The Planning Inspectorate

Appeal Decision

Site visit made on 28 October 2019

by Graeme Robbie BA(Hons) BPl MRTPI

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

Decision date: 13 February 2020

Appeal Ref: APP/E2001/W/19/3234626
Old Peat Works, off Reading Gate, Swinefleet, East Riding DN14 8DT

- 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 Paul Whyatt (4 Recycling Ltd) against the decision of East Riding of Yorkshire Council.
- The application Ref 18/03711/CM, dated 12 November 2018, was refused by notice dated 27 June 2019.
- The development proposed is the proposed change of use of land and buildings at The Old Peat Works, Swinefleet to a recycling facility including the erection of tanks and containment bays for biosolids treatment, waste treatment and waste storage facility with the final product used as soil improvers and fertiliser replacement.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award for costs was made by Mr Paul Whyatt (4 Recycling Ltd) against East Riding of Yorkshire Council. This application is the subject of a separate decision.

Procedural Matters

3. I have adopted a slightly abridged description of the proposed development in my decision, having taken it from that set out on the Council's decision notice. I am satisfied that it still captures the nature and detail of what is proposed and no party would be prejudiced by doing so.

4. The appellant has submitted an agreement, in draft form, under section 106 of the Town and Country Planning Act 1990 (as amended) with the appeal. The agreement (s106), between the appellant and the Council, would commit the appellant to the payment of an annual highways maintenance contribution for a period of 5 years, and successive five year periods thereafter, and for the Council to spend that contribution for the maintenance of the highway known as Reading Gate. I will return to this matter later.

Main Issue

5. The main issue is whether the appeal site is an appropriate location for the proposed development, with particular regard to the living conditions of local residents and the character of the surrounding area arising from vehicle movements to and from the proposed facility.

Reasons

6. The appeal site is a former peat works located in an isolated rural location surrounded by arable fields. The site contains a substantial building, partly brick-built and partly steel-framed with concrete block and sheet panelling walls, sited within a large concrete hardstand apron. The site has two accesses from the local highway network; one to the west and the other a short distance to the north along a gated access track, both of which lead from Reading Gate. It is proposed to use the northerly access point to gain access to the site for the purposes of the appeal proposal.

7. The former peat works site lies approximately 5km south of the settlement of Swinefleet. Access to the site from the main A161 road, which runs through Swinefleet and links Swinefleet, Crowle and Eastoft[1] with Goole, is from the largely single-lane rural road known as Reading Gate. Other than a short stretch of road where Reading Gate crosses Crossmoor Bank, it is Reading Gate along which access to the site for deliveries and vehicle movements would be taken.

8. The appeal proposal seeks to re-use the existing building, with modification and alteration, and the surrounding apron area as a recycling facility for the treatment of bio-solids. In addition to the re-use of the main building, a series of compounds, clamps and tanks would also be constructed within the apron area and a one-way circulation system for incoming and outgoing deliveries. Within the site and buildings, three main processes would be undertaken to process and treat bio-solids; the liming of bio-solids to prepare them for agricultural use, the treatment of other forms of waste bi-product to allow for reuse and the storage of biosolids prior to their seasonal application to the land in more amenable and suitable conditions than alternative field-side storage locations.

9. The transport of materials to the site and, once treated and recycled, from the site would be by way of heavy goods vehicle (HGV). The appellant's traffic management plan[2] details the measures that would be taken to ensure that whilst in transit materials do not seep, spill or blow from the vehicles. There is nothing exceptional in what is set out and I have no reason to suspect that the content of the vehicles would give rise to the dust, odour or other deposition that the Council cite as a detrimental factor to the living conditions of residents living along Reading Gate and further afield.

10. During my visit to the site I spent some time assessing the nature of the access route into the site, specifically Reading Gate, but also stretches of the A161 from which access from the north and south would be taken. In the case of Reading Gate, although the carriageway is single-lane width, visibility and sight-lines were good. A particular characteristic of the minor roads in this area is that they tend to be straight and with minimal roadside banks. Oncoming traffic, pedestrians, cyclists, horse riders and other road users are capable of being seen over an extended distance. Sufficient time, and visibility, would exist to be able to accommodate those users and moderate progress, by all parties, accordingly.

[1] Being agreed to be the nearest settlements to the appeal site
[2] Local Transport Projects for Heaton Planning: 'Proposed Recycling Facility Former Swinefleet Peat Works Traffic Management Plan' August 2019

11. However, it is also fair to say that an equally distinct characteristic of these lanes is the uniformity of width of the single-lane roads and relative absence of extensive roadside verge areas. There is, at least in the context of HGV traffic, limited scope for informal use of verges or 'informal passing bays' to allow vehicles to pass each other. What may be practicable for cars and other road users to pass each, would not necessarily apply to HGVs passing each other, or indeed cars passing HGVs.

12. The appellant has identified a number of locations along the Reading Gate access route where sufficient width within the verges exists to create passing bays of sufficient width and length to allow HGVs to pass. These would, of course, also allow cars to pass HGVs and would have the additional benefit of catering from large agricultural vehicles which will also not be uncommon within the area given its prevailing rural agrarian character. The local highway authority has raised no objection to this element of the proposal, the works for which can be carried out within the highway verge, and nor have the Council sought to revisit this element of the proposal in their appeal submissions.

13. From my observations of the proposed access route along Reading Gate I see no reason to disagree with these conclusions. The areas of proposed work, either to create passing bays or to improve junction dimensions in particular locations, seem to me to be well-judged, minimal in their extent and entirely in keeping with the nature and character of the local highway network and the surrounding area. Reading Gate already benefits from signed passing bays and the proposal, adding to those, would do so in a manner that would not alter the character of the local road network or the wider area along Reading Gate.

14. There are a small number of sporadically located houses along the length of the Reading Gate access route between the A161 and the appeal site. In the context of the open, flat landscape in which they are situated, there is a sense of isolation to them, despite their proximity to Reading Gate and relative proximity to Swinefleet. At the time of my visit to the site, other road traffic was limited and I can imagine that the network of lanes in a flat landscape provide an attractive and easy opportunity for walking, cycling and horse riding, in addition to serving the network of agricultural fields in the area. However, I have not been presented with any compelling evidence to persuade me that the levels of vehicle movements set out in the Transport Assessment[3] and Traffic Management Plan[4] are inaccurate and would be materially greater than anticipated. The level of anticipated vehicle movements would not, in my judgement, compromise local resident's ability to take advantage of the local highway network.

15. Moreover, as I have set out above, sightlines are good and visibility is largely unobstructed for extended distances along a good proportion of Reading Gate. Encountering an HGV accessing or egressing the appeal site would be little different to encountering a large agricultural vehicle, the likes of which cannot be unexpected in a rural setting such as this. Whilst there may be seasonal fluctuations in agricultural traffic which would not be present to the same extent in the proposed use and its vehicle movements, large vehicles traversing these lanes would not be uncommon or unexpected for those who

[3] Local Transport Projects for Heaton Planning: 'Proposed Recycling Facility Former Swinefleet Peat Works Transport Assessment' October 2018
[4] Local Transport Projects for Heaton Planning: 'Proposed Recycling Facility Former Swinefleet Peat Works Traffic Management Plan' August 2019

live and work in the surrounding area. Nor would the anticipated levels of vehicle movements fundamentally alter the relationship that pedestrians, cyclists or other road-users have with the local highway network as those levels would not be excessive, either taken in isolation as a number per hour, or applied to the specific context of Reading Gate.

16. The occupants of the houses along Reading Gate would, inevitably I think, nevertheless be aware of the levels of vehicle movements anticipated in relation to the proposed use of the former peat works building and site. However, distilled down to an hourly average the level of HGV traffic would not in my judgement be excessive, given both the rural nature and limited usage patterns of the existing local highway network and the nature of agricultural traffic that will already use the local lanes.

17. However, more persuasively, I have to consider the implications of the appellant's stated fallback position regarding the lawful use of the site and also, as a point of comparison, the nature of the previous use of the former peat works site. Although the levels of traffic movements associated with the previous use of the site have been disputed by local residents, I do not have any compelling evidence before me to substantiate alternatives to the levels of movement set out in writing by the operator of the site in its previous guise. From that evidence, the levels of vehicle movements were quite clearly significantly in excess of those anticipated in the current instance and I have not been presented with any compelling substantive evidence that would lead me to doubt the veracity of the information provided by the former operator of the appeal site.

18. Furthermore, the Council have not disputed either the extent of operations associated with the previous use of the site as the peat packing facility, nor in terms of the uncontrolled use of the site and building accepted via a certificate of lawful development issued in 2005[5]. On the evidence before me, I have no reason to believe that the stated levels of operation previously undertaken from the site were inaccurate or misleading. Nor does the evidence before me suggest that the lawful use of the site, which the appellant cites as a potential fallback position, would not generate uncontrolled levels of vehicle movements above and beyond that proposed in the current instance. I have no reason to doubt the appellant's intentions regarding the fallback position and I give this matter considerable weight regarding the effect of vehicle movements upon the living conditions of local residents.

19. The appellant's evidence regarding vehicle movements on the A161 in the vicinity of Swinefleet demonstrate that the proposal, when taking into account both deliveries and staff vehicle movements, would not result in significant increases in total vehicle movements along the A161. The proposal would be expected to result, on average, in an increase in 5 HGV vehicle movements per hour along the A161.

20. Of these numbers, the appellant anticipates that only 10% of delivery movements would originate from the south, and so the impact of HGV movements felt in Eastoft and Crowle would be negligible. I accept that the local primary school is located in the centre of Swinefleet, directly on to the A161. However, whilst the proposal would result in an increase in vehicle movements through the village, the appellant has indicated that HGVs

[5] LPA Ref No: 05/06145/CLP

accessing the site from the north would be able to use existing facilities on the road network to control access timings and avoid school drop-off and pick-up times.

21. Although such arrangements would skew the anticipated average hourly vehicle movements and condense them into a slightly shorter period, such effects would not be harmful in the context of usage of, and vehicle patterns along, the A161. The local highway authority are satisfied that the local highway network is capable of accommodating the level and type of traffic anticipated in connection with the proposal, whilst Highways England have raised no objection in terms of implications for the wider strategic road network from the proposed development. The Council remain opposed to the proposal on the grounds that the traffic generation arising from the proposal would be akin to industrial development in the open countryside which would have a detrimental impact on residential amenity.

22. However, in the context of dispersed and sporadic residential development in the surrounding area, I saw that the former peat works is not sited particularly close to any existing residential properties. It also lies some distance, across open fields in all directions, from existing settlements such as Crowle, Eastoft and Swinefleet. The appellant's Transport Assessment[6] and Traffic Management Plan[7] demonstrate the measures that would be taken with regard to the differing materials transported to the site. I have no reason to believe that these measures would not, and could not, be implemented and note the responses of consultees in this respect.

23. I am satisfied that appropriate measures would be in place with regard to the transport of materials and, once at the appeal site, stored, managed and recycled appropriately. Given the site's relative isolation from nearby residential properties, any impacts of the type and nature raised by residents living along the route would be transient as vehicles pass. I have already concluded that the volume of passing vehicles would not be of such a level as to cause material harm to the living conditions of those residents in the context of the rural setting the Council cite within the refusal reason. Nor do I have any compelling reason to suspect that the measures set out by the appellant would not adequately control the type of concerns raised by residents. Moreover, in an active agricultural rural setting the movement of large vehicles with sometimes malodourous materials is not without precedent.

24. The proposal would result in a small increase in vehicle movements, and particularly HGV movements, along the rural lanes that link the appeal site with the A161 just to the east of Swinefleet. Part of this route has, I am advised, recently been resurfaced. Whilst I am satisfied that the proposal would not cause material harm to residential amenity, the increase in HGV traffic along these roads has the potential, notwithstanding the measures set out to provide improved passing and junction turning areas, to give rise to additional degradation to the highway. The appellant had reached agreement with the Council to make a highways maintenance contribution for a period of at least five years, and then for successive 5-year periods. A draft planning agreement (s106) under the provisions of section 106 of the Town and Country Planning

[6] Local Transport Projects for Heaton Planning: 'Proposed Recycling Facility Former Swinefleet Peat Works Transport Assessment' October 2018
[7] Local Transport Projects for Heaton Planning: 'Proposed Recycling Facility Former Swinefleet Peat Works Traffic Management Plan' August 2019

Act 1990 (as amended) (the Act) was submitted with the appeal to this effect. I note, too, that officer's initial recommendation to the Council's Planning Committee was for deferral of a decision subject to securing such matters.

25. However, despite an initial indication of agreement of such matters, I do not have before me a signed or completed s106. Although a draft copy of the s106 is before me, I have no executed mechanism before me to secure the contribution and measures set out within the draft document, nor have I subsequently been provided with such. Joint Waste Local Plan policies W2 and W23 both deal with matters of access and road safety and the ability of the local road network to satisfactorily accommodate traffic movements arising from developments. I have been given no reason to believe that the highways maintenance contribution would not be necessary, directly related to, or fairly related in scale and kind, to the proposal sought and its provisions would have accorded with the provisions and tests set out in the National Planning Policy Framework and the Community Infrastructure Regulations 2010.

26. Thus, notwithstanding my conclusions as set out above regarding the effect of the traffic movements arising from the proposal on the living conditions of residents living along the access route, particularly but not exclusively, on Reading Gate, the absence of an executed s106 I am not satisfied that the proposal would make adequate provision for the satisfactory accommodation of road traffic movements on the local road network or for road safety. Without such, the proposal would be in conflict with JWLP policy W2. Although not cited within the Council's refusal reason, the absence of an s106 would also fail to demonstrate compliance with JWLP policy W23.

27. Policy W2(i) of the Joint Waste Local Plan (JWLP) and policy ENV1(B)(4) of the East Riding Local Plan Strategy Document (LP) both require proposals to have regard to the impact upon the amenity of existing properties as part of their aim of seeking high quality design taking into account relevant detailed planning considerations. Although not directly referred to in the reason for refusal, JWLP policy W23 also seeks to ensure that the impacts of proposals on local communities are acceptable. The appellant has been able to consider the provisions of JWLP policy W23 in both application and appeal documentation and the Council's reference to it in their subsequent appeal submissions (despite its absence from the reason for refusal) does not prejudice the appellant. Although I have concluded that the proposal would not cause material harm to the amenities and living conditions of local residents in the context of the appeal site's rural location, the absence of an executed planning obligation to appropriately mitigate the physical impact of traffic on the local road network, and particularly HGV traffic, is such that the proposal would be contrary to JWLP policies W2 and W23 and ENV1.

Other Matters

28. I have noted the large number of objections to the planning application from local residents objecting to the proposal on a wider basis, including in respect of the visual aspect of the use of the appeal site; ecological and biodiversity matters; noise, dust and odour from operations at the site itself; flooding and the implications arising from a flood event; devaluation of local properties; lack of benefits for local residents and the wider carbon footprint of the transportation of materials relative to their recycling.

29. However, devaluation and the effect of a proposal upon property prices is not a material consideration to which I can attach any significant weight. With regard to these other concerns, I note that they were considered in detail by the Council and that they did not form part of the Council's reasons for refusal. The information before me does not lead me to conclude that these other matters, either individually or cumulatively, would result in a level of harm which would justify dismissal of the appeal on those grounds.

Conclusion

30. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR