The Planning Inspectorate

Appeal Decisions

Site visit made on 8 June 2020

by C Sherratt DipURP MRTPI

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

Decision date: 13 October 2020

Land at Mincrete, C/O Flannery Plant Hire, Bridge Lane, Woolston, Warrington, WA1 4BA

Appeal A: APP/M0655/C/20/3246920

- 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 Mincrete Limited against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice was issued on 16 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a concrete mixing plant with ancillary plant including storage bays, overhead conveyors, weighing bins, water storage tank, extended concrete pad and roadway, and a material change of use of the land to B2 use class (general industry).
- The requirements of the notice are
  (a) Cease the use of the land as a concrete mixing plant.
  (b) Remove from the land the concrete mixing plant with ancillary plant including storage bays, overhead conveyors, weighing bins, water storage tank, extended concrete pad and road way.
- The period for compliance with requirement (a) is one calendar month and requirement (b) three calendar months.
- 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.

Appeal B: APP/M0655/W/20/3247140

- 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 Mincrete Limited against the decision of Warrington Borough Council.
- The application Ref 2019/34923, dated 13 January 2019, was refused by notice dated 23 December 2019.
- The development proposed is the construction of a concrete mixing plant with ancillary plant including storage bays, overhead conveyors, weighing bins, water storage tank, extension of existing concrete pad and road way; retention and subdivision of existing offices, staff toilet and kitchen and change of use of land to B2 Use Class (general industry).

Decisions

Appeal A: APP/M0655/C/20/3246920

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under

section 177(5) of the Act as amended for the development already carried out, namely the construction of a concrete mixing plant with ancillary plant including storage bays, overhead conveyors, weighing bins, water storage tank, extended concrete pad and roadway, and a material change of use of the land to B2 use class (general industry) at Land at Mincrete, C/O Flannery Plant Hire, Bridge Lane, Woolston, Warrington, WA1 4BA, as shown on the plan attached to the notice, subject to the conditions set out in Schedule 1.

Appeal B: APP/M0655/W/20/3247140

2. The appeal is allowed and planning permission is granted for the construction of a concrete mixing plant with ancillary plant including storage bays, overhead conveyors, weighing bins, water storage tank, extended concrete pad and roadway, and a material change of use of the land to B2 use class (general industry) at Land at Mincrete, C/O Flannery Plant Hire, Bridge Lane, Woolston, Warrington, WA1 4BA in accordance with the terms of the application, Reference 2019/34923, dated 13 January 2019, and the plans submitted with it, subject to the conditions set out in Schedule 1.

Reasons

Appeal A - ground (a) and deemed planning application and Appeal B

Main issues

3. The main issues are the effect of the development on:

   - the living conditions of the occupiers of nearby properties by reason of noise and disturbance and dust;
   - highway and pedestrian safety; and
   - the ecology of the River Mersey and Woolston Eyes Site of Special Scientific Interest (SSSI).

4. The appeal site is situated within Riverside Industrial Estate where the parties agree there is a mix of general industrial use businesses lawfully operating within an existing industrial estate. Access is from Manchester Road along Bridge Lane which is mainly single width and an unmade road. The rear boundaries of a number of properties abut Bridge Lane.

   The appeal relates to a use of land falling within Class B2 (General Industrial) of the Use Classes Order (UCO) and various operational development required to facilitate that use. The lawful use of the site is, the appellant explains, for Class B8 (Storage use) although prior to that, until 2006, it was used lawfully for purposes falling within Class B2 of the Use Classes Order. There is no dispute that some of the other businesses occupying the industrial estate can be categorised as falling within Class B2.

5. The documentation submitted in support of the planning application that is now the subject of Appeal B, included an Ecology Impact report, Flood Risk Assessment, Dust Management Plan (DMP) and drainage layout details.

6. The development plan includes the Local Plan Core Strategy (LPCS) adopted on 21 July 2014. Of particular relevance is Policy QE6 'Environment and Amenity Protection'. This policy supports development which would not lead to an adverse impact on the environment or amenity of future occupiers or those

currently occupying adjoining or nearby properties or does not have an unacceptable impact on the surrounding area. The policy sets out a range of factors that will be taken into consideration when assessing the impact of a development proposal.

Living conditions

Noise and disturbance

7. The development involves an industrial process and requires the movement of heavy machinery and Heavy Goods Vehicles (HGVs). It is situated some 90m away from the closest residential property. The site access along Bridge Lane is situated approximately 10 metres to the rear of residential properties.

8. The planning application that was submitted indicates operating hours starting at 06:00 hours weekdays to ensure that the business can produce the concrete and then deliver it to construction sites to meet the demands of the building industry. The Council refers to guidance in BS4142:2014 (Methods for rating and assessing industrial and commercial sound) and therefore considers 'day-time' hours commence at 07:00 hours. The site therefore operates at hours when noise and disturbance should, the Council argue, be kept to a minimum. Further, the Council is concerned that the industrial equipment utilised in the process is tall in size (maximum height 6 metres), open in nature and not enclosed within a building and that any noise mitigation measures could not therefore be entirely effective.

9. Given the proximity of the site and access road to residential properties, I acknowledge there is likely to be some impact on the living conditions of the occupiers of neighbouring properties. However, it must be acknowledged that the appeal site is part of a wider industrial estate where other uses operate falling within Class B2 of the UCO. The Council does not challenge the appellant's claim that some other businesses are operating with no planning conditions that restrict hours of operation etc. The development could therefore potentially occur on one of those other units and operate unfettered by any restrictions on hours.

10. In my view, given the location of the site on a long established industrial estate, the development that is the subject of these appeals would not, subject to conditions restricting the hours of operation to between 06:00 hrs and 17:30 hours on weekdays, have an adverse impact on living conditions, by reason of noise and general disturbance during unsociable hours, over and above that which occupiers of properties nearby might reasonably experience given the proximity to an industrial site. I therefore find no conflict with Policy QE6 in this regard.

Dust

11. An additional factor for consideration in assessing proposals against LPCS Policy QE6, is the impact a development would have upon living conditions by reason of the level of dust generated through its operation. The Council is concerned that the operation results in high levels of dust, which is settling within the surrounding environment to the detriment of residential amenity, contrary to policy QE6.

12. The DMP that accompanied the application identifies a number of activities associated with this proposal that have the potential to cause dust from

operations at the site. A number of measures are in place to manage it, which are in line with Defra's Process Guidance Note 3/01(12). A number of further control measures are suggested in the DMP. This was reviewed by both the Council's Environmental Protection Team and Natural England, both of whom were satisfied with the analysis and recommendations contained therein. The appeal premises are also managed through an Environmental Permit. The Council provides no substantive evidence to the contrary to criticise the findings of the DMP.

13. To conclude on this issue, I find that with an appropriate scheme of measures in place, the development would not have an adverse impact on the living conditions of the occupiers of nearby properties by reason of dust.

Highway and pedestrian safety

14. Policy QE6 requires consideration of the development on "the effect and timing of traffic movement to, from and within the site and car parking including impacts on highway safety". As stated previously, the appeal site is situated at the end of Bridge Lane, a narrow roadway which provides the only access for vehicles to enter and leave the site. Bridge Lane is a narrow unadopted highway approximately 300 metres in length, that is unable to accommodate two-way traffic flow for most of its length. Whilst it does benefit from some passing places these are infrequent and the road does not benefit from a demarked area to accommodate pedestrians alongside vehicles. Users of the New Cut Heritage and Ecology Trail also have to walk across the access road whilst using the trail. There is therefore likely to be conflict between pedestrians and HGVs and other vehicles entering and leaving the site, to the detriment of highway and pedestrian safety, contrary to Policy QE6.

15. That said, it is acknowledged that the industrial site as a whole can only be accessed via this lane and there are other businesses operating within the estate that use Bridge Lane for access. The appellant has drawn my attention to the comments of the Council's 'Transport Planning and Development Control' officer as set out in the report to Committee relating to the planning application. The consultee response acknowledges that the current access arrangements do not comply with design standards. However, consideration must be given to the similar level of vehicle movements associated with the existing permission for a use falling within Class B8. As it was not considered that the development, now the subject of this appeal, would intensify traffic movements to and from the site, it was not considered to be unacceptable or that any mitigation should be provided.

16. I concur with those views, again giving significant weight to the lawful use to which the site could revert and its location within an established industrial estate. To conclude on this issue, I do not consider the development results in any materially greater harm to pedestrian and highway safety.

River Mersey and Woolston Eyes SSSI

17. The appeal site is approximately 50 metres away from Woolston Eyes, a designated Site of Special Scientific Interest (SSSI). The River Mersey is a watercourse of regional importance. Policy QE6 seeks to protect the environment within the Borough and further objectives for protecting SSSIs and other nature designations is set out in Policy QE5 'Biodiversity and Geodiversity'. The National Planning Policy Framework requires that

development on land within or outside a SSSI which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSI.

18. The planning application was accompanied by various reports including an ecology impact report. The appellant explains that this was produced to meet the requirements of Natural England. Although the report concluded that there has not been (from the already operational site) and will not be any discernible impact on the SSSI and that mitigation is not necessary, it was recommended following discussion with Natural England that acoustic and visual screening should be erected around the site because even though the bunds will be screening the SSSI to some degree, the birds of the site will nevertheless be using the river and riparian habitat corridor (supporting habitat). The screening would therefore reduce any visual and acoustic impacts. Additional drainage information was also submitted during the application process.

19. In response to the consultation exercise carried out in relation to the planning application, Natural England raised no objections to the development, based on the information provided and the mitigation measures proposed being secured. In particular, the mitigation measures proposed include that the surface water drainage is a closed system, so that the surface water drainage will not impact the SSSI and additional measures that are outlined in the DMP. According to the Council's report to Committee no adverse comments were received from the Environment Agency or the Greater Manchester Ecology Unit. I afford these responses great weight.

20. The DMP refers to IAQM Guidance on the Assessment of Mineral Dust Impacts for Planning (May 2016). It states that ''the level of dust deposition likely to lead to a change in vegetation is very high (over 1g/m2 /day) and the likelihood of a significant effect is therefore very low except on the sites with the highest dust release close to sensitive habitat sites.'' It is therefore considered that the risk of fugitive dust from the site affecting the Woolston Eyes SSSI is not likely to be significant, provided that the control measures implemented for the site operations outlined in the DMP are fully implemented. In particular, it should be noted that as the River Mersey lies between the appeal site and the SSSI, there is no road access which would take site traffic within approximately 60-70m of the SSSI, therefore reducing the risk of trackout.

21. To conclude, based on the evidence provided, I am satisfied that subject to the mitigation measures being implemented, there would be no adverse impact on the ecology of the River Mersey and Woolston Eyes SSSI from the existing development. Appropriate conditions could secure the approval of a scheme of such mitigation measures. I therefore find no conflict with Policy QE6 or the Framework in this respect.

Conditions

22. To protect the living conditions of the occupiers of neighbouring properties, the hours of operation shall be restricted to the hours of 06.00 to 17.30 Monday to Friday with no working permitted weekends and Bank Holidays reflecting the details given on the application form. In addition, a scheme of mitigation

measures reflecting those set out in the DMP together with an acoustic and visual screen should be submitted for approval including a timetable for implementation to ensure no adverse impact from dust on the living conditions of nearby residents and to protect the interests of the SSSI. A scheme for the disposal of foul and surface water is also necessary to prevent pollution of groundwater and surface water. As the use is already operating from the site, the conditions requiring the submission of schemes is worded to require the use to cease should those schemes (which shall include timetables) not be submitted for approval or other actions be taken within certain timescales. These sanctions are considered proportionate to the harm that would arise should appropriate mitigation measures not be put in place.

23. I do not consider it is necessary to restrict the future use of the site to a concrete mixing plant only or restrict any permitted development rights that may apply given the location of the site within a wider industrial estate.

Conclusions

24. Whilst I find some conflict with the development plan, in particular Policy QE6, the use to which the site can revert upon compliance with the notice (i.e. a use falling within Class B8 'storage and distribution'), by virtue of section 57(4) of the Act, together with the location of the site within an established industrial estate, are material considerations of significant weight in the determination of these appeals. Such material considerations indicate that planning permission should be forthcoming.

25. To conclude, Appeal A should succeed on ground (a) and planning permission will be granted, subject to conditions. The appeal on grounds (f) and (g) does not therefore need to be considered. For the reasons given above I conclude that Appeal B should also be allowed, subject to conditions.

C. Sherratt

Inspector

Schedule of Conditions

1) The use hereby permitted shall cease within 1 month of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 1 month of the date of this decision schemes for:

      - dust mitigation in accordance with the recommendations outlined in the submitted Mincrete Ltd Dust Management Plan;
      - acoustic and visual screening in line with the recommendations made within the submitted report entitled 'Assessment of Impacts and Noise and Visual Disturbance to interest features of the adjacent Woolston Eyes Site of Special Scientific Interest';
      - the disposal of foul and surface water;

   shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

   Upon implementation of the approved schemes specified in this condition, that scheme shall thereafter be maintained and remain in use.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2) Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between 06:00 and 17:30 hours on Monday to Friday, and not at any time on Saturday and Sundays or on Bank or Public Holidays.