented that the development should be built in accordance with the approved Flood Risk Assessment dated June 2015.

Essex and Suffolk Water – No objection.

Thames Water - No objection, requested a condition relating to drainage to the public sewer.

Transport for London - No objection, requested conditions relating to electric vehicle charging points, the provision of a Construction Logistics Plan and cyclist changing facilities.

Environmental Health (Noise) – No objection, requested conditions relating to hours of construction work and external noise. Note: as the proposal is for a data centre within an industrial estate and some 1.5 kilometres from the nearest dwelling it was considered that these conditions are unnecessary and they have not been included.

Environmental Health (Contaminated Land) – No objection, requested conditions relating to contaminated land and landfill gas.

Flood and Water Management Engineer – No objection.

Highway Authority - No objection.

Regeneration – Would like to explore the possibility of developing a walking and cycling route from Rainham Village alongside the Creek to this area. The route would be on land the developer would normally be asked to keep clear for river access/maintenance.

5. Relevant Policy

Core Strategy and Development Control Policies Development Plan Document ("The LDF"):

DC9 (Strategic Industrial Locations)
DC32 (The Road Network)
DC48 (Flood Risk)
DC53 (Contaminated Land)
DC55 (Noise)
DC58 (Metropolitan Site of Nature Conservation Importance)
DC59 (Biodiversity in New Developments)
DC61 (Urban Design)
DC72 (Planning Obligations)

London Plan

Policy 5.12 Flood Risk Management
Policy 5.13 Sustainable Drainage
Policy 5.21 Contaminated Land
Policy 6.9 Cycling
Policy 6.10 Walking
Policy 6.13 Parking

National Planning Policy Framework ("the NPPF")

6. Staff Comments

6.1 The main issues to be considered by in this case are the principle of development, visual impact, amenity and access considerations.

7. Principle of Development

7.1 The site is located on land designated in the LDF as a Strategic Industrial Location. Policy DC9 states that within such areas B1, B2, and B8 uses will be granted planning permission. The proposal is considered to be akin to a B8 use and is therefore considered to be acceptable in principle.

8. Design/Impact on Street/Garden Scene

- 8.1 Policy DC61 states that planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the local area.
- 8.2 The site is in an inconspicuous location, off the public highway, and at a lower level than the adjoining A13 and neighbouring Fairview Industrial Estate. The site is located approximately 3m lower than the A13 and several metres lower than the industrial estate. The appearance and landscaping of the proposal are to be considered as reserved matters, and approval is sought for the scale and layout. With the exception of the proposed data storage building and adjoining external plant area, the proposal would not be visible from any public highway and would be well screened from the surrounding area. The site would be visible from Creek Way and from some of the elevated premises forming part of the neighbouring industrial estate. The proposed storage building and external plant building, owing to their significant heights, would be visible from the A13, with the proposed building exceeding the level of the A13 by over 10m. Nevertheless, the general form and scale of the proposal would not be out of place in what is a Strategic Industrial Location, and it is considered that an acceptable appearance could be achieved for the location.
- 8.3 Given the nature of the proposal, including its siting, scale, and indicative appearance, it is considered that it would be in accordance with Policy DC61 of the LDF.

9. Impact on Amenity

- 9.1 Policy DC61 states that planning permission will not be granted for proposals that would significantly diminish local and residential amenity.
- 9.2 The site is not located in close proximity to any residential properties or similarly sensitive land uses. Given the background noise already generated by the A13, and given the proposal's siting within an industrial area and the nature of the use it is considered that the proposal would not result in any significant adverse impacts in terms of noise and odour, or in any other respect, on local or residential amenity.

10. Highway/Parking

- 10.1 Policy DC32 of the LDF states that new development which has an adverse impact on the functioning of the road hierarchy will not be allowed.
- 10.2 The proposed development would not give rise to a significant number of vehicle movements during its operation, and the site is in any case served by roads designed for heavy goods vehicles. The site would be accessed via roads serving the neighbouring waste management facility. The Council's highways officers have raised no objections to the proposal.

- 10.3 Transport for London were consulted about the proposal with no objections being received subject to the submission of a Construction Logistics Plan and details relating to the installation of electric vehicle charging points. Both conditions should be employed, along with a further condition requiring the approval of bicycle storage facilities, and measures, such as a shower, to encourage cycling amongst the facility's staff.
- 10.4 The Council's Regeneration Officers have requested that land be set aside within the site to allow for the creation of a pedestrian access route between Ferry Lane and Rainham, running alongside Rainham Creek and passing beneath the A13. A pedestrian link could be achieved and, with appropriate fencing to separate it from the site, need not be harmful to the facility's security.
- 10.5 In terms of its impact on highway safety and amenity, and having regard to access considerations generally, it is considered that the proposed development would be acceptable and in accordance with Policy DC32 of the LDF.

11. Flood Risk

- 11.1 Thames Water have raised no objections to the proposal subject to the use of a condition requiring the approval of drainage works. It is recommended that this condition be employed should planning permission be granted.
- 11.2 The submitted Flood Risk Assessment (FRA) concludes that the site is located within Flood Zone 3a, and not within the floodplain (Flood Zone 3b). The Environment Agency has not objected to this conclusion. Policy DC48 of the LDF stipulates various requirements relating to major development proposed in Flood Zone 1, and any other development located in Flood Zones 2 and 3.
- 11.3 In terms of the Sequential Test, the proposal is for "less vulnerable" development as defined by national planning guidance, and this is considered to be compatible with the site's location within Flood Zone 3a.
- 11.4 Mitigation proposed to reduce flooding involves the use of cellular storage crates. The Environment Agency is satisfied with the proposal subject to its being built in compliance with the approved Flood Risk Assessment and a condition is proposed to ensure that this occurs.

12. Contamination

- 12.1 The Council's Environmental Health Officers have raised no objections to the proposal subject to the use of a condition, which can be imposed should planning consent be granted.

13. Noise

13.1 The Council's Environmental Health Officers have requested the use of conditions controlling the hours of construction works and the noise emitted by the proposed plant. The conditions are not considered to be necessary given the temporary nature of the construction works, the end use and the site's location away from sensitive land uses.

14. Archaeology

14.1 English Heritage have raised no objections to the proposal subject to the use of a condition which can be employed should consent be granted.

15. Ecology

15.1 The site is designated as a Metropolitan Site of Nature Conservation Importance, and located approximately 200m away from the Rainham Marshes SSSI. Policy DC58 of the LDF states that the biodiversity and geodiversity of sites of this nature will be protected and enhanced. The application is accompanied by an ecological survey, which demonstrates that the proposal would not result in significant harm to protected species. Natural England has assessed the proposal and offered no objections.

16. Infrastructure

16.1 The proposal involves a pathway alongside Rainham Creek. The Council is in the process of developing a walking and cycling route from Rainham Village alongside the Creek to this area. The path alongside the Creek included as a part of this development would form a part of this link and a S106 agreement will be necessary in order to secure access to this path for the public.

17. Mayoral Community Infrastructure Levy (CIL)

17.1 The proposal would involve the creation of 7,500 square metres of floorspace. The Mayoral CIL contribution is calculated as £20 x 7,500 = £150,000.

18. Conclusion

18.1 The proposal is considered to be acceptable having had regard to Policies DC9, DC32, DC48, DC53, DC55, DC58, DC61, and DC72 of the LDF and all other material considerations.



IMPLICATIONS AND RISKS

Financial Implications and risks: None

Legal Implications and risks: Legal resources will be required to prepare and complete the legal agreement.

Human Resource Implications: None

Equalities and Social Inclusion Implications: The Council's planning policies are implemented with regard to equality and diversity.

BACKGROUND PAPERS

1. Application and supporting details and plans received on 23-03-2015