
Appeal Decisions

Site visit made on 4 January 2017

by Wendy McKay LLB Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2017

Appeal A Ref: APP/X2600/C/16/3151794

Land at The Barn, Heron Farm, Besthorpe, Attleborough, Norfolk, NR17 2LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Newall Civil Engineering Limited against an enforcement notice issued by Norfolk County Council.
- The enforcement notice, numbered ENF/1570/ENF, was issued on 24 May 2016.
- The breach of planning control as alleged in the notice is: "Without planning permission: The use of the Land for the importing, exporting, depositing, storage, handling, processing and transfer of Waste Category 1 and 2 material. (A copy of the Types of Waste Definitions is attached to this Notice)."
- The requirements of the notice are: (i) Cease the importation of Waste Category 1 and 2 material onto the Land; (ii) Cease the use of the Land for the depositing, storage, handling, processing and transfer of Waste Category 1 and 2; (iii) Remove all Waste Category 1 and 2 from the Land; (iv) Remove all plant and equipment used for depositing, storage, handling, processing and transfer of Waste Category 1 and 2 from the area shown hatched blue on plan B2 attached to the notice.
- The periods for compliance with the requirements are: Requirement (i) 7 days; Requirement (ii) 28 days; Requirements (iii) & (iv) 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B Ref: APP/X2600/W/16/3151253

Land at Heron Farm, Besthorpe, Attleborough, Norfolk, NR17 2LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Newall Plant Ltd against the decision of Norfolk County Council.
- The application Ref C/3/2015/3016, dated 18 December 2015, was refused by notice dated 25 April 2016.
- The development proposed is a retrospective application for the recovery of aggregates and soils from imported inert materials linked to the adjacent Newall Civil Engineering business.

Summary of Decision: The appeal is dismissed.

The appeal on ground (b) – Appeal A

1. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the Appellant and the relevant test is the '*balance of probabilities*'.

The relevant date for the purposes of assessing an appeal on this ground is the date of issue of the notice.

2. The Appellant indicates that the area shown within the red edging on Plan B2 comprises the permitted office, HGV parking and plant storage area¹; an area of land forming part of the existing Heron Farm agricultural operations and the planning application site the subject of Appeal B. The latter therefore only comprises part of the area covered by the enforcement notice. The Appellant does not dispute that the matters alleged by the notice have taken place but submits that the enforcement notice and the area edged red on Plan B2 cover too broad an area. It contends that the notice includes large areas over which no activities set out in the notice have occurred; this would inhibit the normal lawful farming and permitted civil engineering business.
3. The Appellant asserts that the only area where waste is proposed on the site is defined in the Standard Rules Permit (LAN3) which forms only a small part of the area edged red on Plan B2. It contends that there is no evidence that waste management activities have taken place outside the planning appeal area, as shown on drawing no LD044/HF/004b (LAN2). The Appellant therefore submits that the red line and blue hatching on Plan B2 should be restricted to the 'Mobile Processing Area' shown on LAN2, given that the processed materials stored elsewhere on the site have achieved end of waste status and the notice is directed at Waste Categories 1 and 2.
4. The Council explains that the unauthorised activities involve the use of mobile equipment. The red line on the notice plan has encompassed the planning unit. The latter was based on the unit of occupation and the fact that the plant used for waste processing is mobile. The area that is covered by the planning permission for the civil engineering business has not been made subject to requirement (iv). Furthermore, it contends that an aerial photograph suggests that the haulage business exceeds the permitted area and that any storage other than for agriculture would be in breach of planning control. The storage of processed material with an 'end of waste' status would be ancillary to the waste recycling activity.
5. The planning unit concept to which the parties refer provides a means of determining the most appropriate area against which to assess the materiality of change where a change in use is alleged. In this case, the breach of planning control alleged refers only to the waste activities set out and the type of waste is also specifically defined. It does not allege a mixed use for those purposes together with the existing lawful uses, namely, agriculture and the permitted use of part of the site for offices, HGV parking and storage of plant.
6. Although various different uses may take place within the same single unit of occupation, I consider that the waste-related activities have been confined to physically separate and distinct areas within the site for which a different main purpose can be identified. This land coincides with the Appeal B planning application boundary with the exception of the access route which is in a mixed use. This area is greater in extent than the 'Mobile Processing Area' shown on LAN2 but appropriately includes activities which are ancillary to the primary waste activities such as the storage of processed waste material. This represents the relevant planning unit for the unauthorised waste activities. I

¹ Planning permission ref 3PL/2007/0147/CU was granted in May 2007 for the 'Change of use of existing farm buildings into offices, assoc. HGV parking and storage of plant (retrospective)'

conclude that the alleged breach of planning control has not taken place on part of the land affected by the notice. However, no injustice would be caused to any party by correcting the notice plan to reflect the area actually used for the waste-related activities, thereby reducing the scope of the notice. The appeal on ground (b) succeeds to this limited extent.

The appeal on ground (c) – Appeal A

7. On ground (c), the Appellant asserts that the existing farm and civil engineering operations have the right to import and use waste materials as part of their day to day operations. It submits that the notice, if upheld, would prevent these lawful activities. The Appellant therefore contends that the notice needs to be amended to safeguard these lawful use rights. It submits that requirements 5(i), (ii) and (iii) should be removed as legitimate rights exist to allow the importation, storage and use of Waste Categories 1 and 2 within the permitted activities at Heron Farm. Alternatively, Plan B2 should be altered as proposed under the ground (b) appeal.
8. The Council submits that the notice does not seek to restrict legitimate activities on the land. It has been designed purely to remedy the breach of planning control caused by the unauthorised change of use and it is not intended to restrict any activity undertaken as part of any permitted use or to restrict any permitted development right. However, if it is considered that the notice should be more explicit in this respect, the Council accepts that it could be amended.
9. Since the notice plan will be amended to exclude the permitted 'civil engineering operations', the requirements of the notice would not attach to that part of the land. Insofar as the agricultural operation is concerned, the examples of legitimate activities which the Appellant has provided represent activities that could potentially be considered ancillary to the lawful use of the agricultural unit. Although the requirements of the notice must not purport to prevent an Appellant from doing something he or she is entitled to do without planning permission, there is no need to insert a saving for that which must be obvious. Furthermore, enforcement powers are to be given a purposive and not literal interpretation. A notice cannot be interpreted to make an offence out of a lawful activity. Given that the agricultural activities that of concern are obvious ancillary activities, they would fall outside the scope of the notice. I do not believe that the requirements of the notice are excessive or need amendment in this respect. The appeal fails on ground (c).

The appeals on ground (a) and the section 78 appeal – Appeals A and B

The Main Issues

10. The main issues are firstly, whether the development would be in accordance with relevant Development Plan waste management policies, secondly, the effect that the development would have on landscape character and its visual impact and, thirdly, the implications for the living conditions of neighbours with particular regard to noise and disturbance.

The Development Plan and other policies

11. The relevant Development Plan documents are the Norfolk Minerals and Waste Development Framework: Core Strategy and Minerals and Waste Development Management Policies DPD 2010-2026 (2011) (NMWDF Core Strategy), the

Waste Site Specific Allocation Development Plan Document (DPD) and the Breckland Core Strategy 2009.

12. Turning to national policy, the Government issued the National Planning Policy Framework (NPPF) in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.² I find the relevant Development Plan policies in this case to be consistent with the NPPF and full weight in accordance with their statutory status should therefore be attached to them.
13. Relevant national policy and guidance is also set out in the National Planning Policy for Waste (2014) (NPPW) and the Planning Practice Guidance (PPG). The NPPW (section 4, bullet point 4) states that Waste Planning Authorities in preparing their plans should consider a broad range of locations including industrial sites, looking for opportunities to co-locate waste management facilities together and with complementary facilities.

Planning History

14. That part of the north-west corner of the land shown within the site but outside the hatched area on Plan B2 has the benefit of planning permission³ dated 25 May 2007 for the 'Change of use of existing farm building into offices, assoc. HGV parking and storage of plant (retrospective)' granted by Breckland District Council.

Reasons

The principle of the development in the light of the relevant Development Plan policies

15. The NMWDF Core Strategy Policy CS3 – *Waste management capacity to be provided*, indicates that the strategy for waste management is to provide sufficient waste management capacity to meet the expected arisings of municipal and commercial waste and also to ensure that appropriate capacity is provided for inert waste recycling and disposal.
16. Policies such as CS3 and CS5 set out the broad spatial strategy for strategic and non-strategic waste sites, whereas other policies, such as Policy CS6, pursue the provision of waste management sites in accordance with those strategies.
17. Policy CS6 states that waste sites should be developed in accordance with Policy CS3 and will be acceptable, provided they would not cause unacceptable environmental impacts, on the following types of land: a) land already in waste management use; b) existing industrial/employment land or land identified for these uses in a Local Plan or DPD; c) other previously developed land; and d) contaminated land or derelict land.
18. The Appellant submits that, as the planning unit clearly includes an existing industrial/employment use, the recycling must therefore comply with Policy CS6 b). However, the planning application site excludes the area of the permitted change of use and, as indicated above, in relation to the

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

³ Ref 3PL/2007/0147/CU

enforcement appeal, that site area will be amended to largely accord with the planning application site.

19. Whilst the site is nearby land upon which a change of use has been permitted, it does not fall within any of the land types listed in a) to d) of Policy CS6. To comply with Policy CS6 b) the entirety of the recycling operation would have to take place on existing industrial/employment land or land identified for these uses in a Local Plan or DPD. The appeal site does not comprise existing industrial/employment land nor is it included within the Waste Site Specific Allocations DPD. Instead, land that was formerly in agricultural use has been developed. This site falls within open countryside as identified in policy terms in the Breckland Core Strategy Proposals Maps. The development would not therefore be in accordance with Policy CS6.
20. The Appellant criticises the Council in its application of Policy CS6. It submits that Policy CS6 does not only allow waste development on sites set out in Policy CS6 a) to d), as other parts of Policy CS6 and other policies in the plan allow for waste development in the countryside.
21. The Council contends that Policy CS6 has been drafted in a positive manner that reflects policy guidance and it is reasonable to assume that those sites which are not listed in the policy would not be acceptable as there would be little value in adopting a policy promoting or referencing certain land types if all other land types were in any case acceptable as well.
22. Nevertheless, there is a divergence between the actual wording of that policy and the manner in which it has been interpreted in the decision notice. Indeed, the word "only" is a noticeable omission from the former. I concur with the Appellant that Policy CS6 should not be interpreted as meaning that development in any other location must automatically be regarded as unacceptable; it falls to be assessed in the light of the Development Plan as a whole.
23. The Council recognises that in the context of Policy CS5: *General location of waste management facilities*, the site is regarded as a 'non-strategic' waste facility and is well-related to the market town of Attleborough, as required by that policy. I consider that the site would also meet the locational requirements of both CS5 i) and ii).
24. Policy CS17 promotes the use of secondary and recycled aggregates in all development and aims to achieve a year-on-year increase in the percentage of inert and construction and demolition waste managed in Norfolk that is recycled starting with a baseline of 70%. Policy CS7: *Recycling, composting, anaerobic digestion and waste transfer stations*, indicates that the development of new facilities will be considered favourably as long as they would not cause unacceptable environmental, amenity or highway impacts. The Appellant contends that Policy CS7 supports Policy CS17 and the development of new recycling facilities should be considered favourably where they would comply with that policy.
25. I conclude that, in terms of waste policy strategy at national and local level, there is support for the development of new or enhanced waste management facilities in appropriate locations. In broad strategic terms, Policy CS3 sets out the aim for waste management capacity to be provided and Policy CS5

identifies the general location of waste management facilities. The location of the site would in general terms be consistent with the aims of those policies.

26. However, the more specific policies which seek to control the provision of waste management sites in accordance with those strategies must also be considered. Policy CS6 provides a means of assessing the acceptability of specific sites to be developed in accordance with Policy CS3. Since the appeal site does not fall within the types of land identified as being appropriate for such development, the scheme would not be in accordance with Policy CS6. Turning to Policy CS7, it is necessary to assess the potential impacts of the development. These will now be considered in the light of Development Management and other local planning policies before I reach a view on the question of whether the scheme accords with the Development Plan as a whole.

The effect on landscape character and visual impact

27. The NMWDF Core Strategy Policy CS14 – *Environmental Protection*, states that the protection and enhancement of Norfolk’s natural and built environments is a vital consideration for future minerals extraction and associated development and waste management facilities. It requires proposals to ensure that there would be no unacceptable adverse impacts on and, ideally improvements to, certain specified matters including the character and quality of the landscape. Where any development proposals would potentially have adverse impacts on any of those assets listed, the adequacy of any proposed mitigation measures will be assessed on a case-by-case basis.
28. The NMWDF Core Strategy Policy DM8 – *Design, local landscape and townscape character*, permits development if it will not harm the conservation of, or prevent the enhancement of key characteristics of its surroundings with regard to the character of the landscape and townscape taking into account any appropriate mitigation measures.
29. The Breckland Core Strategy Policy CP11: *Protection and enhancement of the landscape*, states that: “*the landscape of the district will be protected for its own intrinsic beauty*”. The Breckland Core Strategy Policy DC12: *Trees and Landscape*, requires appropriate landscaping schemes to mitigate against landscape impact. These policies are consistent with the NPPF which includes as one of the core planning principles the need to recognise the intrinsic character and beauty of the countryside.
30. The site is not located within any designated landscape area such as an Area of Outstanding Natural Beauty or the Norfolk Broads which, as the NPPF paragraph 115 states, have the highest status of protection in relation to landscape and scenic beauty. Nevertheless, the landscape character of the area has been assessed and it falls within the ‘E3: Old Buckenham Plateau’ in the Landscape Classification of Breckland within the adopted Landscape Character Assessment Development Plan Document (DPD). The Landscape Strategy for this classification is to “*conserve the rural, tranquil character. Opportunities should be explored to replant field boundary hedgerows...*”.
31. The Appellant contends that the description of the site as a ‘greenfield site’ is incorrect given the presence of a range of existing farm buildings, hardstanding and the permission relating to the Newall Civil Engineering business. These areas all fall within the area defined on Plan B2 attached to the notice.

However, as indicated above, the notice plan will be amended to coincide with the majority of the planning application site. Given the former lawful agricultural use of the appeal site, I do not find its description as a 'greenfield site' to be misleading.

32. The surrounding landscape is generally open and flat, although there is a gentle slope southwards into a valley feature before the land rises again across the former airfield. Notwithstanding the nearby permitted use, the development is obviously at odds with the character of its rural surroundings. In terms of mitigation, the site is proposed to be surrounded by bunds of 4m in height to the south and east of the processing/operational area and tree planting is proposed. The details of any proposed planting scheme could be secured by a landscaping condition. The existing hedgerow would to some extent assist in screening the processed stock area where material would be stored in the eastern part of the site.
33. The incoming stockpiles and the processed stock within the storage area could be limited in height to 3m by planning condition which would be below the height of the bunds. The Appellant submits that by surrounding the development by 4m high landscaped and tree planted bunds, it has been designed to blend with hedgerows so that the development would meld with local landscape. It contends that this technique would enable the screening effect to be achieved in a short time-frame.
34. However, I do not agree that the provision of the proposed 4m high screen bund, albeit incorporating a planting scheme, would have the desired effect of ensuring that the development would meld with the local landscape. In my view, the bunds themselves, even as the planting matures, would continue to look incongruous in the open flat landscape. They would clearly be out of keeping with the assessed landscape character for the area and contrary to the aims of the Landscape Strategy. I do not consider that what is proposed represents an appropriate landscaping scheme that would satisfactorily mitigate the adverse impact upon landscape character.
35. The Appellant submits that the Council has exaggerated the visual impact by ignoring the proposed landscaping and placing too great a sensitivity on the views that can be gained of the site. It contends that any such views would be distant, heavily interrupted and from a very small number of locations. The nearest properties to the site on Bunwell Road to the north would have no view of the development at all. The properties to the east are located at The Limes and are over 500m distant.
36. The Appellant also points out that the land between The Limes and the development site is active arable farmland which will employ the usual farming plant and machinery that will operate right up to the boundaries and leave ploughed arable land between the properties and the site for some 5-6 months a year. However, I do not accept that bare arable fields which are typically found in rural farming locations such as this can be regarded as providing any sort of sensible comparison to the visual impact of the proposed development.
37. At the time of my site visit inspection, I observed the appeal site from the residential property at the eastern corner of The Limes complex. That property has an extensive garden area with views available across the intervening agricultural fields. Although at some distance from the appeal site, I do not consider that the, albeit oblique, views from that residential property towards

the site could reasonably be described as “heavily interrupted” by field hedges, particularly during winter months.

38. The Appellant draws support from the officer’s report to the Committee which advises that there are no landscaping issues which would undermine Policy CS14; and that there are no ecological grounds to support an objection to the application⁴. However, the conclusion reached on landscape impact in the officer’s report⁵ was on the basis that it would be subject to the Council’s proposed condition 12.7 which provides that: *“No plant and machinery shall be operated unless it is on the ground level on the floor of the site. No plant or machinery shall be operated at an elevated level on top of a stockpile or bund.”* Since this would largely prevent plant operated on the site protruding above the proposed bunds, it was concluded that the development would not have an unacceptable impact on the surrounding landscape.
39. The Appellant has subsequently indicated that it does not agree to the Council’s proposed condition 12.7. The Appellant considers this condition to be impracticable and would result in adverse operational and health and safety implications, as it would require an excavator operator to lift and place material into an elevated hopper which he could not see from his position on the ground. In those circumstances, it would be unreasonable to impose such a condition.
40. I consider that the practice of loading the hopper from an elevated position with plant of an industrial nature protruding above the height of the bunds would have serious landscape and visual implications. The operation of plant and machinery on top of a stockpile in an elevated position would enable the machinery to be seen from outside the site above the height of the bunds and exacerbating the adverse visual impact of the development. The overall impact on landscape character and visual amenity would be unacceptable in this rural countryside location and would be at odds with the adopted Landscape Character Assessment. Furthermore, the development could not be made acceptable by the imposition of planning conditions that would comply with the guidance set out in the NPPF, paragraph 206, and the PPG.
41. I conclude that there would be a significant adverse impact upon landscape character and visual amenity which could not be satisfactorily overcome by the proposed mitigation and planning conditions. The development would not be in accordance with NMWDF Core Strategy Policies CS14 and DM8 and Breckland Core Strategy Policies CP11 and DC12.

The implications for the living condition of neighbours with particular regard to noise and disturbance

42. The NMWDF Core Strategy Policy CS14 – *Environmental Protection* provides that developments must ensure that there would be no unacceptable adverse impacts on, and ideally improvements to, certain specified assets including residential amenity e.g. noise, vibration, dust, lighting and visual intrusion. Policy DM12 – *Amenity*, states that: *“Development will only be permitted where it can be demonstrated that the scale, siting and design of a proposal is appropriate and that unacceptable impact to local amenity will not arise from the construction and/or operation of a facility.”*

⁴ See paragraph 6.46 of the Committee Report

⁵ See paragraph 6.40 of the officer’s report

43. The Breckland Core Strategy Policy DC1 – Amenity, also seeks to prevent new development causing unacceptable impact on local amenity.
44. The NPPF, paragraph 109, states that the planning system should contribute to and enhance the natural and local environment by, amongst other things preventing new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution.
45. Paragraph 123 of the NPPF provides that planning policies and decision should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
46. The Environment Agency (EA) has no objection to the proposal and the Appellant holds a Standard Rules Permit issued in December 2014 for the treatment of waste to produce soil, soil substitutes and aggregate at the site and the permit conditions include those relating to emissions to water, air and land, fugitive emissions, impact of odour, noise and pests and monitoring.
47. However, the Permit does not cover the whole of the appeal site; just the area currently used for waste processing. The planning application and the revised enforcement site include land outside that area where material is stored that has achieved end of waste criteria. The impact of all the noise generated within the whole appeal site and the proposals for mitigating and controlling that noise fall to be considered.
48. Since operations at the site commenced, the Council has received some 16 complaints from local residents primarily relating to noise that is generated from the site. In the light of the level of complaints, even whilst part of the site has been regulated by the Permit, the Council submits that it has not been demonstrated that the scheme would be acceptable as regards its noise impact.
49. The Appellant questions the nature, and reliability of complaints made. It has ceased the use of a particular item of plant that resulted in a noise complaint and states that all other items of plant have been chosen for their low noise output. The Appellant contends that the Noise Assessment undertaken at the time of the planning application shows that acceptable noise levels can be achieved.
50. That Noise Assessment refers to the PPG – Minerals, paragraphs 19-21, which give guidance on proposals for the control or mitigation of noise emissions for mineral development proposals, including those for related similar processes such as aggregates recycling and disposal of construction waste. It also refers to noise limits which mineral planning authorities should aim to establish, through planning conditions, at noise sensitive properties. The Noise Assessment mentions the PPG – Noise and the definition provided therein of some key human health effect levels.
51. The Noise Assessment commentary on the Assessment Results states that with a 3m acoustic barrier between the primary noise source and the sensitive receptors along with the existing 4m bund on the eastern boundary of the site, the noise from the development is predicted to be no more than 10 dBA below

background at all receptors during all of the periods of the day assessed. It concludes that, provided a suitable 3m noise barrier is installed on the northern perimeter of the application site, the proposed development would be acceptable and would enable a good standard of amenity to be maintained as the noise impact would be below the Lowest Observed Effect level.⁶

52. Although the District Council's Environmental Health Officer (EHO) ultimately raised no objection, the officer's report to Committee refers to the EHO's comments that noise could be an issue on occasion particularly from material handling and loading into storage piles and/or the loading of large-sized materials into the hoppers for the crusher and screening units. The Council's understanding that the Appellant could comply with condition 12.7 (operating plant at ground level) formed the basis of the officer's original recommendation for approval. The Council considers this condition to be fundamental to limiting the impact on local amenity, since working at a height on top of existing stockpiles or bunds has given rise to complaints received prior to, and since, the determination of the application. The absence of such a condition would certainly seem to defeat the object of having in place the 3m high screening bund recommended by the Noise Assessment with a view to mitigating noise.
53. The Appellant proposes that condition 12.7 be replaced by two new conditions. The Council draws attention to the six tests set out in paragraph 206 of the NPPF which include the need for conditions to be precise and enforceable. It submits that the Appellant's proposed conditions would not be enforceable. The Council objects to the imposition of conditions restricting noise levels, as a matter of principle, and takes the view that the control of noise in this way is a matter for the EA Permit. Paragraph 122 of the NPPF, advises that local planning authorities should assume that pollution control regimes will operate effectively. However, since the Permit does not cover the whole site, the imposition of planning conditions would not represent a complete duplication of the control of emissions by the pollution control regime. The full potential impact of noise generated upon amenity must be satisfactorily addressed.
54. In support of the substitute noise conditions, the Appellant refers to PPG Minerals paragraphs 19-21 which indicate that the noise levels during normal working hours should be no more than 10 dBA above background levels. The first suggested condition would require the level of noise not to exceed 52dB LAeq (1hr) at the boundaries of Flaxton Farm and Flaxton Barn and Heron Cottage and 50 dB LAeq (1hr) at the boundary of Shire Barn and Southcroft. The second condition makes provision for a noise monitoring survey to be undertaken at those locations each year, if requested by the Local Planning Authority, and for action to be taken in accordance with the subsequent report should the results indicate non-compliance with the permitted noise levels.
55. In my view, it is likely that the noise impact of the recycling and processing plant operating in this area of countryside has been compounded by the operator's practice of operating plant at an elevated level on the top of stockpiles within the site. The relevant guidance in PPG – Minerals indicates that the noise assessment should take account of a number of matters including the proposed operating locations and procedures. Whilst I recognise that the first condition now proposed is intended to reflect recorded background noise levels, the Noise Assessment conclusions were not reached

⁶ The level of noise exposure above which adverse effects on health and quality of life can be detected.

on the basis of the scenario now envisaged. The Noise Assessment did not adequately assess the implications of this particular working practice to confirm that acceptable noise levels could still be achieved during all working hours for all affected properties. Although the Appellant has shown some complaints to be unfounded, that does not apply to them all. In the absence of a full and proper noise impact assessment of the intended operation, and in the light of the complaints made to the Council, I am unable to find that the impact on local amenity resulting from noise emissions would be acceptable.

56. Whilst, in principle, planning conditions could be imposed to mitigate adverse noise impacts and reduce them to acceptable levels in accordance with national policy, the package of the two alternative conditions proposed by the Appellant raise issues which have not yet been satisfactorily addressed. In the light of the Appellant's comments in relation to the need to continue to work at an elevated level, it would be unreasonable to impose such a condition, by way of an alternative, on any permission granted. The two conditions proposed by the Appellant do not, without further investigation and assessment, provide an adequate means of control. In the absence of satisfactory mitigation and control measures, I conclude that the development would have an unacceptable environmental impact in respect of noise contrary to NMWDF Policies DM12 and CS14 and Breckland Core Strategy Policy DC1.

The need for the development and other matters

57. The Appellant explains why the alternative allocated sites identified in the Council's adopted Waste Site Specific Allocations DPD 2013 are unsuitable for the proposed use and also refers to the loss of a previous inert waste recycling facility at Shoreham Quarry. The Council accepts that there is a need for the development. Furthermore, the Appellant has highlighted the benefits and linkages of this particular location being adjacent to the civil engineering business which generates the waste treated. The Council also recognises that the development would move the management of waste up the waste hierarchy in accordance with the National Planning Policy for Waste 2014.
58. The Norfolk County Highway Authority has no objection to the development subject to conditions concerning the implementation of a scheme for carriageway markings, an HGV Management Plan for the routing of vehicles to and from the site, and a scheme for the implementation of off-site highway works for the provision of three passing bays on the C139 Bunwell Road.
59. The Appellant currently has over 100 employees and there are 19 people whose roles have a direct involvement with the recycling operations. These roles include drivers, machine operators, fitters, pickers, and administration and management support roles. The need for the development, the employment generation and the benefit of co-locating the waste and civil engineering facilities are material considerations that weigh in support of the appeal proposal.

Overall conclusions

60. In terms of waste policy strategy at national and local level there is support for the development of new or enhanced waste management facilities in appropriate locations. However, the development does not fall within any of the land types listed in Policy CS6 and would not be in accordance with that policy. Furthermore, as outlined above under the second and third issues, it

would result in unacceptable environmental and amenity impacts contrary to that and other Development Plan policies including Policy CS7. These adverse impacts could not be satisfactorily overcome by the mitigation proposed and/or by the imposition of planning conditions. The development would not therefore accord with the Development Plan as a whole.

61. Whilst I have had regard to the benefits associated with the scheme, there are no material considerations that indicate that the development should be permitted contrary to Development Plan policies. The benefits of the scheme including employment generation, the benefit of co-locating the waste and civil engineering facilities, the need for such development and the lack of deliverable alternative sites in the immediate area do not justify the grant of permission in this case. The enforcement appeal fails on ground (a) and I do not intend to grant permission to the deemed application for planning permission or on the s78 appeal.

The appeal on ground (f) – Appeal A

62. On ground (f), it is necessary to first establish what it is the Council is seeking to achieve by the notice. The reasons for issuing the notice include reference to Development Plan policy. It is clear from considering what is said in paragraphs 3, 4 and 5 of the corrected notice, read as a whole, that the remedial requirements follow from sub-paragraph (a) of s.173(4) of the 1990 Act. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that objective.
63. The Appellant submits that, for the same reasons as put forward in support of ground (c), the steps required by requirements 5(i), (ii) and (iii) all exceed what is necessary to remedy the breach of planning control and are inconsistent. It contends that the concerns which prompted the notice relate specifically to aggregate recycling but there would inadvertently be a direct impact on a number of legitimate and permitted activities at Heron Farm.
64. The appeal on ground (f) must be considered in the light of my findings on the appeals on grounds (b) and (c). The notice plan will be corrected to exclude the permitted 'civil engineering operations'. Furthermore, I do not believe that the notice requires amendment to safeguard aspects of the lawful agricultural use that might involve Waste Category 1 and 2 materials that would otherwise be prevented by requirements 5(i), (ii) and (iii). These are obvious ancillary activities that do not need to be specifically excluded from the requirements of the notice.
65. The Appellant also claims that reason 4 is factually flawed and should be removed, as it refers to the siting of the "Land" in open countryside rather than the use. The Council accepts that the relevant part of reason 4 should refer to the siting of the use rather than the land and should be amended. In my view, this represent an obvious error in the notice that may be corrected pursuant to the powers granted by s.176 of the 1990 Act without any injustice being caused.
66. I conclude that the requirements do no more than seek to remedy the breach of planning control and, therefore, are not excessive. In the light of the conflict with Development Plan policies, it would not be disproportionate to require the

Appellant to carry out the steps required by the notice. The appeal on ground (f) fails.

The appeal on ground (g) – Appeal A

67. On ground (g), the Appellant submits that the compliance periods set out in section 6 of the notice are in some cases conflicting and in other cases are too short. In particular, the time periods for requirements 5(ii) and (iii) are inconsistent in what they would permit.
68. The Appellant also points out that some materials are more difficult to remove from the site in a sustainable way and a reasonable period in which such material could be removed for reuse rather than disposal is sought. The Appellant therefore seeks an extension of the timescales in 5(ii) and (iii) to 6 months from the effective date.
69. From the information provided by the Planning Contravention Notice, the Council calculates that, based on the quantity of material required to be removed and the number of vehicles movements required to move that amount, the period of 90 days for requirements (iii) and (iv) would be reasonable.
70. However, as the Appellant points out, to remove materials from the site quickly would result in them being transported to landfill which would not reflect the principles of the waste hierarchy and sustainability set out in national guidance. I believe that the compliance period for requirements (iii) and (iv) should be extended to six months to enable the Appellant to reasonably seek a more sustainable means of disposing of the material.
71. I also consider that the notice as drafted does present an internal inconsistency in relation to the time periods for requirement 5 (ii) and 5 (iii) in that it would prevent the storage, handling and transfer of material beyond 28 days whereas 90 days are permitted for the removal of the waste from the land. To avoid such a conflict, I believe that the time period for the storage, handling and transfer of material should also be extended to six months and the notice will be varied in this respect. The appeal on ground (g) succeeds in these respects.

Formal Conclusions

Appeal A

72. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Appeal B

73. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision

Appeal A Ref: APP/X2600/C/16/3151794

74. The enforcement notice is corrected by deleting from paragraph 2 the words "edged red" and substituting therefor the words "hatched black"; by deleting from paragraph 2 the word, letter and figure "marked B2"; by substituting the plan attached to this decision for the Plan B2 attached to the notice; by

deleting from paragraph 4. 4. the word "Land" and substituting therefor the word "use"; and varied by deleting from requirement 5 (iv) the words, letter and figure "area shown blue on attached plan B2" and substituting therefor the word "Land"; by deleting requirement (ii) in its entirety and substituting therefor the following new requirements: "(ii)(a) Cease the use of the Land for the depositing and processing of Waste Category 1 and 2" and "(ii)(b) Cease the use of the Land for the storage, handling, and transfer of Waste Category 1 and 2"; by deleting from paragraph 6 the words and figures "Requirement (ii) 28 days" and substituting therefor the words and figures "Requirement (ii)(a) 28 days" and "Requirement (ii)(b) six months"; and by deleting from paragraph 6 the word and figures "90 days" and substituting therefor the words "six months".

75. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/X2600/W/16/3151253

76. The appeal is dismissed.

Wendy McKay

INSPECTOR



Plan

This is the plan referred to in my decision dated: 7 February 2017

by **Wendy McKay LLB Solicitor (Non-practising)**

Land at: The Barn, Heron Farm, Besthorpe, Attleborough, Norfolk, NR17 2LN

Reference: APP/X2600/C/16/3151794

Scale: 1:5000

