

Appeal Decision

Hearing held on 8 February 2017

Site visit made on 8 February 2017

by Paul Dignan MSc PhD

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

Decision date: 20 April 2017

Appeal Ref: APP/M1900/C/16/3158553

Codicote Quarry, St Albans Road, Codicote, Hitchin, SG4 8SP.

- 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 Codicote Quarry Ltd against an enforcement notice issued by Hertfordshire County Council.
 - The enforcement notice, numbered CM0005 EN Aug 2016, was issued on 12 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of the wash plant for the screening of soil, and installation of the concrete pad for the placement of the wash plant, in the approximate position marked with a cross on the attached plan.
 - The requirements of the notice are (i) Cease and do not resume the use of the wash plant for the processing of waste materials for the production of soil, sand, stone and other products; and (ii) Dismantle and remove the unauthorised wash plant from the Land.
 - The period for compliance with the requirements is 4 weeks for requirement (i) and 6 months for requirement (ii).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of the wash plant for the screening of soil, and installation of the concrete pad for the placement of the wash plant, in the approximate position marked with a cross on the plan attached to the notice, on land at Codicote Quarry, St Albans Road, Codicote, Hitchin, SG4 8SP referred to in the notice, subject to the following conditions:
 - 1) The wash plant hereby approved shall be removed from the Land, no later than 31 December 2022.
 - 2) The area of the Land on which the wash plant is sited shall be restored in accordance with the Restoration Scheme approved 25 July 2012, by no later than 31 December 2022.
 - 3) No mobile wash plant shall be brought onto the Land without the prior notification and agreement in writing of the Waste Planning Authority.
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Background and preliminary matters

2. Codicote Quarry is a chalk quarry in the countryside near the village of Codicote. It is within the Metropolitan Green Belt. Access to the quarry is from St Albans Road, an unclassified road. The quarry is identified as a specific site in the Hertfordshire Minerals Local Plan 2002 – 2016, adopted in March 2007. It is in two parts, a northern section which is leased separately, but which is not currently being worked, and the southern section within which the appellant company operates.
3. Planning permissions for the winning and working of minerals go back to 1948, with the working area extending over the years. The relevant permission now is the 1993 Interim Development Order Ref. 1/0349-93 (IDO), with conditions amended on appeal in February 1997. The appellant company is working the site on a lease that runs to 2022. Condition 25 of the IDO requires the submission of a detailed Restoration Scheme. A scheme was submitted pursuant to the condition and approved in July 2012. I discuss this further under ground (a). Part of the site also benefits from a planning permission granted by North Hertfordshire District Council in 1980¹ which includes permission for the storage and mixing of soil. The soil processing was regulated by Waste Management Licence 95/327 (WML) but the WML was replaced by a 'standard conditions' Environmental Permit under the Environmental Permitting Regulations 2010. In respect of soil processing, there are now no conditions controlling hours of operation or vehicle movements.
4. The wash plant the subject of the appeal was brought onto the site in about January 2016 and placed on a new concrete pad and appeared to be fully operational by about mid-May with the addition of de-watering apparatus.
5. Both the wash plant and the concrete pad are within the description of the breach, but the requirements do not include the removal of the concrete pad. This was an oversight on the part of the Council, which did not intend to under-enforce. I could amend the notice to require the demolition and removal of the pad from the site, but only if there was no injustice. Amending the notice in this way would make it more onerous, and I consider that it would cause injustice to the appellant. The Council could have withdrawn the notice and issued another, but it decided not to. Section 173(11) of the 1990 Act provides that compliance with the notice would therefore result in planning permission for the pad being treated as having been granted by virtue of section 73A of the Act. This is a material consideration in the ground (a) appeal.
6. Before the hearing a Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 was provided by the appellant. It considered that the UU would address the concerns of the Council and local residents related to the development the subject of the appeal and the use of the land. The UU was not in a wholly acceptable form, but it was agreed that the main concerns raised and discussed at the hearing might be appropriately addressed by such an agreement, properly prepared and executed. In view of this I did not close the hearing on the day but adjourned it to enable agreement to be reached between the parties, in consultation with local residents as to the terms of an acceptable UU. A final UU was sent to me on 9

¹ Ref 1/1178/80 (730)

March 2017, and the hearing was closed in writing on 21 March 2017. I consider that further under ground (a).

The appeal on grounds (b) and (c)

7. Ground (b) is that the matters alleged have not occurred, and ground (c) is that they are not a breach of planning control. With regards to the concrete pad, it was initially thought to be less than 100m² and hence development permitted by Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, it is now accepted that the pad exceeds the relevant limitation.
8. Regarding the wash plant, no ground (b) argument is advanced, but the appellant's position on this is that it is not development, or alternatively that it is development permitted by the GPDO.
9. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying of building, engineering, mining or other operations. The argument here is that while the concrete pad must be a building operation, the wash plant merely sits on it and is a temporary structure. Notwithstanding the absence of a requirement to remove the concrete pad, I consider the pad and plant to be a single building operation, and further that the wash plant, which can reasonably be considered to be affixed to the ground by reason of its sheer weight and the substantial built structure housing the dewatering equipment, cannot be considered in isolation from the pad. I consider that the overall structure is a building for the purposes of the 1990 Act. For this reason it also falls outside of Class I of Part 7 of the GPDO.
10. Part 4 Class A of Schedule 2 to the GPDO grants permission for the provision on land of buildings, moveable structures, works, plant or machinery, that is required temporarily. However, as the appellant accepts, the temporary nature of the requirement is not easily disentangled from the outcome of the appeal, and the requirement at present is expected to be until 2027 at most, but possibly only until 2022. This appears to depend somewhat on the quarry lease. Nonetheless, while the term 'temporary' is not defined in the GPDO, the length of time involved in this case goes beyond what I would consider as temporary for the purposes of the GPDO.
11. The overall structure is development which requires planning permission. It is not granted by the GPDO. The appeal on this ground cannot therefore succeed.

Ground (a) and the deemed planning application

12. Prior to the erection of the wash plant it appears that there had been considerable quantities of soil based waste brought onto the site. Processing that waste is the purpose of the appeal development. The presence of the waste also prevents, or significantly interferes with, the progress of the approved restoration scheme. The appellant claims that because the condition governing the restoration scheme did not have an explicit implementation clause, it cannot be enforced in any case. In essence, the argument is that it would be preferable in planning terms for the Council to allow the retention of the wash plant to process the waste on the site, after which it is proposed to remove it and undertake an enforceable alternative restoration scheme.

13. Regarding the approved restoration scheme, the Council considers it to be enforceable despite the relevant condition not having an explicit implementation clause. It points to the recent Supreme Court judgement in *Trump International*² which considered the enforceability of a condition. The judgement found that the condition, which did not itself include the mechanism to achieve its aim, was nonetheless enforceable in the context of the planning permission read as a whole.
14. Applied to the present case, the Council considers that it is clear from the context of the IDO that the restoration scheme was plainly intended to have a practical purpose, and its implementation is implicit in condition 26, which builds upon it, and in condition 27 which plainly indicates that the areas affected are to be subject to the schemes submitted under conditions 25 and 26.
15. Historically the interpretation of conditions in planning law has been strict and has explicitly precluded the importation of implied terms, but as Mrs Justice Patterson pointed out in the recent case of *Dunnett Investments*³, the Supreme Court judgement in *Trump International* has moved the law on in relation to the interpretation of conditions. She set out the present position, noting that planning conditions need to be construed in the context of the planning permission as a whole, that a condition should not be construed narrowly or strictly, and that it should be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood. She noted also that there is no reason to exclude an implied condition, subject to a recognition that the permission is a public document that may be relied upon by parties unrelated to those originally involved.
16. Applying this more purposive approach to the interpretation of condition 25 of the IDO, I have no doubt that a restoration scheme approved in accordance with the condition could be enforced, provided that the approved programme has clear timescales. In this case however it seems to me that the relevant programme has sought to retain a degree of flexibility, which weakens the extent to which the indicated timetable can be relied upon. This in turn introduces uncertainty, hence some weight can be placed on the appellant's argument that it would be preferable in planning terms to have a more straightforward mechanism to secure restoration.
17. There are other aspects of the undertaking that would secure planning benefits. At present there is no planning control over highway movements associated with the WML, and traffic generated by the quarry has become an issue of genuine concern to local residents. It has long been acknowledged that St Albans Road is not suited to HGV traffic due to its narrow width and alignment, but the current level of HGV movements has resulted in significant complaints from village residents about traffic conditions, along with the issues of noise and dust affecting St Albans Road residents. It is fair to say that traffic in and out of the quarry is an issue of significant concern to local residents.

² *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74

³ *Dunnett Investments Ltd v SSCLG and Anor* [2016] EWHC 534 (Admin), upheld in [2017] EWCA Civ 192

18. The final submitted undertaking includes measures aimed at addressing these concerns. It would restrict the number of vehicle movements on any working day to 32, control working hours, and prevent HGV access to the quarry at the start and end of the school day. There would also be HGV traffic monitoring measures, and wheel washing facilities would be retained and used on the site for the duration of operations. In terms of the operation of the quarry itself, a timetable for implementation of the approved restoration programme would be secured, with completion by the end of 2022, chalk extraction would cease immediately and soil processing would cease by the end of 2022. In my view these are all clear and significant benefits, in terms of highway safety, local character and the amenity of local residents, such that substantial weight can be given to the undertaking in the planning balance.
19. These benefits must be weighed against the harm arising from the inappropriate nature of the development in the Green Belt, and to any other harm. The structures inevitably lead to a loss of openness, but I give limited weight to this harm due to the low level of visual impact by virtue of the siting of the development on the quarry floor, that the structure is sited within a working quarry, and also that alternative mobile equipment could be sited and used within the quarry without the need for planning permission. As I indicated earlier, some weight must also be given to the permission to retain the concrete pad that would result from compliance with the notice. Conditions proposed by the Council would ensure that the wash plant is removed at the end of 2022, that its site be restored, and that mobile plant not be brought onto the land. I consider that these would be reasonable and necessary since the approved restoration programme pre-dates the structure, and having regard to the weight given to the potential for the use of mobile plant.
20. Overall, I consider that the benefits of the undertaking, considered as a whole, is a material consideration that is sufficient to clearly outweigh the overall harm due to inappropriateness and other harm. I conclude therefore that very special circumstances exist to justify this development in the Green Belt. The development as proposed accords with the development plan, which includes Policy 6 of the Hertfordshire Waste Core Strategy and Development Management Policies DPD (CS) and Policy 2 of the North Hertfordshire District Local Plan No. 2 with Alteration (LP), whose aims are the protection of the Green Belt, along with CS and LP policies aimed at protecting the character of the area and highway safety.
21. Accordingly, having considered all other matters raised, I shall allow the appeal on ground (a) and grant planning permission on the deemed planning application.
22. Success on ground (a) means that the enforcement notice is quashed, and the appeal on ground (f) does not fall to be considered.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joe Henry
Liam Winters
Nick Bramall

Henry Planning
Director, Codicote Quarry Ltd
Codicote Quarry Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Sharon Threlfall
Anthony Brady

Hertfordshire County Council
Hertfordshire County Council

INTERESTED PERSONS:

Jim Park
Steve Sanders
Joe Kimber
Ray Mercy
Jan Haye

Local Resident
Local Resident
Local Resident
Local Resident
Hertfordshire County Council

DOCUMENTS

- 1 Council's letter of notification
- 2 Representations and photographs – Jim Parks
- 3 Appellant's submission regarding *Trump International v Scottish Ministers* [2015] UKSC 74.

The following documents were submitted after the oral hearing

Final agreed section 106 undertaking.
Letter from the Council confirming that the s106 undertaking was acceptable.
Correspondence between the Council and Codicote residents regarding the terms of the s106 undertaking.