
Appeal Decision

Site visit made on 16 May 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 11 August 2017

Appeal Ref: APP/E3525/C/16/3160889

Land known as Risby Business Park, Newmarket Road, Risby, Suffolk, IP28 6RD

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by GAP Group Limited against an enforcement notice issued by St Edmundsbury Borough Council.
- The notice was issued on 12 September 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a mixed use comprising the storage, distribution, repair and maintenance of plant and hire equipment.
- The requirements of the notice are:
 - (i) Cease the use of the land and all buildings thereon (shown edged in red on the attached plan) for the storage, distribution, repair and maintenance of plant and hire equipment.
 - (ii) Remove from the land all plant machinery, hire equipment, welfare units, portable toilets, heras fencing, tools, equipment and paraphernalia used in connection with the unauthorised use as specified in this Notice.
 - (iii) Reinstall the earth bund, the approximate position of which is shown edged in blue, to the specification authorised and approved under SE/07/1542.
 - (iv) Remove from the land all waste material arising from carrying out the requirements as specified in (i) (ii) and (iii).
- The periods for compliance with the requirements are:
 - Steps (i) and (ii) to be complied with, in full, no later than 28 days (4 weeks) after the date upon which this Notice takes effect.
 - Step (iii) to be complied with, in full, no later than 42 days (6 weeks) after the date upon which this Notice takes effect.
 - Step (iv) to be complied with, in full, no later than 56 days (8 weeks) after the date upon which this Notice takes effect.
- The appeal is proceeding on the ground set out in s174(2)(a) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Decision

1. It is directed that the enforcement notice be corrected by:
 - (a) In paragraph 3, deletion of "mixed";
 - (b) In paragraph 7, addition after "15th October 2016" of "unless an appeal is made against it beforehand"; and
 - (c) Deletion of the enforcement notice plan and substitution of the plan annexed to this decision.
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It is directed that the enforcement notice be varied in paragraph 5 by:

- (d) Deletion in entirety of requirement (iii); and
- (e) Deletion in entirety of requirement (iv) and substitution of:
 - “(iii) Remove from the land all waste material arising from carrying out the requirements as specified in (i) and (ii).”

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 s177(5) of the Act.

Matters concerning the enforcement notice

2. Before I proceed to determine the appeal I must ensure that the notice is in good order. At my site visit I saw that the access road into the site did not follow the alignment of that which had been edged in red on the enforcement notice plan. I arranged for the matter to be raised with the parties. A revised plan was subsequently agreed between the parties. I shall correct the notice by substituting the revised plan.
3. The notice alleges a “mixed” use although the concept of a mixed use is of two or more primary uses existing within the same planning unit. In this case, the use is of a more composite nature with its various elements (storage, distribution, repair and maintenance) having an interdependency. In other words, it is a single sui generis use which does not fall squarely within any particular use class. I shall correct the notice by deleting “mixed” in paragraph 3.
4. Paragraph 7 of the notice states that the notice takes effect on 15th October 2016. However, where an appeal is lodged (as in this case) the effect of the notice is suspended. The notice would not have taken effect on that date. I shall correct paragraph 7 by adding the words “unless an appeal is made against it beforehand”.
5. I shall make the above corrections under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either of the main parties in me so doing.
6. Whilst, in paragraph 4 of the notice, there is no reference to the time period for enforcement¹ there is no dispute between the parties that the use commenced in 2015 and, therefore, well within the ten year period. I am satisfied that no party’s interests have been prejudiced by this omission. I do not consider it necessary to correct the notice in these circumstances.

Other preliminary matters

7. The enforcement notice alleges a material change of use but does not state the previous use from which the alleged use has changed. I am told that the land has a history of use for industrial and commercial purposes including, at one time, for the refurbishment of paint finishing equipment. In 2001 a fire severely damaged the principal building leading to the cessation of business activity. Over the following years the land was unused until occupied by the appellant company in 2015. No argument has been made that there are any

¹ In this case the relevant time period would have been ten years (s171B(3) of the Act). The parties’ attention was drawn to the matter during the preliminary stages of the appeal.

lawful use rights surviving on the land from the previous industrial and commercial uses. Thus, I shall approach the appeal from the basis of a change of use from unused land.

8. Circumstances have changed since the time of the earlier uses and following the fire. In 2007 a masterplan for the site was adopted by the Council and in 2008 planning permission was granted for a Business Park. The St Edmundsbury Core Strategy [hereafter "CS"] was adopted in 2010, the Vision (including Rural Vision) was adopted in 2014 and the Joint Development Management Policies document [hereafter "DM Policies"] was adopted in 2015. These documents together comprise the current development plan. The development plan intends that the site will be developed for Class B1² and Class B8³ uses in accordance with a masterplan. The earlier history of industrial and commercial use carries little weight in the overall balance of considerations in the appeal, in these overall circumstances.
9. An issue has arisen concerning the earth bund and the requirement of the notice (5(iii)) to reinstall it to the specification authorised by the 2008 permission. Although no appeal has been made expressly under ground (f)⁴ the appellant has argued that this requirement is excessive. I shall consider this matter under the heading "*The implied appeal on ground (f)*".
10. The appellant has drawn attention to the blue line on the enforcement notice plan which, whilst intending to depict the earth bund approximately, does not accurately reflect its position and size. However, for reasons I shall explain later, I intend to delete the requirement for the re-instatement of the earth bund. Therefore, this is not a matter which I need to consider further.
11. There is a steel portal framed building on the land which is associated with the use. I am told that the building comprises the former (fire damaged) building which has been substantially refurbished, re-clad, re-roofed and extended. These refurbishment and extension works do not form part of the allegation within the notice and are not matters before me in this appeal. My considerations are limited to those relating to the use.
12. The deemed application takes its terms from the allegation which refers to storage, distribution, repair and maintenance of plant and hire equipment specifically. The use also has an office component which I shall take into account. A significant part of the use is the outdoor cleaning of the hire equipment which I regard to fall within the "maintenance" element. I shall deal with the appeal and the deemed application accordingly.

² Class B1 is defined, in the Town and Country Planning (Use Classes) Order 1987 (as amended) as: Business Use for all or any of the following purposes—

(a) as an office other than a use within class A2 (financial and professional services),
(b) for research and development of products or processes, or
(c) for any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

³ Class B8 is defined, in the Town and Country Planning (Use Classes) Order 1987 (as amended) as: Storage or distribution - Use for storage or as a distribution centre.

⁴ An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach, or, as the case may be, to remedy an injury to amenity caused by the breach.

The appeal on ground (a) and the deemed application

Planning policies

13. The site is allocated as a rural employment area (Class B1 and B8 uses) within the development plan. Policy DM3 (DM policies) states that masterplans will be required for proposals on allocated land. Policy CS9 (CS) is generally supportive of rural economic development and growth and policy DM33 (DM policies) is permissive towards the re-use of buildings in the countryside subject to compliance with other policies.
14. CS policies CS2 and CS3 taken together with DM policies DM1, DM2 and DM14 seek to achieve high quality sustainable development which (amongst other things) conserves the character and quality of local landscapes, prevents pollution, does not adversely affect the Special Protection Area, provides for the health and safety of the public and does not have an adverse effect upon amenity including by reason of noise.
15. Reference has also been made to CS policies CS4 which classes Risby as a Local Service Centre where housing and employment development is encouraged, CS7 which states that development must provide for travel by a range of means of transport other than the private car and CS13 which states that the scale of development should reflect the need to maintain the sustainability of local services and to diversify the economy. Additionally DM policies DM5, DM6, DM45 and DM46 are cited which encourage economic growth in the countryside, resist developments that would cause or exacerbate flooding, require transport assessments and travel plans for developments likely to have significant transport implications and which seek to reduce over reliance on the car and ensure parking is provided for all vehicle types. Vision policy RV4 allocates the site as a rural employment area for B1 and B8 uses.
16. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.⁵
17. A masterplan for the development of the site, adopted by the Council in 2007 following public consultation, has the status of supplementary planning guidance. It pre-dates the current development plan. Whilst the appellant calls into question the viability of what it proposes no explanation has been given as to why the masterplan has not been refreshed if it no longer reflects current market conditions. Policy DM3 states that masterplans will be required for proposals on allocated land. In the absence of any replacement or alternative the 2007 masterplan continues to be a material consideration which carries moderate weight in these overall circumstances.
18. The National Planning Policy Framework [hereafter "the Framework"] sets out the Government's planning policies for England and how it expects these to be applied at local level. The core planning principles are set out at paragraph 17 and state (amongst other things) that planning should support sustainable economic development, seek to secure a good standard of amenity for existing and future occupants of land and buildings, take account of the different roles and character of different areas, contribute to conserving the natural environment and reducing pollution and encourage the effective use of land by reusing previously developed land. Section 1 advises on building a strong

⁵ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

competitive economy, section 3 gives guidance on supporting a prosperous rural economy and section 4 concerns promoting sustainable transport. Paragraph 109 advises (amongst other things) on the prevention of pollution, paragraph 111 advises on reusing brownfield land and paragraph 123 gives guidance on dealing with the impacts of noise. National policies as expressed in the Framework are material considerations for the appeal.

19. The CS pre-dates the Framework. However, the cited policies are in general conformity with it and are therefore capable of carrying significant weight. The Vision policies and the DM policies post date the Framework and carry full weight unless material considerations indicate otherwise.

Main issues

20. The use involves the hiring out of equipment (including portable toilets, welfare units, barriers and fencing), the outdoor jet washing/cleaning of the equipment and its repair and general maintenance. The use does not fall squarely within the development plan allocation policy for the site as it is a sui generis use whereas the development plan proposes a rural employment area for B1 and B8 uses developed in accordance with a masterplan.
21. The master plan and 2008 planning permission scheme were clearly very carefully designed to minimise any harmful effects upon local residents and the wider environment. I shall focus upon the masterplan which remains the starting point for the decision.
22. The masterplan envisages that the range of buildings to be converted at the northern end of the site will be entirely for Class B1 use, as will be the two northernmost of the new blocks. It states that no Class B2 uses will be permitted on the site and proposes a residential use (site managers dwelling) in the north eastern part. The masterplan, which was informed by a Landscape and Visual Appraisal, also proposes that the site periphery is defined by bunding and native species planting to the north, south and west with new native hedgerow species planting to reinforce the east section. Additionally, internal bunding was proposed to the northern end planted with shrubs.
23. The appellant says that, despite a long running marketing campaign for the business park, no pre-lets were secured. Some of the blocks were built "on-risk" but most sat vacant for long periods until eventually occupiers were found. Completing the development of the business park in accordance with the masterplan was not considered a viable or commercially expedient proposition.
24. If what the appellant asserts is correct⁶, these circumstances could amount to a material consideration which indicates a decision other than strictly in accordance with the allocation policies of the development plan, subject to the development being acceptable in all other respects.
25. With that in mind, and when taking into account the full policy background, statutory duty, the respective cases of the main parties and the comments made by other interested parties and consultees, I consider the main issues in the appeal to be:

⁶ The comments of an interested party, who's company was interested in purchasing the site, throws some doubt upon this claim. There is no detailed viability and marketing evidence. However, the Council has not sought to challenge the appellant's assertion.

- i. Visual effect upon the character and appearance of the area;
- ii. Effect upon the character of the area and the living conditions of neighbours with particular regard to noise, odour and spray drift; and
- iii. Whether satisfactory surface water drainage is provided for.

Visual effect upon the character and appearance of the area

26. The site lies close to, but outside, the village settlement boundary at the point of transition between the built part of the village and the countryside. The character and appearance of Risby is that of a rural village set in a farmed landscape with an historic core. The predominant land use of the village is residential.
27. Much of the centre of the village is within the Risby conservation area which extends along Welham Lane to a point quite close to the north east corner of the site. The Council has not sought to argue that the development affects the character and appearance of the conservation area or the setting of any listed building within it. Neither do I consider it to do so. However, the village fabric of quaint cottages, historic residences and rural buildings, together with its country lanes, village green and pond are all part of its visual quality and charm.
28. To the west of the site is farmland crossed by public footpaths from the end of Welham Lane which traverses the northern boundary of the appeal site.
29. The outside storage of portable toilets and welfare units together with the parking of associated vehicles, on the face of it, is incongruous in such a setting and will be visually displeasing if it is seen.
30. There are mature, tall hedges to the east and west boundaries of the site and, to an extent, its northern boundary, which provide for a degree of screening which may fluctuate a little over the year depending on leaf cover. Additionally there is fencing to the north and (in part) east boundaries with the building itself also blocking views into the site, to an extent from the north and west. However, I am not persuaded that the outside storage activity is sufficiently screened in all views.
31. From Welham Lane, to the north, it is possible to see the stored welfare units rising above the fencing and hedgerow, their urban and utilitarian appearance is unwelcome on this pleasant country lane leading out of the village to the open countryside.
32. It appears that views into the site are also possible from some neighbouring properties and/or their gardens including from Orchard Cottages, Orchard House and Welham House. I also have concerns about the possibility of views into the site from the gardens and land parcels of the properties to the east which abut the site and of glimpses in views from the countryside to the west, bearing in mind that the storage could occupy the western part of the site.
33. Substantial bunding and planting to the periphery and within the northern part of the site had been proposed by the masterplan, informed by a Landscape and Visual Appraisal. However, there is no information before me to indicate that the visual impacts of the appeal development have been assessed with such rigour.

34. Fencing alone to provide additional screening is unlikely to be visually acceptable as, in a sensitive rural and edge of village location, a softer approach is called for. I cannot be satisfied, on what is before me, that the visual impacts of the development can be adequately mitigated in a way that will not, in itself, cause visual harm to the character and appearance of the area.
35. With regard to visual effects in views from the south, the southern boundary is defined by a featureless metal fence which severs the site from the business units⁷ with their neat forecourt parking areas and landscaped surrounds. Although screening views of the portable toilets and welfare units from the south, as a result of this boundary treatment the co-ordinated and structured approach to the landscaping of the business park, as envisaged by the masterplan, is lost and the landscape quality of the business park as built out is undermined. There is no landscaping proposal for the appeal site before me such that I could be satisfied that a softer transition would be possible whilst, at the same time, providing for the adequate screening of the outside storage area.
36. On this first main issue, therefore, I conclude that the appeal development has a harmful visual effect upon the character and appearance of the area which cannot be overcome by the imposition of planning conditions.

Character of the area and living conditions – noise

37. The main sources of noises that are likely to arise from the use, and which could be detectable from outside the site boundaries, include jet washing of portable toilets and welfare units, the comings and goings of lorries and other vehicles (engine noise), loading and unloading of hire equipment, occasional/accidental dropping of items (e.g. metal fence panels), forklift truck operation (engine noise and reversing alarm), recharging batteries of the welfare units (generator noise), employees voices and shouting, music from stationary vehicles and other general yard activity.
38. In considering this issue I have had particular regard to effects upon the public realm areas of Welham Lane, the outside areas and gardens surrounding Orchard Cottages, Orchard House and the bungalows to the opposite side of Welham Lane; and also the garden areas and land parcels associated with the properties to the east on Welham Lane, Orchard Close and South Street, a number of which border the appeal site.
39. The appellant has provided technical evidence in respect of the environmental effects of the development which includes a noise impact assessment [hereafter the "MAS report"]. Whilst acknowledging that some noise will be audible from outside the site from time to time and in worst case scenarios the report concludes that an acceptable noise environment exists at the site. It indicates that there is acceptable impact at the closest dwelling and that noise impact could be reduced further by additional screening.
40. The Council has not, itself, brought technical evidence of noise readings (for example) but challenges the conclusions of the MAS report on the basis that there has been a loss of residential amenity nevertheless. Noise has been witnessed by the Council's Environmental Health Officer. Interested parties have also commented upon the adverse effects of noise.

⁷ A further building on the business park was under construction at the time of my site visit.

41. The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. The impact will depend on how various factors combine in any particular situation.
42. The village ambience has a still and passive quality which, I have no doubt, is valued by residents and visitors and which contributes to the area's special sense of place. Whilst there is a degree of established traffic noise from the A14, its nature is of continuous background sound which is likely to have become accepted over time and may go unnoticed by some. Other sounds within the environs tend to be natural or community sounds (for example birdsong, dogs barking, residents going about their daily activities) and are the type of sounds that, in general, would be accepted in a rural village setting.
43. The sounds arising from the subject development, on the other hand, are unwanted and alien to this location where the village edge meets the countryside, being more akin to what might be found on an industrial estate and/or within an urban area. Apart from causing general annoyance, such noise is likely to be perceived as invasive and disturbing in its location, causing interference to the general stillness of the village and countryside.
44. I acknowledge that some sounds will not be audible outside of the site, not least because they are screened by the existing building and fences, and thus will not cause harm to the wider area. I also take into account that (according to the technical evidence) site noise adds only a very small amount to the overall sound environment and that some of the noises may be infrequent or of relatively short duration. Even so, I consider the audible noises will intrude upon the valued calmness of the surroundings when taking into account the rural quality of the area and the incongruous nature of the noises concerned.
45. Whilst the appellant argues that inaudibility is an unrealistic expectation from any commercial operation, for reasons I have already explained I give little weight to the earlier industrial activities which took place on the site but ceased in (or around) 2001. The decision is to be made from the starting point of the masterplan which proposed only Class B1 and residential use within the part of the site where the subject activities are now taking place.
46. Attention has been drawn to a condition on the 2008 permission which placed a limitation on the level of noise when measured at the boundaries of the site. It is suggested that the noise which emanates from the appeal development is below the level imposed by that condition and that this weighs in favour of the appeal development.
47. For the following reasons, I attach little weight to this condition. Firstly the condition has a proviso that no constituent of the noise shall cause annoyance to occupants of surrounding properties whereas the noise from the appeal activities clearly does cause annoyance. Secondly, the condition is to be interpreted in the context of the planning permission as a whole which covers the entire site and includes class B8 uses with associated lorry movements, loading and unloading activities. However, on the part of the site from where the subject sound generating activities now emanate only Class B1(a) use with associated car parking was permitted. By definition, such use would not have caused detriment to the amenity of the area in terms of noise such that the condition would not have come into play in respect of activities within that area.

48. It is suggested that noise could be mitigated by further screening and/or a noise management plan. I have considered whether these matters could be covered by planning conditions. However, I cannot be sure from the evidence that such measures would sufficiently reduce the level of noise arising from activities on the open parts of the site. I also have concerns about the extent, height and design of the screening that might be required and whether that would be visually acceptable in views from the public realm and from neighbouring properties and gardens.
49. I have taken into account paragraph 123 of the Framework which confirms that noise giving rise to "significant adverse impacts" on health and the quality of life as a result of development should be avoided. I have had regard to the Planning Practice Guidance on Noise and the Noise Policy Statement for England which is referenced in the Framework, both of which assist in the interpretation of national planning policy as expressed in paragraph 123. The development plan policies relating specifically to the consideration of noise (namely policies DM2 and DM14) do not support development which "adversely affects" the amenity of adjacent areas and residential amenity or which results in "unacceptable" impacts on general amenity.
50. When considering the noise sources and their effects I find, in the particular circumstances of this case, that the unwanted noise arising from this development adversely affects and results in unacceptable impacts on amenity within the terms of policies DM2 and DM14 and also gives rise to "significant adverse impacts" as interpreted in the context of paragraph 123 of the Framework. These detrimental effects upon the quality of life for residents and the enjoyment of visitors cannot be satisfactorily overcome by the imposition of planning conditions.

Character of the area and living conditions - odour

51. The matter of odour is examined in the MAS report. I am told that the toilets and welfare units are emptied off-site. When the MAS consultant undertook an assessment a slight odour from the toilets was detected but was imperceptible at a distance of 3 metres with no detectable odour beyond the site boundary. On that basis the MAS report concludes that no mitigation measures are necessary.
52. However, a considerable number of interested parties complain of experiencing odour from within their gardens, from neighbouring land parcels and also when passing the site along Welham Lane. For example, one neighbour comments that on some days there is a most noticeable and unpleasant taint emanating from the site which pervades the area. Therefore, even though the MAS consultant found no problem on his visits that required abatement/mitigation measures I do not rule out the possibility of odour being experienced outside the site on some days.
53. It is suggested that an odour management plan could be required through a planning condition which would document procedures to be adopted when undertaking potentially odorous activity. However, it is unclear whether such a plan could eradicate the problem or whether odour is, in fact, an inevitable consequence of the use and, if so, to what extent it could be managed. I do not consider a planning condition would be appropriate without a better understanding of what it might seek to achieve.

54. On this issue I find harm that cannot be overcome by a planning condition.

Character of the area and living conditions - spray drift

55. Whilst shielded to an extent by the existing building and the boundary fence, the MAS report accepts that spray drift may occur in a northerly direction in windy conditions. The comments of interested parties indicate that spray drift has been experienced, in particular within Welham Lane to the north of the site. Such occurrences have an adverse effect upon the character and environmental quality of the area and the enjoyment by residents and visitors of this pleasant country lane.

56. There is no proposal before me to address this issue and I am not persuaded that satisfactory measures to prevent spray drift could be achieved in a manner which would be visually acceptable. On this issue, therefore, I find that harm arises to the character and environmental quality of the area which cannot be overcome by planning conditions.

Surface water drainage

57. I am told that the development uses the site's existing drainage system and that surface water from the jet spraying area runs to the Anglian Water mains sewer in Welham Lane. The appellant has a license from Anglian Water to discharge trade effluent (used water from wash down of plant including empty portable toilets) into the public sewer. However, that in itself is not conclusive of there being satisfactory surface water drainage arrangements in place.

58. The site overlies a Source Protection Zone 2 and Principal Aquifer and is located close to a water abstraction point for public water supply. As such, the site is particularly sensitive in terms of any pollution and how that is dealt with.

59. There is an extensive hard surfaced area, much of which appears to have been constructed to facilitate the current use. I cannot be sure that all surface water is disposed of to the existing drainage system.

60. The license covers only effluent from the jet spray and cleaning activities. In addition, the hard standing is used for the storage of hire equipment and the parking and operation of vehicles giving potential for contamination by fuels, chemicals and/or other polluting materials. In other words, the use poses a risk. However, there is no detail of any drainage strategy before me or of the treatment stages for any pollutants and of how the risk is to be managed.

61. Interested parties are concerned about the possibility of pollution of the village pond. The appellant acknowledges that there was an incident of pollution which arose from an isolated overflow in extreme weather conditions. The Environment Agency has raised a concern that there is insufficient information.

62. In all these circumstances, and in the absence of a drainage scheme and/or an assessment which demonstrates that any risks posed can be satisfactorily managed, I cannot be sure that acceptable arrangements are in place for the drainage of surface water that will avoid contamination of the water supply.

63. Because of its fundamental nature, a planning condition would not be appropriate without there being further information about how the issue is to be addressed.

Other matters

64. The site is close to the Breckland Farmland Special Protection Area. The appellant has provided Information to Support a Habitat Regulations Assessment which concludes that the development is not likely to have a significant effect alone or in combination with other plans or projects upon the Special Protection Area. This is not contested by the Council and I have no reason to disagree.
65. A Transport Statement shows a reduction in expected vehicular movements when compared to those that would arise from the extant planning permission, and that the number of larger vehicles will not increase. It has also been demonstrated that travel to and from the site is possible via a range of transport modes other than private car. Additionally I acknowledge that most transport will approach and leave the site via the A14 rather than on the roads through the village. I find no harm arising in respect of transport issues subject to the imposition of conditions.
66. The issue of potential noise break out arising from activities taking place within the building could be dealt with through a planning condition. Planning conditions could adequately control the hours/days of operation, provide for an acceptable lighting scheme and limit the use of both accesses on Welham Lane.
67. Other matters raised include flood risk, possible land contamination and on-site wildlife considerations. Whilst I do not have full information relating to these issues I have no reason to think that they are pivotal for the appeal or that there is any impediment to them being covered by planning conditions.
68. I also acknowledge the concerns expressed about the loss of employment opportunities that would have arisen had the business park been completed, the suggested negative effects upon trade at other village businesses, damage that is alleged to boundary features and that the development was carried out without planning permission. My decision turns, however, on the findings I have made on the main issues identified above.

Conclusions on ground (a) and the deemed application

69. The development brings vacant, brownfield land back into beneficial use and provides employment. It supports other businesses in the area, helps to support local services and diversifies the rural economy. These are all benefits which weigh in its favour. In terms of traffic impacts and ecology I find no harm. These are neutral factors in the decision. However, with regard to visual impacts, noise, odour, spray drift and drainage I find substantial harm. That harm is not outweighed by other considerations. The development offends the policies of the development plan, notably policies CS2, CS3, DM1, DM2, DM3 and DM14, and the development plan when read as a whole. Additionally the development is not sustainable development because of the degree of environmental harm that it gives rise to.
70. I have taken into account all other matters raised including the appellant's Corporate Social Responsibility Report which aims to minimise environmental impact in every possible way; and that the appellant has sought to involve the Council's Environmental Health Officer and was seeking to resolve matters with the Council at the time the enforcement notice was issued. However, there are

no other matters either singularly or collectively which indicate a decision other than in accordance with the development plan.

71. Therefore, I conclude on ground (a) that the appeal should fail. The deemed application shall be refused.

The implied appeal on ground (f)

72. The appellant argues that the earth bund which existed prior to the change of use was not the same as that which is comprised in the landscaping scheme of the 2008 permission. The 2008 permission proposed a longer planted bund. An aerial photograph and another photograph taken prior to or at the early stages of the commencement of the current use appear to support the appellant's argument.
73. The enforcement notice seeks a complete remedy of the breach. Under s173(4)(a) of the Act a breach can be remedied by restoring the land to its former condition or by making the development comply with the terms of any planning permission which has been granted.
74. The requirement to reinstall the earth bund as approved in the 2008 permission falls within the scope of s173(4)(a). However, if such a requirement is to remain within the notice it should be framed in the alternative and also provide for the lesser step of restoring the bund to its former condition.
75. I have considered varying the notice in this regard but have concluded that such a variation would not be appropriate. That is because the earth bund, in its former condition, was not wholly in compliance with the 2008 permission. To require its re-instatement through the notice would be to legitimise this (former) unauthorised feature. Without the requirement at all it will remain open to the Council to take action in respect of the bund as it sees fit. Thus, there would be no injustice to the Council in the removal of this step.
76. I therefore find that requirement 5(iii) is excessive and I shall delete it. The implied appeal on ground (f) succeeds to this limited extent.

Conclusion

77. For the reasons given above I conclude that, except to the limited extent identified in the implied appeal on ground (f), 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.

Susan Wraith

Inspector



Annex to Appeal Decision

Revised Enforcement Notice Plan

This is the plan referred to in my decision dated: 11 August 2017

by Susan Wraith Dip URP MRTPI

Land known as Risby Business Park, Newmarket Road, Risby, Suffolk, IP28 6RD

Appeal ref: APP/E3525/C/16/3160889

Scale: NOT TO SCALE

