



Appeal Decision

Site visit made on 19 December 2017

by Stephen Roscoe BEng MSc CEng MICE

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

Decision date: 25 January 2018

Appeal Ref: APP/T1600/W/17/3180692

Land Adjacent to Page's Lane, Church End, Twyning, Tewkesbury, Gloucestershire

- 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 Moreton C Cullimore (Gravels) Ltd against the decision of Gloucestershire County Council.
 - The application Ref 15/0088/TWMAJM, dated 14 October 2015, was refused by notice dated 27 January 2017.
 - The development proposed is the extraction of sand and gravel and restoration to agriculture, amenity and nature conservation use on land adjacent to Page's Lane, Church End, Twyning.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the Council's refusal that is the subject of this appeal, the Gloucester Cheltenham and Tewkesbury Joint Core Strategy has been adopted, and I have taken this into account in my decision.

Main Issues

3. I consider the main issues in this case to be:
 - i) the effect of the proposal on the living conditions of nearby occupiers and the economic wellbeing of local businesses in relation to noise and dust;
 - ii) whether the proposal would preserve or enhance the character or appearance of the Church End Conservation Area (CA); and
 - iii) whether the proposal would result in the satisfactory restoration of the site.

Reasons

Living Conditions

4. In respect of noise, the existing levels at the appeal site over which background values are averaged show a large variation of up to 10dB. This is understandable for the rural area in which the appeal site is situated. There are however residential properties in close proximity to the site. The sensitive receptors associated with these properties make the assessment of the background level more critical than would be the case for a noise source in a more isolated location. This gives little margin for error in terms of predictions for noise impact from the proposal.

5. These predictions show that average noise levels, with mitigation, are close to 10dB over the averaged background levels. This means that at times they would be likely to exceed the 10dB and that the background level against which this 10dB increase is judged is also subject to variation of up to 10dB. All of this points to the likelihood that a 10dB increase would be exceeded for an obvious period of time. I am not satisfied that these variations, which I consider would occur on a day to day basis, could be satisfactorily regulated by means of an appropriate condition and its enforcement, which I consider would be more general in its approach.
6. Furthermore, the type of noise would not be similar to the background noise at the site, a significant component of which is nearby intermittent traffic and more distant traffic noise. The distinct noise characteristics of the type of plant which would be likely to be used, and particularly its peak components even under routine operations, would be associated with the extraction activities as an obvious source. This would make them difficult to ignore and would emphasise the imposition of this development on the local area.
7. Those parts of the proposal closest to residential properties would incorporate a 4.5 to 5m high acoustic screen bund for mitigation. In view of the height of this bund and its impact on the relatively flat landscape and the quality of the compacted soil within the lower levels of the bund, I am not satisfied that noise could be controlled or mitigated further. The proposal would therefore conflict with Minerals Local Plan¹ (MLP) Policy DC1 in this regard. The bund thus would not provide an appropriate buffer in the context of the proximity of sensitive uses in conflict with MLP Policy E14. Moreover, there would be few intervening features between the workings and the residential properties apart from the bund. I therefore consider that noise would be very likely to reach unacceptable levels and that there would be insufficient separation between the operations and people in conflict with Local Plan² (LP) Saved Policy EVT3. I am not however convinced that the impact on local businesses, although there undoubtedly would be some, would be unacceptable.
8. In terms of dust, the proposal would include the on-site grading of extracted material. It would also be likely to include the production of an aggregate product, as the gravel would be likely to have a high polished stone value, strength and resistance to weathering and chemical attack. The site is relatively small, and activities would be likely to involve more intensive turning of vehicles and plant than on larger sites. Furthermore, the site is not of a regular shape due to the proximity of residential properties and the need to provide some space between them and the workings. This irregularity would require the bund to turn a number of corners to follow the shape of the site, requiring more bund volume and earthmoving operations close to the properties. This would result in higher dust levels at these properties. Again, I am not satisfied that dust could be controlled or mitigated further, and the proposal would therefore conflict with MLP Policy DC1 in this regard. This would not however be unacceptable in terms of business users, due to greater separation distances.
9. The eastern area of the workings, or Phase 1, would be the most critical in terms of living conditions. It has been suggested that this area would be worked over a period of 6 months, but there is no evidence that this timescale

¹ Gloucestershire Minerals Local Plan: April 2003

² Tewkesbury Borough Local Plan: March 2006

would be regulated, and I consider that it would thus be market dependent. There would be a high degree of work involved in creating and then removing the 5m high acoustic screen bunds due to their tight alignment in this part of the site. I recognise that advice in Planning Practice Guidance suggests that elevated noise level could be acceptable for preparatory work such as bund construction for up to 8 weeks in a year. There is however no evidence that the bunds could be constructed and removed within a period of 8 weeks, bearing in mind that material would need to be stripped from the site to be used in them, and then returned as restoration material. Furthermore, the layout of the extraction in this area is something of a finger some 50m wide between two side bunds which would have a base width each of some 20m and a height of 5m. This bund arrangement would extend the period of time over which plant would be working in close proximity to the residential properties.

10. Agricultural operations on the existing site would indeed create dust under certain circumstances. This would however be for a limited period, and such operations would not involve the creation and removal of a number of bunds 5m high. It has been suggested that the relatively coarse material would reduce the amount of dust generated. Whilst this may be the case, it is not a matter that I can rely on to any great extent, due to the variability of below ground conditions.
11. I therefore conclude that the proposal would be likely to have an unacceptable effect on the living conditions of nearby residential occupiers in relation to noise and dust. I further conclude that it would thus conflict with MLP Policies DC1 and E14 and LP Saved Policy EVT3.

Church End Conservation Area

12. The CA lies to the east of the appeal site. Its setting appears however to be generally framed by the highway approaches to the CA rather than views of it which would include the appeal site. The proposed bunds would be glimpsed between the buildings within the CA. The bunds would however be temporary and limited views of plant would be available over them. The proposal would therefore preserve the setting of the CA.
13. The restoration would include the creation of two ponds. These would have some public access which would give views of the CA not currently available, and their presence would physically reduce future development pressure on the setting of this part of the CA.
14. I therefore conclude that the proposal would preserve or enhance the character or appearance of the CA and would accord with the National Planning Policy Framework in this regard. In coming to this view, I have placed great weight on the conservation of the heritage asset.

Restoration

15. The proposed restoration would include agricultural use, in accordance with MLP Policy R2, and public access to the restored ponds. I am satisfied with this variety of restoration uses, and that the provision of these could be regulated by the imposition of an appropriate condition.
16. I therefore conclude that the proposal would include satisfactory measures in relation to its restoration.

Other Matters

17. The Council has a landbank of just over 10 years of sand and gravel reserves. Whilst much of this is based on a single large site, there is no direct evidence that the appeal proposal would increase commercial competition against this single site to any great extent. This would be because of the likely particular qualities of the material to be extracted at the appeal site. I accept that the material at the site is of a particular quality with no lignite contamination. I also recognise that the material has a business link with the appellant's building product manufacturing processes and that this would reduce unsustainable transport of the material. These matters however would not outweigh the harm that I have identified.
18. Whilst the extraction would have some benefits, it would only make a limited contribution to the aggregate needs of the area. Moreover, the appeal site is not in the Council's preferred area of the upper Thames valley for sand and gravel extraction, although the MLP suggests that small scale extraction would be permissible elsewhere.
19. The Council's Local Aggregates Assessment (LAA) suggests that more sites with reserves may have to be identified in the future to accommodate growth. This will however always be the case, and the purpose of a landbank is to identify sufficient sites within a specific timescale. I do not therefore consider that this statement in the LAA supports the appeal.

Conclusion

20. The Framework advises that great weight should be given to the benefits of mineral extraction. Here however, whilst I recognise that there are some benefits in the extraction proposed, it would make a limited contribution to the sufficiency of supply and therefore to the economy of the region. There would also be limited public benefits resulting from the restoration. Against these benefits should be balanced the harm to the living conditions of nearby residential occupiers, and this is a matter to which I attach significant weight due to their proximity as I have described. This harm would outweigh the benefits of the extraction. This is particularly the case on the eastern part of the site with its finger of extraction requiring a large degree of disruptive mitigation bunding as well as the extraction itself. Furthermore, exceptional circumstances for extraction outside of the preferred area have not been proven to me. The fact that the proposal would preserve or enhance the character or appearance of the CA does not influence the planning balance in this case, as this is a test against which the proposal should be judged in any event.
21. Having taken into account all other matters raised, none carry sufficient weight to alter the decision, and my conclusion is based on the evidence before me in terms of policy as a whole. For the reasons given above, I conclude that the appeal should be dismissed.

Stephen Roscoe

INSPECTOR