



Appeal Decision

Site visit made on 26 March 2019

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 01 April 2019

Appeal Ref: APP/L3055/C/18/3206116

Land at 293 Bowbridge Road, Balderton, Newark, Nottinghamshire

- 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 Newark Care (Notts) Limited against an enforcement notice issued by Nottinghamshire County Council.
 - The enforcement notice was issued on 17 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission making the material change of use of the land from an industrial use to use for the importation and storage of waste.
 - The requirements of the notice are:
 1. Cease and not to recommence the importation of waste materials onto the Land;
 2. Remove from the Land all waste materials brought and placed on the Land; and
 3. Remove from the Land the material imported to form a bund around the mixed waste material.
 - The periods for compliance with the requirements are 1 day in relation to requirement 1 and 3 months in relation to requirements 2 and 3.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a)/the deemed application for planning permission

Main Issues

2. The main issue is whether the development is acceptable having regard to:
 - any need for it;
 - any impact on the character and appearance of the area;
 - any impact on the environment in terms of pollution and on neighbouring occupiers in terms of odour, vermin, flies and noise; and
 - any implications for local policies concerning the provision of housing.

Reasons

3. A variety of waste management solutions are identified in Policy WCS7 of the Nottinghamshire and Nottingham Replacement Waste Local Plan Waste Core Strategy (WCS), adopted December 2013. However, the long-term storage of

waste on vacant land is not among them. Accordingly, that policy does not suggest appropriate locations for such a facility.

4. Among other things, saved Policy W3.1 of the Nottinghamshire & Nottingham Waste Local Plan (WLP), adopted January 2002, provides that planning permission will not be granted unless enough information is provided to enable assessment of the need for the facility. No evidence of need has been provided so, on this basis alone, there is conflict with Policy W3.1.
5. The Environment Agency (EA) estimates that the site currently holds some 2000 tonnes of waste. Limited samples taken by the EA indicate that this appears to comprise inert household and commercial waste; mainly plastic, a lesser component of metals, fabrics, timber, cardboard, paper, building materials, soils, other packaging, sanitary and medical waste (including sanitary towels and saline bags) and there is some contamination with food waste. WCS Policy WCS5 makes some provision for additional non-hazardous or inert landfill capacity, where it is shown to be necessary. There is no evidence before me to demonstrate need. Indeed, there is a licensed operational landfill site 2 miles to the south. In any event, WCS5 gives priority to areas around Nottingham and Mansfield/Ashfield, rather than this location. WCS5 does not support the development.
6. WCS Policy WCS4 supports small-scale waste treatment facilities where they help to meet local needs and fit in with the local character. Again, there is no evidence that this development meets a local need. I address character next but, in any event, the development conflicts with WCS4, as well as WCS5 WCS7 and WLP Policy W3.1 and I conclude on this issue that there is no need for it.
7. Turning to character and appearance, the appeal site is in a mixed residential and commercial area. There is a housing estate to the west side of Bowbridge Road, the frontage being characterised mainly by bungalows in the immediate vicinity of the site. Directly to the north of the appeal site is a car sales and motor repair business and a small collection of other industrial units, with allotments, a leisure centre and a residential care home beyond them. There is disused industrial land to the east and, just to the south, lie other industrial units and a petrol filling station.
8. The appeal site is set back from the road frontage a little and is surrounded by palisade fencing. Within that, there is an earth bund, which is overgrown with weeds. Bags of rubbish are stacked in blue and white synthetic hessian bulk bags within the bund. The tops of the stacks can be seen from several points along Bowbridge Road. There will no doubt be more extensive views from the upper floor of a single two-storey house almost opposite the site.
9. At the time of my visit, there was rubbish, including degraded blue bags, on the rough ground between the site and the Bowbridge Road frontage. This could no doubt be remedied through proper management and the visual impact of the site could be mitigated to some extent by effective screening and controls over the height to which waste could be stored. Nevertheless, notwithstanding the mixed nature of the area, this use in close proximity to dwellings, is detrimental to the character and appearance of the area, giving rise to further conflict with WCS4. It also involves a breach of WCS13, which seeks to avoid unacceptable impact on any element of environmental quality. The development also conflicts with Core Policy 9 of the Newark & Sherwood

District Council Core Strategy (CS), adopted March 2011, which aims to ensure that proposals contribute to the protection and enhancement of the environment.

10. I conclude on this aspect, that the development causes unacceptable harm to the character and appearance of the area.
11. Although the EA has carried out limited sampling, in further breach of WLP Policy W3.1, insufficient information has been provided in relation to matters such as the type of waste material, arrangements for surface drainage and hydro-geology and measures to minimise pollution. The stored waste is exposed to rain and the appellant does not dispute that it is on a permeable base, with no engineered drainage system. Given the lack of information, a precautionary approach is appropriate, and there is potentially contaminated run-off which could discharge to the wider environment creating pollution risk, contrary to saved WLP Policy W3.5, CS Core Policy 9 and Policy DM10 of the Newark & Sherwood Allocations and Development Management Policies Development Plan Document (DMDPD), adopted July 2013.
12. Although pollution risks can often be addressed through conditions, that is unlikely to be reasonable in this case. The Waste Planning Authority (WPA) indicate that the total reconstruction of the site would be required, with a concrete impermeable base and a sealed drainage system discharging to a public sewer. This would necessitate removal of all the waste first.
13. Even if water pollution could be prevented, Newark & Sherwood District Council's (DC) Environmental Health officers have received complaints. They remain concerned about the impact on people living and working nearby in terms of offensive odour and vermin infestation, including rats. The waste itself is likely to harbour rats and the fact that it includes some food waste will attract them, along with flies. I visited on a cool morning when the wind was from the north and I did not detect a strong smell from the site. However, complaints from neighbours indicate that on warm days, and possibly when the wind is in a different direction, odour is a significant problem.
14. I also note that if planning permission were granted for the use, waste would probably be moved around the site. This would disturb it, exacerbating odour issues and could result in an additional noise problem.
15. Some of this harm could perhaps be mitigated by conditions. However, no specific measures have been proposed by the appellant and, given the close physical relationship with neighbouring uses, including many dwellings, an acceptable standard of amenity cannot be secured, contrary to DMDPD Policies DM5 and DM10.
16. I conclude on this aspect that the development has an unacceptable impact on the environment in terms of pollution and on neighbouring occupiers in terms of odour, vermin, flies and potentially noise, contrary to the policies referred to.
17. The appeal site forms part of larger site which had planning permission for a 64-bed nursing home (now lapsed) and which is now allocated under DMDPD Policy NUA/Ho/8 for around 66 new dwellings. If approved, the current use would prevent housing development of the appeal site itself. Given the environmental, character and appearance issues discussed, it would clearly also

inhibit residential development of the remainder of the allocation, along with the almost adjacent site to the south. This is allocated for around 150 dwellings under DMPD Policy NUA/Ho/9 and so the delivery of about 236 new homes could be prejudiced.

18. The appeal development could therefore undermine the DC's ability to maintain an adequate housing land supply and conflict with DMPD Policy DM2, which supports the development of allocated sites for their intended purpose.

Conclusion on ground (a)/the deemed application for planning permission

19. I conclude that the development is unacceptable in this location, given that a need for it has not been demonstrated and it would cause unacceptable harm to: the character and appearance of the area; the environment in terms of pollution; neighbours' amenity, in terms of odour, vermin, flies and noise. It would also undermine local policies concerning the provision of housing. It is contrary to the development plan, given the conflict with the key policies referred to, and no material considerations indicate that planning permission should nevertheless be granted. I am not persuaded that reasonable conditions would overcome the environmental harms identified and, even if they could, they would not address the objections based on lack of need and impact on the provision of housing.

20. Ground (a) should therefore fail and planning permission should be refused.

Ground (g)

21. The basis of this ground is that the 3-month compliance period in the notice is unreasonable short.
22. The appellant states that the waste was deposited on the site by a trespasser in 2015 without its knowledge and consent. This does not appear to be disputed. On becoming aware of the problem, the appellant took steps to prevent it continuing, having informed the EA, the police and the WPA. It then granted a short lease to the trespasser, whilst negotiations took place over a possible sale of the site to that trespasser. When those negotiations failed, the appellant forfeited the lease, regained possession and obtained an order for costs against the trespasser, who was subsequently declared bankrupt. The appellant then engaged in negotiations with the DC with a view to selling the site to it, but the DC withdrew in May 2018.
23. The appellant contends that it was not expedient for the WPA to issue the enforcement notice shortly after that. Expediency is a matter for the courts rather than for me but, in any event, the appellant claims that the 3-month compliance period is wholly insufficient. It argues for at least 12 months, in order to arrange clearance of the waste by a specialist waste disposal company at substantial financial cost.
24. I have had regard to the history of this matter and the fact that enforcement action was delayed for some 3 years while other solutions were explored. However, the appellant has not disputed the WPA's evidence that, at a rate of 2 HGV movements per day, 5 days per week, the amount of waste on the site could easily be removed within a maximum of 8 weeks, noting the location of a licensed landfill site within 2 miles. Furthermore, given that the waste appears to be general waste, a specialist waste operator will not be required, and the

material can be moved by a suitably authorised waste carrier, such that there need not be any significant delay in engaging a contractor.

25. Neighbouring occupiers have had to contend with the environmental consequences of the current use of this site since 2015 and should not have to do so for any longer than is necessary now. Furthermore, the removal of the waste itself will cause issues, particularly in terms of smell and disturbance of vermin and therefore this exercise needs to be expedited, rather than undertaken over a lengthy period.
26. The appellant will incur costs in complying with the notice, but that is not enough reason for extending the compliance period. Furthermore, whilst I note the collapse of negotiations regarding the sale of the land with the waste in place, the site must have a value, given the housing allocation. I am not persuaded that the 3-month compliance period is unreasonably short and ground (g) therefore fails.

J A Murray

INSPECTOR