



Appeal Decision

Hearing Held on 25 August 2020

Site visit made on 27 August 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/B3030/C/19/3243446

Land at The Workshop, Cockett Lane, Farnsfield NG22 8JQ

- 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 Mr Peter Bratt on behalf of North Midland Plant Limited against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice was issued on 5 December 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, 'development' consisting of the material change of use of the Land from agriculture to use for of the Land involving the importation, storage and distribution of (non-waste) building and construction materials including but not limited to stone, rock, sand, aggregates, etc, and associated services.
 - The requirements of the notice are:
 - A. Cease the use of the Land for the importation, storage and distribution of (non-waste) building and construction materials including but not limited to stone, rock, sand, aggregates, etc, and associated services.
 - B. Remove from the Land all building and construction materials, including but not limited to, stone, rock, sand, aggregates.
 - C. Remove from the Land all plant, vehicles, cabins, equipment, services and machinery associated with the use of the Land for the importation, storage and distribution of (non-waste) building and construction materials.
 - D. Regrade to allow the resumption of the use of the land for agriculture.
 - The period for compliance with the requirements is:
 - A. 120 days after this notice takes effect.
 - B. 120 days after this notice takes effect.
 - C. 120 days after this notice takes effect.
 - D. 130 days after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be corrected and varied by:
 - Deleting the word 'for' and substituting the words 'for the' for the word 'involving' in paragraph 3.
 - Deleting the requirements in paragraph 5D and replacing them with 'Regrade the Land to its former condition.'

- Deleting all the periods in paragraph 6 and replace with '6 months after this notice takes effect.'
 - Deleting the year '2019' in paragraph 7 and replacing it with '2020'.
2. Subject to the corrections and variations above, 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.

Procedural Matter

3. An appeal had been brought on ground (f); the steps required to comply with the notice are excessive. The appellant's case being that it is excessive to have to remove areas of hard surfacing, in the form of compacted stone, which have in place around the building and on the access track for over four years. However, the notice does not require the removal of any hard surface area and only requires the use to cease and materials, cabins, containers, plant and vehicles to be removed from the Land which is then to be regraded. During the Hearing the Council confirmed that this was the case and once the use had ceased and materials, etc removed, only regrading was required which would involve the levelling out the Land to remove artificial plateaus which have been formed. On this basis the appellant accepted that the steps required to comply with the notice were not excessive, and that the appeal on ground (f) should not proceed. I have determined the appeal on that basis.

Enforcement Notice

4. The breach of planning control alleged in the notice is: Without planning permission, 'development' consisting of the material change of use of the Land from agricultural use of the Land involving the importation, storage and distribution of (non-waste) building and construction materials including but not limited to stone, rock, sand, aggregates, etc, and associated services.
5. Paragraphs 8.4-8.8 of the appellant's statement of case provides details of site operations undertaken by North Midland Plant Limited and PB Waste Limited who operate from the site. Aggregates and materials are purchased, delivered to the site, stored and then dispatched from the site in one of the Appellant's vehicles. Associated with this primary storage and distribution use, the appellant uses his vehicles for haulage, disposal of waste, and hires his plant for ground works. There are currently eight goods vehicles which operate from the site and various plant, including mini-diggers and a JCB. The plant and vehicles are used to deliver, unload and re-load materials at the site. They are stored on the site when not in use. Vehicle and plant are serviced in the workshop where there is also an office.
6. It was acknowledged at the Hearing that the appellant's business operations include an element of plant hire. However, I have not been provided with any substantive evidence that would lead me to believe that the plant hire business is a primary use of the Land such that there is a mixed storage/distribution and plant hire use taking place on the appeal site together with associated ancillary services. Indeed, para 8.18 of the appellant's statement indicates that the appellant has a unique business operating from the site which combines the supply of aggregates with associated services, including haulage, earthworks and plant hire. Taking into account the grounds of appeal, the written evidence

before me, including neighbour representations, what I heard at the Hearing and saw on my site visit, I am satisfied that the notice correctly identifies the primary use of the site and the deemed application for planning permission is derived from that alleged breach. It is on that basis that I have determined the appeal.

7. There is a typographical error in paragraph 3 of the notice. I shall therefore correct that error by removing the erroneous word 'for'. In addition, for the purposes of clarity, I shall also delete the word 'involving' and substitute it with 'for the'.
8. There is an error in paragraph 7 in relation to the date when the notice takes effect. The year should be 2020 rather than 2019. The appellant and Council agree that there would not be any injustice to them if I were to correct the notice to 4 January 2020.
9. Paragraph 5D of the notice requires the appellant to regrade to allow the resumption of the use of the Land for agriculture. However, the requirements can only go so far as remedying the breach of planning control. The requirement to allow for the resumption of use of the land for agriculture is therefore excessive. I shall vary the terms of the notice and delete the requirement to allow the resumption of the use of the Land for agriculture. I am satisfied that this variation would not cause any injustice to the appellant or the local planning authority as it does not alter the purpose of the notice and it is no more onerous than the original requirements.

Appeal on ground (a), deemed planning permission

Main Issues

10. The main issues in this appeal are:

- Whether the development is acceptable in principle in this location, having regard to local and national planning policies;
- The effect of the development on the character and appearance of the area; and
- The effect of the development on the living conditions of neighbouring residents, with particular regard to noise, disturbance and dust.

Reasons

Acceptable in principle

11. The appeal site lies adjacent to Dalesworth Nurseries and takes access from Cockett Lane. Immediately to the east of the appeal site lies The Southwell Trail which is also a local nature reserve. To the south is a small agricultural field and beyond that lies The Old Goods Yard, now a private residence and residential properties on Station Lane.
12. The appeal site is being used for the importation, storage and distribution of (non-waste) building and construction materials. At the time of my site visit I noted large piles of aggregates, including stone and sand, in heaps dotted around the southern half of the site. There is a large portal framed building in the south eastern corner of the site which is being used as an office and workshop where vehicles and plant associated with the business are repaired

and stored. This building has permission for use solely as agriculture and the Council has served the appellant with a breach of condition notice in relation to the unauthorised use of this building. There are six storage containers on the site which are used to store replacement tyres for the vehicles, and I also saw a JCB, mini-digger and mini dumper truck stored adjacent to the building, and various plant parts, including a large buckets. Several cars belonging to employees were also parked adjacent to the building.

13. Spatial Policy 1 of Newark & Sherwood District Council Amended Core Strategy (adopted March 2019) (CS) identifies the settlements which will help to deliver sustainable development in the District. Spatial Policy 2 of the CS sets out which areas are to be the focus of growth and the intended spatial distribution of it. The appeal site is not within an area specifically intended for growth and therefore development in this location falls to be considered against the sustainability criteria set out in Spatial Policy 3 of the CS.
14. Spatial Policy 3 sets out the Council's overarching policy for development in rural areas. It provides support for the rural economy by encouraging tourism, rural diversification and by supporting appropriate agricultural and forestry development. Five criteria are identified for the consideration of development in rural areas which include location, scale, need, impact and character.
15. In terms of location new development should be in villages. It should not generate excessive car-borne traffic from out of the area or have an undue impact on local infrastructure. New development should be appropriate to the proposed location and small scale in nature. Development which supports local agriculture, farm diversification or employment and tourism which are sustainable and meet the requirement of the relevant Core Policies will be supported. The development should not have a detrimental impact on the character of the location or its landscape.
16. Spatial Policy 3 states that development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. The supporting text to Spatial Policy 3 advises that its locational criteria supports development of sites in sustainable accessible villages and which is decision making terms means a location within the existing built extent to villages, which include farmyards. It would not normally include undeveloped land, fields, paddocks or open space which form the edge of built form.
17. The Farnsfield Neighbourhood Plan 2016 – 2026 (NP) was made in September 2017. Policy FNP4 relates to local employment opportunities and advises that subject to certain criteria, development which includes new employment opportunities will be supported within the village envelope of Farnsfield. In addition, Policy FNP4 particularly encourages employment opportunities which also deliver skilled jobs for local people, provide micro-businesses and start-ups and support new and/or growth sectors.
18. There is no dispute between the main parties that the appeal site lies outside of Farnsfield village envelope and that its lawful use is for agriculture. However, the appellant's case is that the nature of the business is such that it requires open space to operate and it needs to be located away from residential properties. Therefore, a rural setting is required. I appreciate that given the noise and activities associated with this use, it would not be suitably located within a residential area. However, apart from cost and site availability, I have

not been provided with any substantive evidence which would demonstrate why the business could not be located on an existing or allocated employment site within an existing settlement. Furthermore, I am not aware that the business delivers skilled jobs for local people or is a new start-up which supports growth sectors. The importation, storage and distribution of (non-waste) building and construction materials is not a use that requires a rural setting nor does it rely on agricultural land for its operation. The open storage of materials, vehicles and plant, including the containers are an erosion of open countryside and conflict with the location criteria set out in Spatial Policy 3 of the CS and Policy FNP4 of the NP.

19. Core Policy 6 of the CS and Policy DM8 of Newark & Sherwood Allocations & Development Management Development Plan Document (DPD) support rural diversification where it can be shown to contribute to the local economy. Such development should be complementary to the existing business in their nature and scale and be accommodated in existing buildings wherever possible. In addition, Policy DM8 makes provision for small scale employment development in the countryside where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs in accordance with the aims of Core Policy 6. Although Policy DM8 pre-dates the current National Planning Policy Framework, 2019 (the Framework) and the CS, its aims with regard to rural diversification and employment uses are consistent with those set out in paragraph 83 and 84 of the Framework which aim to support a prosperous rural economy. I therefore give this policy substantial weight.
20. Whilst the unauthorised use does utilise an existing agricultural building, I have not been provided with any substantive evidence that would lead me to believe that the importation, storage and distribution building and construction materials has been developed as part of a farm diversification scheme which would support the management and viability of a farm holding. The use is well established in its own right. Furthermore, the use is not a use which I would consider to be what is meant by the land-based rural businesses which are supported by paragraph 83 of the Framework.
21. The business provides full time employment for 13 people which is clearly a benefit of the development, and although none of those employees live in Farnsfield, the majority live in villages relatively close by and therefore have a short commute. I also appreciate the service this use provides to businesses situated within the local area. However, given the proximity of Farnsfield to the service centre of Southwell and the Mansfield Fringe, I am not convinced that the use could not be re-located to a more appropriate location nearby, and there would be no loss of employment or adverse effect to the local economy.
22. I recognise that land allocated for employment purposes in Farnsfield has subsequently been granted consent for housing development. However, the Council advise that despite this allocation not coming forward, taking into account the combination of employment completions and existing allocations in the Southwell Area, within which Farnsfield lies, there is more than sufficient employment land to exceed the requirements of 4.5ha of employment land across the Plan period. I therefore give this consideration limited weight.
23. I conclude that the development is not acceptable in principle in this location having regard to local and national planning policies. It conflicts with the

development plan and in particular with Strategy Policy 3 and Core Policy 6 of the CS, as well as Policy DM8 of the DPD and Policy FNP4 of the NP, the aims of which are set out above.

Character and appearance

24. The appeal site lies within an area identified as the Sherwood Policy Zone within the Newark and Sherwood Landscape Character Assessment (CA). It is a landscape characterised by gently rolling topography, medium to large scale semi-irregular field patterns, views framed by rising ground and woodland edges and a nucleated settlement pattern with some mining settlements with associated pit heaps and railway lines. The CA considers the landscape condition to be moderate with a moderate sensitivity. The Policy Action for this area is to conserve and create the specified ecological and landscape features.
25. The southern half of the appeal site contains large areas of compacted bare ground where there are also heaps of building and construction materials rising to heights of at least three metres in some instances. The northern part of the site is unmanaged semi-improved grassland. Earth bunds have been created along the southern and south eastern boundaries of the site, wrapping around the building and there is a smaller bund with some trees on it along the site's northern boundary. The Southwell Trail runs alongside the eastern boundary of the site and is generally screened from the site by vegetation.
26. The Initial Landscape Assessment¹ (ILA) submitted with the appeal documents identifies the bunds, building and material storage as non-typical at a National and Local Character level. There are long range views of the site when travelling south along Cockett Lane and mid and close-range views from The Southwell Trail where there are breaks in the vegetation. The overall appearance of the site, including the bare ground, piles of aggregates and stored containers, vehicle and plant does not harmonise with the surrounding landscape character and has a harmful effect on the character and appearance of the area.
27. The ILA includes landscape mitigation measures based on retaining all existing boundary hedges and adding native trees planting particularly along the eastern, western and northern boundaries of the site to improve screening and enhance biodiversity and habitat creation. A Landscape Masterplan has also been prepared for the site which includes new screen bunds along the northern and western site boundaries.
28. The landscape mitigation measures would provide some additional screening of the site and ecological enhancements. I have also taken into consideration the suggestion at the Hearing that it would be possible to impose a condition to limit the height of the stored aggregate. However, the overall appearance of the site, with its bare ground, stored material, including containers and vehicles/plant, does not conserve the existing landscape character and even with additional screen planting would have a significant and harmful effect on the visual qualities of the area.
29. I conclude that the development has a harmful impact on the character and appearance of the area. It conflicts with the development plan, and in

¹ Initial Landscape Assessment, Prepared by Weddle Landscape Design, Sept 2019

particular with Core Policies 9 and 13 of the CS which seeks to ensure, amongst other things, that development complements the existing landscape character and contributes towards meeting the Landscape Conservation and Enhancement Aims of the area. I also find conflict with Policy DM5 of the DPD which, amongst other criteria, seeks to ensure that the new development protects local distinctiveness and character.

Living conditions

30. The Council are concerned that the existing use is having a harmful effect on the living conditions of neighbouring residents, in particular in relation to noise and disturbance as a result of vehicular movements, loading and unloading of materials, hours of operation and dust. A significant number of objections from local residents have also been received, including representations from the Parish Council, Nottinghamshire County Council and Local Councillors which set out ongoing concerns relating to noise and disturbance and the effect this unauthorised use is having on their living conditions. Those concerns include early morning vehicular activity, clanging of plant whilst materials are moved around the site and dust generation.
31. Taking into account the planning history of the site there does not seem to be any dispute that there has been some level of activity on the site relating to storage of heavy goods vehicles and related storage for a number of years. However, it is accepted by the appellant that that use was not lawful. Moreover, it is clear that there has been a significant intensification in the use of the site and activities taking place on it during the last three years which included the introduction of an unlawful waste transfer use, which has subsequently ceased. Consequently, I give little weight to the appellant's case that prior to the introduction of the waste activities, the site has operated for many years without complaints.
32. The nearest noise sensitive properties include the residential dwelling at Dalesworth Nurseries which adjoins the site, The Old Goods Yard which is also in residential use and residential properties on Station Lane. Recreational users of The Southwell Trail are also susceptible to noise nuisance.
33. Existing activities include heavy goods vehicles (HGV) entering and leaving the site from 0630 hours and loading and unloading operations within the site. Taking into account the noise generated from those activities, including the vibration from HGVs utilising the site access which runs along the boundary with Dalesworth Nurseries, such operations undoubtedly result in noise and disturbance to neighbouring residents early in the morning which is unacceptable. To enable the business to operate, the appellant requires HGVs to leave the site loaded by 0630 hours on Monday to Friday. However, they have suggested that that the movement of loose building and construction materials could be restricted to no earlier than 0730 hours with all loading of vehicles taking place the night before.
34. I have no doubt that preventing the movement of aggregates and building materials around the site in the early morning would provide some improvement to the living conditions of neighbouring residents, albeit the Council have suggested that a time of 0800 hours would be more acceptable. However, there would still be disturbance from HGVs starting up and moving into and out of the site along the access road close to Dalesworth Nurseries from 0630 hours. Furthermore, the movement of materials around the site

and the loading and unloading of vehicles would continue throughout the day, which given the site's proximity to some residential properties would still result in noise nuisance to neighbouring residents and be intrusive to users of the neighbouring Southwell Trail. The clanging from grabbers, buckets and tippers which I witnessed on a preliminary visit to the area is particularly intrusive. Notwithstanding the visual impact any acoustic fencing may have as part of the suggested noise management plan, that noise characteristic would be difficult to mitigate against. Furthermore, given that the site is currently operating within the suggested 2000 ton limit for stored materials on the site, I am not convinced that such a limitation would significantly reduce the level of activities on the site and nor would it prevent the noise impacts described above.

35. During the dry weather dust arising from site operations has also been a problem. Residents have complained about layers of dust accumulating on their window sills and cars. It is understood that when waste transfer operations were taking place on site the crusher which was in use contributed significantly to dust emission. That piece of equipment is no longer needed on the site and has been removed. The appellant has now bought a water bowser to help suppress dust and also indicated at the Hearing that he would be willing to surface the access road and yard in a solid bound material to further reduce dust emissions. The Council indicated during the Hearing that they were satisfied that a condition requiring the implementation of such measures as part of an agreed dust management plan would provide suitable mitigation for dust emissions and allay their concerns in this regard. From the evidence before me and taking into account the suggested wording for a condition, I too am satisfied that a dust management plan could be secured by condition and overcome the existing harm to living conditions from current dust emissions.
36. Whilst it would be possible to control dust emissions from the site by condition, there are no conditions that would provide adequate mitigation for the noise and disturbance resultant from the use and which would make the development acceptable. The proposed development would have a harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. It would conflict with the development plan, and in particular with Policy DM5 of the DPD which seeks to ensure, amongst other criteria, that development does not have an unacceptable impact on the amenity of neighbouring development. It would also conflict with paragraph 127 of the Framework which seeks to maintain a high standard of amenity for existing and future users.

Conclusion

37. For the reasons given above the change of use is contrary to the development plan when read as a whole and the use is unacceptable. There are no material considerations to overcome the conflict with the development plan and the appeal on ground (a) must fail.

Appeal on ground (g)

38. The issue is whether the compliance period of 120 days for steps A, B and C and 130 days for step D is reasonable. The appellant considers that a period of at least 12 months is a more reasonable time period to comply with all the steps. An extensive search for new premises has already been undertaken with little success. His view is that it would take at least 12 months to find a new site and get the requisite planning permission to operate from it and

secure a lease or site purchase. The appellant does not want to have to make his staff redundant, particularly at a time when the COVID-19 pandemic is making it very difficult to find alternative employment.

39. The Council believe that given that there have been ongoing enforcement investigations relating to the site since 2018 and that the notice was served in 2019, the appellant has had sufficient time to prepare to relocate his business. To allow for this activity to continue for a further 12 months would not be acceptable given the harm it is causing to the amenity of local residents.
40. I have found that the development is having a significant and harmful effect on the living conditions of neighbouring residents by reason of noise and disturbance. I therefore agree with the Council that it would not be appropriate to allow the unauthorised activities to continue on the site for a further 12 months. However, the business does have thirteen employees and I appreciate the efforts the appellant has been making to search for new premises and the difficulties encountered in that search during COVID-19 pandemic. The decision that I have reached is that a period of six months strikes the right balance for the notice to be complied with in full. To this extent the appeal on ground (g) succeeds.

Overall Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Peter Bratt	Appellant
Lynsey Warren	Manager of North Midland Plant Limited
Mr Craig Burman	Schofield Sweeny (agent)
Lisa Allison	Rural Solutions
Chris Braine	Weddle Landscape Design

FOR THE LOCAL PLANNING AUTHORITY

Richard Marshall	Lead Officer for Enforcement
Emma Raine	Planning Policy Officer
Matthew Tubb	Planning Policy Officer

THIRD PARTIES

Councillor Bruce Laughton

Councillor for Newark & Sherwood District
Council and Nottinghamshire County Council

Tim Turner

Senior Practitioner, Monitoring &
Enforcement, Nottinghamshire County
Council.