



Appeal Decision

Site visit made on 28 January 2020

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th April 2020

Appeal Ref: APP/X2600/W/19/3225900

Aldeby Landfill Site - Oaklands Gravel Pit, Common Road, Aldeby NR34 0BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by FCC Environment against Norfolk County Council.
 - The application Ref C/7/2018/7008 is dated 3 July 2018.
 - The application sought planning permission for the variation of condition 4 of permission D/7/1987/3439 to enable retention of the access road until 8 July 2018, in parallel with the expiry of the landfill site permission without complying with a condition attached to planning permission Ref C/7/2013/7021, dated 14 July 2015.
 - The condition in dispute is No 2 which states that: The haul road shall be removed and the land on which it is constructed shall be re-instated and restored to a condition suitable for agricultural use by the 8th July 2018.
 - The reason given for the condition is: To ensure the proper and expeditious restoration of the site in accordance with Policy DM14 of the Norfolk Minerals and Waste Core Strategy DPD 2010-2026.
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Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 4 of permission D/7/1987/3439 to enable retention of the access road until 8 July 2018, in parallel with the expiry of the landfill site permission without complying with a condition attached to planning permission Ref C/7/2013/7021 at Aldeby Landfill Site - Oaklands Gravel Pit, Common Road, Aldeby NR34 0BL in accordance with the terms of the application, Ref C/7/2018/7008, dated 3 July 2018, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Application Boundary – 2321-01-01 (Rev A).
 - 2) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. The haul road hereby permitted shall then be removed and the land restored to agricultural condition in accordance with a scheme of work including a timetable, that shall first have been submitted to and approved in writing by the local planning authority.

Application for costs

2. An application for costs was made by FCC Environment against Norfolk County Council. This application is the subject of a separate Decision.

Procedural Matters

3. Planning permission was granted on 31 January 1989 (Ref D/7/1987/3439) for a new Access Road connecting Rectory Road with Oaklands Gravel Pit, which included condition 4 in relation to the access road being removed and land on which it is constructed being restored to a condition suitable for agricultural use within 25 years of the date of that permission (i.e. 31 January 2014). Subsequent to that permission, a s73 application (Ref C/7/2013/7021) was submitted and approved by the Council to allow the retention of the access road. That resulted in a fresh permission for the entire scheme, which included condition 2 which restricted the retention of the access road to 8 July 2018, coterminous with the consented life of the landfill site. However, the description of development did not accurately describe this position. The appeal before me (Ref C/7/2018/7008) seeks to amend condition 2 of that permission in order to permanently retain the haul road, and I have determined the appeal on this basis.
4. The Council issued a Non-Validation Notice (NVN) setting out its reasons for not progressing with the determination of the planning application. One of these reasons included the appellants inclusion of proposed development outside the red-line boundary of the submitted application. The proposed details were set out in the appellant's Planning Statement which also included additional drawings which indicated potential junction and landscape improvements. The appellant has indicated that these are indicative and do not form part of their application (and thereby appeal). However, in order to fully understand the proposed development sought, the application form in this instance does not provide sufficient detail as to why the appellant wishes the condition to be removed or changed. Therefore, the application form must be read in conjunction with the supporting Planning Statement.
5. Within the Planning Statement are a range of further drawings that illustrate how any effects of the development could be mitigated, and these included the suggested imposition of further conditions along with alterations to the junctions with the local road network which necessitate an expansion to the red line boundary of the scheme. However, the appellant has indicated that the suggested drawings are indicative, and as a result, I have considered this appeal on this basis.
6. The Council's NVN indicates that it declined to validate the proposal as a condition was being sought to the original permission in order to make the proposed development acceptable. However, s73 does not expressly preclude conditions being sought, and notwithstanding this, conditions can be added when making a decision on a s73 application provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted. The red line boundary could have been amended through a variation of condition 1 (the condition specifying the plans) provided this does not constitute a fundamental alteration of the proposal put forward in the original planning permission. However, this appeal has been made on the basis of the removal of condition 2 only. As such, I have therefore determined this appeal on the basis of the red line boundary of planning permission (Ref

C/7/2013/7021) which created the permission that the appellant applied to vary.

7. The access road has been implemented and has previously been the subject of a temporary permission to extend its retention until 8 July 2018 (Ref C/7/2013/7021). The appellant applied to the LPA to extend this through an application submitted on 3 July 2018, which subsequently was not validated by the Council. On the basis that the application was not validated, no consultations were carried out under the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, following the validation of this appeal, Norfolk County Council consulted both statutory and non-statutory consultees for a period of 28 days, albeit no comments were received. In light of the proximity of the haul road to nearby heritage assets, the appeal proposal was also subject to advertising in accordance with the Planning (Listed Buildings and Conservation Areas) Regulations (1990).
8. The Development Plan for the area includes the Norfolk Minerals and Waste Development Framework (2011) ('the NMWDF') and as the site is located within South Norfolk District Council's administrative area, the Joint Core Strategy for Broadland, Norwich and South Norfolk (2011) ('the JCS') and the South Norfolk Local Plan Development Management Policies Document (2015) ('the SNLP').

Main Issues

9. The main issues are the effect that varying the condition would have on:
 - the character and appearance of the area.
 - Highway safety having regard to the suitability of the local highway network to accommodate additional Heavy Goods Vehicle (HGV) traffic.

Reasons

Character and appearance

10. The appeal site is a metalled roadway which is sufficiently wide to allow two HGVs to pass along the majority of its length. The haul road has been in place for a considerable number of years and remains in use and this was evident at the site visit. The road is bordered by mature hedging along a large proportion of its length, and at the junction with the landfill site, there is further planting along areas of structural landscape bunding which is also verdant. The surrounding landscape is predominantly characterised by gently undulating agricultural land comprising a number of fields bordered by mature hedging.
11. The disputed condition was imposed as it was considered that the cessation of the use of the haul road and restoration to agricultural land was necessary in order to ensure the proper and expeditious restoration of the site in accordance with Policy DM14 of the NMWDF. The proposed variation of the condition would allow the use of the haul road on a permanent basis, and therefore the land would not be restored suitable for agricultural use.
12. Policy CS6 of the NMWDF indicates that landfill sites will be acceptable in principle but restricted to a temporary permission lasting until the cessation of the operational date. As the haul road serves and was part of the original permission that established the landfill site, the policy is relevant to the road

- itself. Policy CS14 of the NMWDF states that development must ensure there are no unacceptable adverse impact on, amongst other things, the character and quality of the landscape and townscape. Policy DM14 of the NMWDF seeks the preference for after use and restoration that support the creation of new, high quality, distinctive landscapes. Policy DM4.5 of the SNLP seeks that development should respect, conserve and where possible, enhance the landscape character of its immediate and wider environment. It also requires proposals to demonstrate how they have taken into account the findings of the South Norfolk Landscape Assessment.
13. The haul road has been in use for a considerable period of time, and as a result, the surrounding landscaping has matured providing significant screening of the road from nearby properties. The hedging and structural landscaping that borders parts of the road assimilates into the landscape and as a result, limits the impact of the road on the surrounding area. The road has a more industrial appearance than the surrounding rural road network albeit it does not have any formal lighting, markings or other features. Although the road is wider than Common Road and Lily Lane, due to its lack of formal demarcation it does not jar with the rural character of the surrounding area.
 14. Although the landscaping and hedging surrounding the road limits its impact on the character of the landscape, the road nonetheless appears as a more industrial feature than its rural surroundings. As such, its retention would not accord with Policy CS14 of the NMWDF and Policy DM4.5 of the SNLP. Therefore, retaining the road would not accord with Policy DM14 as it would not create a high quality and distinctive landscape, nor would its retention accord with Policy CS6 as it would retain a permanent part of a landfill use.
 15. Paragraph 54 of the National Planning Policy Framework ('the Framework') indicates that otherwise unacceptable development could be made acceptable through the use of conditions. However, as the road has a limited impact, and is not harmful no further conditions in respect of landscaping are necessary.
 16. In light of the above, I conclude that the varying of the condition would result in harm to the character and appearance of the area. As such, it would not comply with Policies CS6, CS14 and DM14 of the NMWDF which seeks to restrict landfill sites to temporary permissions lasting until their cessation date, ensure there are no unacceptable effects on the character and quality of the landscape and ensure the preference for after use and restoration that support the creation of new, high quality, distinctive landscapes.
 17. The proposal would also fail to accord with Paragraph 7 of the National Waste Development Framework ('the NWDF') which seeks to ensure that land raising or landfill sites are restored to beneficial after uses at the earliest opportunity and to high environmental standards through the application of appropriate conditions where necessary.

Highway Safety

18. The haul road is a metalled surface which links Rectory Road with the entrance to the Aldeby landfill site at Common Road. The haul road is wide enough to allow two Heavy Goods Vehicles to pass along the majority of its length. At the junction of the haul road with Rectory Road, there is adequate visibility in both directions and there is a speed limit of 40 miles per hour in place. The road also bisects Lily Lane which is a very narrow single width rural road, albeit

acceptable visibility is available at this point. The road also bisects St. Mary's Road which is a no more than a track which allows access to nearby Priory Farm.

19. The landfill site to which this haul road provides access no longer accepts waste; however, the appellant has indicated that the haul road is required to support the ongoing restoration of the landfill site to provide the supply of materials to the site, as well as support future monitoring by allowing access for technical vehicles. The appellant has applied separately to the Local Planning Authority for a further 3 year extension to the restoration period of the landfill site. Approximately 40-60 HGV movements are expected to the site per week for this purpose which would otherwise be displaced on to the local highway network if the haul road were removed. Although the number of HGVs will decrease over time, there is no evidence to indicate what the expected reduction in movements would be and over what period. However, a gradual decrease in the number of movements could be expected once restoration work has been completed. There are also likely to be some movements associated with the landfill site that would be required for a further 60 year period as part of long term monitoring but these are not quantified. Therefore, there remains a need for the retention of the haul road for a period of time to allow for the restoration of the landfill site and in the absence of the haul road these would have to use the local road network.
20. The haul road is proposed to be used by monitoring vehicles beyond the sites' restoration, although no evidence has been provided that monitoring would be difficult to undertake if it were no longer in place. Concerns have been raised that indicate possible impacts on the living conditions of occupiers of nearby properties if monitoring traffic in the form of HGVs uses the local road network. The surrounding local road network, including Common Road leading to the landfill site itself, is narrow and would not allow for two vehicles to pass simultaneously potentially resulting in the need for reversing in the highway or damage being caused to highway verges. Common Road and Lily Lane currently have 7.5 tonne weight restrictions in place which restrict HGV movements away from surrounding residential properties. Due to the narrow width of the surrounding road network, if HGVs were displaced on to the surrounding roads, these would pass close to residential properties with consequent impacts on living conditions of occupiers due to noise and vibration.
21. However, whilst these concerns are likely during the restoration period, the impact on the living conditions of nearby properties could be reduced to a level that may not result in harm due to the likely decrease in such traffic over time. Therefore, the need for the roads' permanent retention for its intended use to support the landfill has not been justified as there is no indication that monitoring activity would need to be conducted using HGVs, or any indication of the extend of HGV movements beyond initial monitoring.
22. The appellants have indicated that the removal of the road will itself require significant HGV movements (around 1,790) due to the need to remove a significant quantity of material. The removal would therefore result in a significant number of additional HGV movements. However, the movements associated with the removal of the road would be temporary, it would still likely take place over a significant period of time. I consider the removal of the road would result in some degree of harm to highway safety due to the increase in

HGV traffic using the local road network which is rural in character and not generally suitable for HGVs.

23. The appellant has indicated requires the permanent retention of the haul road is justified as the landowner requires it for moving large agricultural vehicles and machinery. Although no details have been provided as to the type and frequency of agricultural vehicle movements or the impact these might have on the local road network if the haul road was removed, the nature of the single width road network, including that along Common Road/ Dun Cow Road is such that a benefit of the proposal is avoiding any large vehicles from using the single width roads. However, in light of the lack of information on agricultural vehicle movements, the extent of this benefit is minimal.
24. Having regard to Paragraph 54 of the Framework, there remains an ongoing need for the use of the haul road for the completion of the landfill sites' restoration and for initial monitoring. Furthermore, Paragraph 7 of the National Planning Policy for Waste ('the NPPW') seeks to ensure that landfill sites are restored to beneficial uses at the earliest opportunity and through the use of appropriate conditions where necessary. As set out above, the need for the permanent retention of the haul road has not been justified having regard to the scale of traffic movements for long term monitoring or an indication of the type of vehicles this might involve, including the limited benefit of its use by large agricultural vehicles. Therefore, in this specific case a condition that allowed the retention of the haul road for a further temporary period to support the road's use during the restoration period and a suitable period beyond for initial monitoring is necessary as the evidence indicates a need to retain the road for a further period. Allowing a temporary retention for a further 3 years would therefore enable the road to be used whilst restoration traffic volumes are highest.
25. In light of the above, I conclude that the development would not result in harm highway safety having regard to the suitability of the local highway network to accommodate additional Heavy Goods Vehicle (HGV) traffic. As such, it would comply with Policy CS15 of the NMWDF which seeks to ensure development, taking into account mitigation measures proposed, do not generate unacceptable risks to the safety of road users. The development accords with Paragraph 108 of the Framework which seeks to ensure that safe and suitable access to the site can be achieved for all users as well as Paragraph 7 of the NPPW which seeks to ensure sites are restored to beneficial uses at the earliest opportunity.

Other matters

26. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to have special regard to the desirability of preserving the building or its setting, to which I attached considerable importance and weight. The Heritage Statement indicates that there are 10 Listed Buildings within 1,000 metres of the haul road. However, of these only the Church of St. Mary is close and an outbuilding east of Priory Farmhouse which is within 80 metres are visible from the haul road. There is limited visibility between the haul road and the nearest heritage asset (the Outbuilding to Priory Farmhouse), and only fleeting glimpses can be experienced. Due to the available separation distance between the road and the buildings, I

consider that the proposal would not result in harm to the setting of the nearby Listed Buildings.

Conditions

27. The Council has identified conditions which the appellant has had the opportunity to comment on. I have considered these against the advice in the Framework and the Planning Practice Guidance and have only imposed them where I consider them to meet the tests, amending them where necessary for the sake of clarity, precision and enforceability.
28. I have imposed the standard condition requiring the development be carried out in accordance with the specified plans.
29. In order to make the development acceptable, a condition allowing the retention of the haul road for a temporary period has been imposed in order to ensure that there is no harm to highway safety having regard to the need for ongoing HGV movements during the duration of the restoration of the landfill site. Whilst the Council suggested a similar condition limiting retention of the road for up to 12 months following the expiry of the environmental permit that accompanies the landfill site, there is uncertainty as to how long the environmental permit may be in place for with the Council suggesting in its statement this could be for a period of up to 30 years. Therefore, it is considered the Council's suggested condition would not comply with the tests set out in the Framework as it is not sufficiently precise.
30. As such, I have imposed a condition allowing the temporary retention of the road for a period of 3 years following the date of this decision which is necessary to make the development acceptable.

Conclusion

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

P Mileham

INSPECTOR