The Planning Inspectorate

Appeal Decision

Site visit made on 11 September & 4 October 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/Z4718/W/19/3232011
Emley Fields, Liley Lane, Grange Moor WF4 4EN

- 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 Mr James Eastwood against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2018/62/94092/E0, dated 24 November 2018, was refused by notice dated 14 May 2019.
- The development proposed is described as the restoration of derelict land for agriculture, involving importation of 90,000 tonnes of top soil and sub soil.

Decision

1. The appeal is allowed and planning permission is granted for the restoration of derelict land for agriculture, involving importation of 90,000 tonnes of top soil and sub soil at Emley Fields, Liley Lane, Grange Moor WF4 4EN in accordance with the terms of the application, Ref 2018/62/94092/E0, dated 24 November 2018, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues is:

    a) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies; and,

    b) the effect of the proposal on the character and appearance of the area.

Reasons

3. The appeal site consists of an undulating grassed field in a rural location and is situated in the Green Belt. To the centre of the site is a distinct valley with steep sides relating to the previous use of the site as part of a wider colliery operation. The proposed development is an engineering operation involving the importation of 90,000 tonnes of top and sub soil to reprofile and restore land to agricultural use and to allow the use of modern farm machinery.

4. That the current state of the site prevents the full and proper working of the land for agriculture and the need for the quantity of material sought by the appellant are not at dispute between the parties and based on the evidence before me I see no reason to reach a different conclusion.

5. Paragraph 146 of the National Planning Policy Framework (the Framework) details that engineering operations are not inappropriate in the Green Belt

provided they preserve its openness and do not conflict with the purposes of including land within it.

6. The final state of the appeal site, once the development is complete, would be as an open agricultural field, albeit reprofiled to reduce the gradient of the sloping ground.

7. In the intervening period when the works are being carried out, identified by the appellant as being two years in duration, there will inevitably be activity associated with the tipping of material, including the movements of Heavy Goods Vehicles (HGVs) and the spreading of the top and sub soil material. The appellant states that the fill material will not be stockpiled on site prior to being used but each HGV load will be placed directly for use on arrival, the handling of the material on site could be controlled by a condition placed upon any resulting planning permission.

8. In support of the application, the appellant submitted a Transport Statement[1] detailing that the proposed development is anticipated to generate an average of 45 HGV movements onto and off the site each week, with a maximum peak of 8 per day. The Kirkless Council Highways Development Management consultation response requests a condition restricting HGV vehicle movements to 10 in and 10 out per day.

9. The appellant has not objected to this condition and indeed confirms in the Appeal Statement that the development can be carried out within the 2-year time period referred to previously.

10. The Framework indicates that openness and permanence are the essential characteristics of the Green Belt. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The site is currently open and free from development and this would continue in the completed form of development.

11. While the appearance of the site during this intervening period may exceed the "ploughed field" description detailed by the appellant and there will inevitably be an increased level of activity at the site as a result of the proposed development, nonetheless I find that the openness of the Green Belt would be preserved. Paragraph 134 of the Framework identifies that the Green Belt serves five purposes and the proposed development would not conflict with these purposes.

12. As such, I find that the proposed development would not be inappropriate development in the Green Belt and does not conflict with the purposes of including land within the Green Belt. Therefore, the proposed development does not therefore conflict with the provisions of the Framework.

Character and Appearance

13. The area around the appeal site is characterised by open farm land bound by hedges and small woods, with pockets of residential and agricultural buildings. Opposite the appeal site is a quarry, screened behind a dense plantation of trees.

[1] Transport Statement by Northern Transport Planning -January 2019

14. Any effects from the construction period would be short term and could be mitigated by conditions placed upon any permission resulting from the appeal.

15. The proposed development will result in the reprofiling of the appeal site for agricultural use and would remain open. It is not at dispute between the parties that the final landform would reflect the surrounding landscape. As such, I find that the proposed development would not harm the character and appearance of the surrounding area and is not therefore contrary to Kirklees Local Plan Strategy and Policies (2019) Policy LP32 and the provisions of the Framework, that among other matters, seeks to ensure that new development protects and enhances the landscape.

Other matters

Ecology

16. The current condition of the appeal site is acknowledged by the parties to provide "limited opportunities for local biodiversity". As part of the appeal scheme the appellant has proposed standoff areas to the periphery of the appeal site and the Council identifies that this "could contribute towards local biodiversity".

17. While I have been provided with very limited details as to how the standoff area would be used, nonetheless I find that this is a benefit of the scheme and as such weighs in favour of the proposed development.

Land Quality

18. With regards to concerns raised by objectors about land contamination, I note that the appellant has submitted a Coal Mining Risk Assessment and that the Coal Authority commented upon the application, raising no objection to the proposed development and seeking that intrusive site investigations are carried out prior to commencement of development. I have no substantive evidence to the contrary before me and I therefore find that, with appropriate conditions, the proposed development would not harm land quality in the area.

Highway Safety

19. A number of objectors including the Kirkburton Parish Council and local Councillors have raised concerns with regards a variety of highway safety issues, in particular relating to the number of HGVs accessing the site, the depositing of mud and other debris on the highway and the route that HGVs would take to access the site.

20. At my site visit I noted that there was some traffic on the adjacent road, including HGVs, through it did not appear busy or dominated by HGV movements despite the presence of a number of uses nearby that would typically be predominantly serviced by HGVs. My site visit was undertaken on a typical weekday and I have no substantive evidence before me to suggest that these observations are untypical.

21. Turning to the route that the HGVs transporting the material will take, concern has been raised by a number of objectors that the route may pass schools and residential properties. It is acknowledged by both parties that the material is likely to come from a variety of sources over the two-year implementation period and therefore the route to the appeal site will change. Furthermore, the

number of vehicle movements on to and off the site each day and the working hours can be controlled by condition and I have no substantive evidence before me to suggest that the surrounding road network cannot accommodate the HGV movements that this appeal scheme would result in.

22. The Kirkless Council Highways Development Management consultation response did not raise an objection to the proposed development subject to a number of conditions being attached to any resulting permission. I find that conditions can adequately control measures to reduce the depositing of mud and debris on the road and could limit the number of HGV movements onto and off the site each day.

23. In light of the limited, and controlled by condition, number of HGV movements on to and off the site I find that the proposed development would not harm highway safety.

Conditions

24. I have considered the conditions proposed by the Council in the light of guidance in Planning Practice Guidance (PPG). I have not included those conditions that duplicate other suggested conditions and I have amended some wording in the interests of clarity and conciseness.

25. In addition to the standard conditions which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.

26. To ensure that the proposed development is carried out in an expedient manner and that the temporary impacts of the proposed development are short in duration, it is necessary to include a condition to require the cessation of works and restoration of the land 2 years from the commencement of development, in the interests of protecting the openness of the Green Belt.

27. Because of the relatively short implementation period of the proposed development, subject of a condition above, I have not included a condition requiring the cessation of the landfilling operation and remediation of the site should works cease for a period in excess of 6 months because it is not necessary.

28. In the interests of highway safety, I have included conditions controlling the number of HGV movements onto and off the site, the working hours of the site and the need to submit a vehicle management plan which would include details of wheel washing facilities and the routes that HGVs would take to the site.

29. The site is close to a number of rights of way and therefore it is necessary to include a condition to protect the users of those rights of way during the implementation of the planning permission.

30. In accordance with the consultation response from Coal Authority I have included conditions requiring the submission of an assessment of the risks posed by contamination on site before development commences. A condition controlling the standoff areas is necessary to secure the ecological benefits of the appeal scheme. I have not included conditions relating to noise, I have not been provided with any substantive evidence to indicate that any nearby noise sensitive receptors would be adversely impacted by the development and as such a condition is not necessary.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed.

Mark Brooker

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'sections 2018'; 'Design Levels'; site location plan.

3) The import of waste to the site shall cease, all associated plant and equipment shall be removed from the site and the site shall be restored within 2 years from the commencement of development.

4) No more than 20 HGV movements (10 in and 10 out) per day shall take place at the site.

5) No development shall commence until a Vehicle Management Plan has been submitted to and approved in writing by the Local Planning Authority which provides the following information:

   a) Wheel washing arrangements to ensure that HGVs do not deposit material on the highway

   b) On site vehicle parking and manoeuvring arrangements

   c) Vehicle routeing arrangements to and from the site

   d) On and off-site vehicle/driver protocols

   e) Monitoring arrangements

   f) Incident/action procedures

   g) The covering of loads being delivered to the site

   The approved Vehicle Management Plan shall be adhered to throughout the construction period for the development

6) All activities including HGV movements to or from the site associated with this planning permission shall not take place outside the following hours:

   08:00 to 18:00 hours Monday to Fridays

   08:00 to 13:00 hours Saturdays

   No HGV movements to or from the site on Sundays or public/bank holidays

7) No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority which details how users of public rights of way KIR/34/10 and KIR/35/40 will be protected during the engineering works herby approved. The development shall be

carried out in accordance with the approved scheme for the duration of the works.

8) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

i) a survey of the extent, scale and nature of contamination;

ii) the potential risks to:
- human health;
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
- adjoining land;
- ground waters and surface waters; and
- ecological systems;

9) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out prior to the completion of development.

10) No development shall commence until a Restoration Plan has been submitted to and approved in writing by the Local Planning Authority which provides the following information:

a) the phasing and direction of backfilling of the site

b) the creation and management of the standoff areas

c) the removal of plant, machinery, haul roads and fences;

d) spreading a minimum depth of 350mm subsoil and 250mm topsoil over the areas to be restored to agricultural use;

e) ripping of any compacted layers of subsoil to ensure adequate drainage and aeration prior to spreading topsoil;

f) details of cultivation techniques and equipment to be used;

g) final levels and contours of the restored land graded to blend in with those of the surrounding land to prevent ponding and promote good surface water drainage;

h) provision of any temporary surface water drainage ditches where restored levels may cause a risk of ponding;

i) grass seeding of any areas to be returned to agriculture including details of proposed seed mixture;

j) details of post restoration drainage arrangements for the site;

k) programme of works and timescales

11) There shall be no storage or processing of infilling material at the site including the use of any mechanical screening or crushing equipment.