

PLANNING APPLICATION NUMBER: P22/1180

Location: PEGASUS GRAB HIRE, BOTT LANE, LYE, STOURBRIDGE, DY9 7AW	
Proposal: SECTION 73 APPLICATION FOR THE VARIATION OF CONDITION 5 (TO AMEND THE HOURS OF OPERATION UP TO 1730 ON SATURDAYS) AND VARIATION OF CONDITION 6 (TO AMEND AGGREGATE PROCESSING HOURS TO BETWEEN 0630 AND 1800 MONDAY TO FRIDAY, AND BETWEEN 0700 AND 1730 SATURDAYS) OF PLANNING PERMISSION P20/1801 AND AN ADDITIONAL CONDITION IN RELATION TO THE MANAGEMENT OF DUST AND DIRT ON THE PUBLIC HIGHWAY.	
Type of approval sought	Full Planning Permission
Ward	Lye and Stourbridge North Ward
Case officer	Richard Stevenson, 01384 814161

Recommendation: **APPROVE SUBJECT TO CONDITIONS**

SITE AND SURROUNDINGS

1. The application site consists of the western and part of the northern areas of the former Helix stationery factory site. Since 2018, when an initial temporary approval was granted, this site has been used as an aggregate recycling facility. Associated with use are onsite buildings, structures and plant including portacabins, a weigh bridge and a substantial aggregate screener. There are also areas of aggregate storage, mostly to the western end of the site. Access to the site is presently from Bott Lane.
2. To the north of the application site is Bott Lane, which also provides access to the Vanguard Foundry, a vacant storage site and six small industrial units. Bott Lane, for part of its alignment beyond the application site is a public footpath rather than a road, which runs towards Timmis Road.
3. To the south-west of the site is a large electricity transformer station, with the Worcester-Birmingham railway line running along the southern boundary of the application site in a cutting.

4. Beyond the eastern boundary of the application site is the remaining open area of the former cleared Helix site fronting Engine Lane that has planning permission for open storage. On the opposite side of Engine Lane are a number of premises in residential use and some remaining industrial uses which face toward the application site. Two waste transfer operations are also located to the north of Engine Lane before the junction with Bott Lane.
5. Some 140 metres to the north of the application site is an allocated housing site located within the Stour Valley where there is a current planning application for residential development of 132 houses.

PROPOSAL

6. This planning application seeks through Section 73 of the Town and Country Planning Act 1990 (as amended) to vary condition 5 of planning approval P20/1801, to allow delivery and dispatch vehicles to operate at the site up to 1730hrs on Saturdays, rather than the current 1400hrs. The applicant is not seeking to vary the weekday hours or to seek for delivery or dispatch on Sundays or Public Holidays.
7. The applicant is also seeking to vary condition 6 of planning permission P20/1801 to allow for extended hours of aggregate processing activities, currently from 0800hrs to 1700hrs Monday to Friday, to be 0630hrs to 1800hrs. For Saturdays when processing activities are permitted from 0800hrs to 1300hrs, permission is sought to vary activities from 0700hrs to 1730hrs. The applicant is not seeking to operate on Sundays or Public Holidays.
8. The application was supported by an initial noise assessment which has been updated by further monitoring, following comments from the Head of Environmental Health and Trading Standards.

HISTORY

APPLICATION No.	PROPOSAL	DECISION	DATE
P14/1604	Prior approval under Part 31 for demolition of former Helix Site	Granted	03-Dec-2014

P16/1337	Installation of a Short-Term Operating Reserve (STOR) to include fuel stores, generators, switchgear container, cabinets and 4.5m acoustic fencing	Withdrawn	28-Oct-2016
P18/0218	Change of Use of the land to allow for the recycling of aggregate material. Provision of a portacabin, parking and a 3m high earth bund	Granted (Temp until Aug 2021)	30-May-2018
P20/1801	The continued use of land as an aggregate sorting and recycling facility and the installation of new aggregate washing facility (Retrospective)	Granted (Temp until 1 September 2026)	19 th Aug 2021

- 9 P18/0218 was granted for a temporary period of three years, due to the then planning policy aspiration to redevelop the wider area for housing (being closely associated with the allocated Caledonia housing site and close proximity to a sustainable transport node at Lye railway station). The temporary permission was to enable the applicant to continue to operate and have time to find a permanent site, before planning policies for future housing in the area were progressed. It should be noted that the applicant had to relocate to this site from a nearby site to the north of Bott Lane. The site previously occupied by the applicant to the north of Bott Lane, did not have the benefit of planning permission and was the subject of enforcement action, due to adverse impacts upon the Stour Valley, and the future development of the allocated Caledonia housing site. The enforcement action was the subject of an appeal to the Planning Inspectorate, which was dismissed for the above reasons. The Local Planning Authority, thereafter, assisted the applicant to occupy the current site for an appropriate temporary period.
- 10 P20/1801 was an application which sought to continue the use the current site for the recycling of aggregate material, together with installation of new aggregate washing facility (retrospective). It was recommended to allow a further extension of three years, however, this was extended to five years at the consideration of the Development Control Committee. The permission was subject to a number of planning conditions, including condition 5 which prevented vehicular deliveries or despatches to or from the site,

(whether laden or unladen), before the hours of 06.30 nor after 18.00 Monday to Friday; before the hours of 07.00 nor after 14.00 on Saturdays and not at all on Sundays and Public Holidays. Additionally, condition 6, limited aggregate processing activities from 08.00hrs to 17.00hrs Monday to Friday and 08.00hrs to 13.00hrs on Saturdays, with no operations allowed on Sundays and Public Holidays.

PUBLIC CONSULTATION

- 11 24 letters of objection were received, following consultation with **xx?** adjoining neighbours, the posting of a site notice and the publication of an advert within a local newspaper. Main issues raised:
- Already operate outside of agreed hours, including Sunday and Bank Holidays
 - Concerned they will not obey any conditions
 - Have to keep windows close due to noise.
 - Noise from reversing beepers
 - Unable to enjoy garden.
 - Vehicles regularly travel along Caledonia which attracts a 7.5 tonnes weight limit
 - Noise travels 300m
 - Dust on roads
 - Noise testing carried out in wrong locations
 - Will increase noise

OTHER CONSULTATION

- 12 Head of Planning (Highway Engineer): No objection. However, concerns raised regarding of detritus on the adjacent highway network.
- 13 Head of Environmental Health and Trading Standards: Recommends the requested additional operating hours are extended for a 12-month period to allow for the monitoring in relation to residential amenity.
- 14 Environment Agency: No comments received.

RELEVANT PLANNING POLICY

- National Planning Guidance

National Planning Policy Framework (2023)

Technical Guidance to the National Planning Policy Framework (2012)

Planning Practice Guidance (2014)

National Planning Policy for Waste (2014)

- Black Country Core Strategy (2011)

CSP1 The Growth Network

CSP3 Environmental Infrastructure

CSP4 Place Making

DEL2 Managing the Balance Between Employment Land and Housing

RC13 Regeneration Corridor

TRAN2 Managing Transport Impacts of New Development

ENV 2 Historic Character and Local Distinctiveness

ENV 3 Design Quality

ENV 8 Air Quality

WM1 Sustainable Waste and Resource Management

WM2 Protecting and Enhancing Existing Waste Management Capacity

WM4 Locational Considerations for New Waste Management Facilities

MIN2 Production of Aggregate Minerals

- Dudley Borough Development Strategy (2017)

S1 Presumption in favour of Sustainable Development

S4 Flood Risk

S5 Minimising Flood Risk and Sustainable Drainage Systems (SuDS)

S6 Urban Design

S13 Areas of High Historic Landscape Value (AHHLV)

S17 Access & Impact of Development on the Transport Network

S27 River Stour and its Tributaries

L8 Protecting the Viability and Integrity of Industrial and
Business Uses

D2 Incompatible Land Uses

D3 Contaminated Land

D5 Noise Pollution

- Supplementary Planning Guidance/Documents

Parking Standards Supplementary Planning Document (2017)

ASSESSMENT

- 15 Pegasus Grab Hire Ltd recycle excavated material by crushing, screening and blending to produce aggregate for construction and highways maintenance schemes. The company moved onto a site in Bott Lane site in 2016, however they were subject to enforcement action by the Local Planning authority which led to them having to relocate to the current site (the former Helix Site) in early 2018; the latter was the subject of Planning Consent P18/1218, which permitted temporary permission of the use of the site until 1 August 2021 and was subject to a suite of conditions designed to address potential noise and dust issues, including restricted hours of operation.
- 16 A subsequent planning application, P20/1801 sought to obtain a permanent permission for the continued occupation of the site but significantly, that proposal included a change to the mode of operation for a wet, aggregates processing system, which would see the installation of a significantly engineered item of plant that could wash and screen the incoming material in such a manner that almost all of the solid material could be recycled. From an environmental perspective, the wet processing method precludes many of the dust emission risks presented by the former traditional methods, including that the processed material remains damp throughout the process. The planning application was supported by a Noise Impact Report which demonstrated that this would be quieter operation than the previous, traditional methods that had been employed. Notwithstanding the claimed reduction in noise, the subsequent planning consent permitted a further temporary consent until September 2026 and the conditions relating to noise and dust controls were retained.
- 17 The recycling operation is regulated by the Environment Agency through operating conditions contained in a bespoke Environmental Permit. The investigation and enforcement of issues around noise and dust are primarily the remit of the Environment Agency, albeit that they cannot determine hours of operation, hence the current restrictions on hours of operation remain the sole remit of local authority development control, for the sake of amenity protection. Any alleged transgression of the same is a

matter for the local authority. Noise during permitted hours of work is regulated by the Environment Agency.

- 18 A number of objections have been submitted, citing noise and dust issues and stating that the Operator is not complying with extant hours restrictions. Indeed, complaints have been received from time to time, however, Environmental Safety and Health have been unable to verify such complaints as being directly attributable to the subject site. Such investigations with regard to noise, sometimes in co-operation with the Environment Agency, have been particularly complicated due to the presence of many other industrial / commercial noise sources in the Stour Valley and generally not having a clear line of sight to noise sources from affected dwellings. Historically, a number of such complaints have later been attributed to other noise sources
- 19 The current section 73 application seeks variation of conditions 5 and 6 of the extant consent such that the hours of operation of the aggregate plant mirror those of the deliveries and despatches times prescribed in condition 5, with the addition of all activities until 17.30 on Saturdays. The original Noise Impact Assessment (NIA) that accompanied the application, dated 4th August 2022, indicated that the proposed increase in processing activities would generally have little impact upon the amenity of residents further from the site, but would increase noise during the evening in Engine Lane between 17.00 to 18.00. One major omission from this original NIA was that no assessment of existing noise on Saturdays had been accounted for. As a consequence of reviewing this NIA, Environmental Health staff undertook a series of noise measurements on Engine Lane, Bisell Way and on the former Pegasus site off Bott Lane, which led to a critical appraisal of the NIA and the request that further noise assessments, especially with regard to the proposed Saturday afternoon hours, be undertaken.
- 20 A subsequent NIA was submitted (dated 12th April 2023) and was supplemented by further information in a communication from the applicant's noise consultants dated 12th May 2023. The revised NIA reported on noise measurements undertaken over a weekend and demonstrated how the residual and background noise levels had been ascertained when the site was shut down for maintenance at 13.00 hours on Saturday 25th March. The NIA reports that when the aggregate processing plant was shut down, the dominant audible noise remaining and affecting receivers at Engine Lane was that of the waste shredder on the adjacent Pegasus Skip Hire site. Indeed, this correlates

with the observations made during measurements undertaken by DMBC Officers at the (former Pegasus) Bott Lane site, where the residual and background noise was elevated by the noise from the shredder (by around 5 – 6 dBA) appearing prior to the subject noise of the aggregate plant. It is unclear how regular the noise from the shredder occurs, but this will impact upon the noise assessment calculations.

- 21 It is noted that the NIA reports that a noise barrier of approximately 5m height has been erected at the Northern boundary of the site since the initial NIA, which should further reduce the calculated noise levels at Caledonia and the area to the North of the Stour valley.
- 22 Environmental Safety and Health are generally in agreement with the findings of the revised NIA but are, however, more concerned with the noise predictions at the closest noise sensitive receptors in Engine Lane, (i.e. that the impact of the subject noise will be dependent upon the presence or absence of extraneous noise from associated industrial activities). They are, therefore, uncomfortable with accepting the noise measurements and observations from one weekend as being representative of the residual noise described as a regular weekend feature. They also consider the potential for the overall noise levels from the site to increase as a consequence of an intensification of activities directly related with the extended operation of the wet aggregate plant (increased haulage vehicles, loaders, etc). They would therefore, on balance, suggest that the variation to the hours as requested, to be granted for a temporary duration of twelve months only, in order to allow adequate assessment of the impact of the increased hours of operation.
- 23 Additionally, the highway officer raised concerns about dust and soil being deposited on the surrounding highway network by vehicles leaving site, and has requested a condition to control this, as soil and dust can potentially increase highway safety risks, but also clog highway drains which can lead to undue flooding.

CONCLUSION

- 24 Environmental Safety and Health considers that it is appropriate for the additional hours as requested to be agreed for a limited period to allow for the monitoring of the impact on residential amenity. An additional condition is also proposed in relation to wheel

washing facilities. Consideration has been given to policies within the Black Country Core Strategy (2013) and the Dudley Borough Development Strategy (2017).

RECOMMENDATION

It is recommended that the application be APPROVED subject to the following conditions:

Conditions and/or reasons:

1. The development/use hereby permitted shall cease on or before 1 September 2026 and the site reinstated to its previous condition within 8 weeks of development/use ceasing.
REASON: The development must be of a temporary nature as its long term retention would be inappropriate relative to Black County Core Strategy Policies CSP2 and RC13 and DBDS Policies D2, D5 and D6, as its long term retention would prejudice the residential based regeneration of the wider Lye area.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
200729_P01_R4
MGR111 - Pegasus 2021 Elevations -Layout
REASON: For the avoidance of doubt and in the interests of proper planning.
3. The acoustic barrier adjoining the access road into the site and the noise bund along the eastern boundary of the site as shown on the approved plans shall be retained for the life of the development.
REASON: To protect amenity and to comply with DBDS Policies D2 , D5 and D6.
4. No additional lighting shall be installed until a scheme for the minimisation of the effect of light glare on nearby properties is submitted to the Local Planning Authority for written approval. The works in the approved scheme shall be completed before any lighting equipment to which this approval relates is operated and shall be maintained during such operation for the life of the development.
REASON: To protect amenity and to comply with DBDS Policies D2 , D5 and D6.
5. Until 31 December 2024 no deliveries or despatches shall be made to or from the site utilising heavy goods vehicles, and no delivery or despatch vehicles shall enter or leave the site utilising heavy goods vehicle(whether laden or unladen), before the hours of 06.30 nor after 18.00 Monday to Friday; before the hours of 07.00 nor after 1730 on Saturdays and not at all on Sundays and Public Holidays.
From 1 January 2025 no deliveries or despatches shall be made to or from the site utilising heavy goods vehicle, and no delivery or despatch vehicles utilising heavy goods vehicle shall enter or leave the site (whether laden or unladen), before the

hours of 06.30 nor after 18.00 Monday to Friday; before the hours of 07.00 nor after 14.00 on Saturdays and not at all on Sundays and Public Holidays (unless otherwise agreed in writing by the Local Planning Authority).

REASON: To protect amenity and allow a temporary period to monitor the additional hours in relation to residential amenity and to comply with DBDS Policies D2 , D5 and D6.

6. Until 31 December 2024 aggregate movement or processing activities shall not be operated before 06.30hours or after 18.00 hours Monday to Friday; before the hours of 07.00 nor after 17.00 on Saturdays and not at all on Sundays and Public Holidays. From 1 January 2025 aggregate movement or processing activities shall not be operated before 08.00hours or after 17.00 hours Monday to Friday; before the hours of 08.00 nor after 13.00 hours on Saturdays and not at all on Sundays and Public Holidays.

REASON: To protect amenity and allow a temporary period to monitor the additional hours in relation to residential amenity and to comply with DBDS Policies D2 , D5 and D6.

7. Within three months of this decision (unless otherwise agreed in writing by the Local Planning Authority) updated details of dust management, suppression and mitigation shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the provision of close-meshed netting to the boundary with the transformer site,-water sprinkler suppression system to boundary of processing areas, the provision of wet, wheel wash system and secondary jet wash to prevent mud tracking onto highways, plus the implementation and maintenance of visual observations record to monitor possible dust emission incidents
-provision of a dust management plan detailing the above and other management measures (e.g. onsite speed restrictions, complaint procedures) to eradicate / minimise dust emissions from the site and associated traffic
The development shall thereafter be operated in complete accordance with the approved management, suppression and mitigation works/strategy for the life of the development.

REASON: To protect amenity and to comply with DBDS Policies D2 , D5 and D6.

8. Within three months of this decision (unless otherwise agreed in writing by the Local Planning Authority);
- a) a risk assessment and site investigation shall be carried out to establish the risks posed to the aggregate washing development by past coal mining activity utilising intrusive site investigations if necessary, and;
 - b) any remediation works and/or mitigation measures required to address land instability arising from coal mining legacy, as may be necessary, shall be implemented on site in order to ensure that the site is made safe and stable for the development proposed in accordance with a timetable to be submitted to and agreed in writing by the Local Planning Authority.

The intrusive site investigations and remedial works shall be carried out in accordance

with authoritative UK guidance.

REASON: In the interests of public safety and to comply with DBDS Policy D4

9. Within three months of this decision (unless otherwise agreed in writing by the Local Planning Authority), a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the necessary site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

REASON: In the interests of public safety and to comply with DBDS Policy D4

10. No materials shall be stored, stacked or deposited within 3 metres of the northern boundary of the site.

REASON: In the interests of visual and residential amenity and to comply with Borough Development Strategy 2017 Policy S6 Urban Design, Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part) and Policy L8 Protecting the Viability and Integrity of Industrial and Business Uses (in part) Policy D2 Incompatible Land Uses (in part).

11. No materials or goods shall be stored, stacked or deposited to a height exceeding 4 metres.

REASON: In the interests of residential and visual amenity and to comply with Borough Development Strategy 2017 Policy S6 Urban Design, Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part) and Policy L8 Protecting the Viability and Integrity of Industrial and Business Uses (in part) Policy D2 Incompatible Land Uses (in part).

12. Within three months of this decision, details of a scheme for the management and prevention of the deposition of dust and soil on highways in the vicinity of the site by vehicles leaving the site (together with an associated cleaning regime), shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved management scheme.

REASON To prevent extraneous material from being deposited on the highway, and where it is that it effectively managed and removed, and to comply with BCCP Policy TRAN2.

NOTES

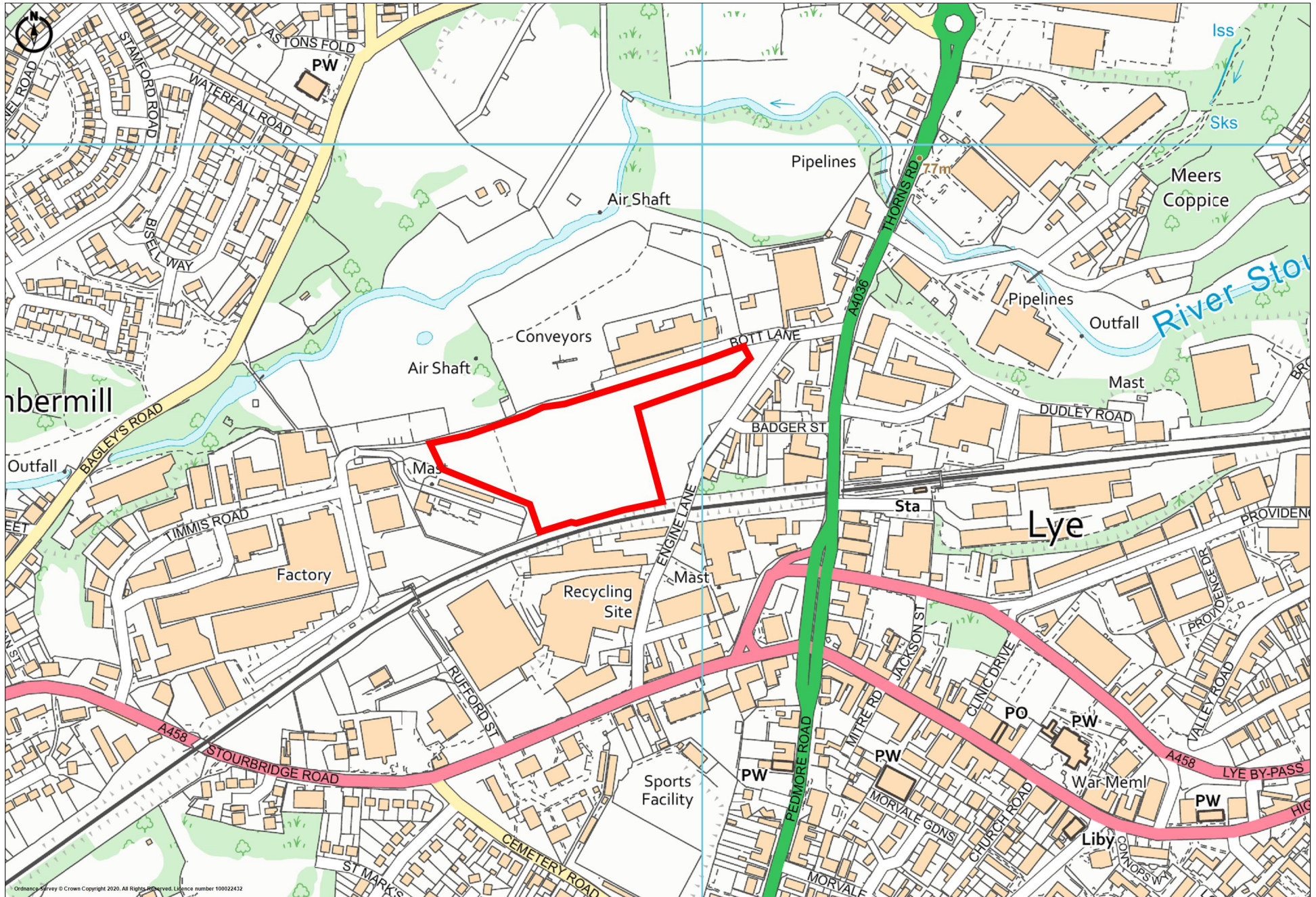
In dealing with this application the Local Planning Authority have worked with the applicant in a positive and proactive manner, seeking solutions to problems arising in relation to dealing with the application, by seeking to help the applicant resolve technical detail issues where required and maintaining the delivery of sustainable development. The development would improve the economic, social and

environmental concerns of the area and thereby being in accordance with paragraph 38 of the National Planning Policy Framework.

Notes to Applicant/Informatives

In dealing with this application the Local Planning Authority have worked with the applicant in a positive and proactive manner, seeking solutions to problems arising in relation to dealing with the application, by seeking to help the applicant resolve technical detail issues where required and maintaining the delivery of sustainable development. The development would improve the economic, social and environmental concerns of the area and thereby being in accordance with paragraph 38 of the National Planning Policy Framework.

Land at Bott Lane, Lye, Stourbridge



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