



Appeal Decision

Site visit made on 2 August 2021

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2021

Appeal Ref: APP/R0660/W/20/3264967

Betchton Cottage Farm, Cappers Lane, Betchton, CW11 2TW

- 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
 - The appeal is made by Mr T Gardiner against Cheshire East Council.
 - The application Ref 20/2611C, is dated 22 June 2020.
 - The development proposed is the extension and reorganisation of existing skip yard and waste transfer station including creation of hardstanding for soil screening; change of use of existing agricultural building to use for soil storage, general storage and vehicle maintenance for agricultural and waste management uses; and siting of new office, canteen and toilet portacabins.
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Decision

1. The appeal is allowed and planning permission is granted for the extension and reorganisation of existing skip yard and waste transfer station including creation of hardstanding for soil screening; change of use of existing agricultural building to use for soil storage, general storage and vehicle maintenance for agricultural and waste management uses; and siting of new office, canteen and toilet portacabins at Betchton Cottage Farm, Cappers Lane, Betchton, CW11 2TW in accordance with the terms of the application, Ref 20/2611C, dated 22 June 2020, subject to the conditions set out in Annex A.

Procedural Matters

2. The appeal was submitted against the non-determination of the application. The Council's appeal statement assessed the proposal and outlined the reasons the application would have been refused had the appeal not been submitted. I have had regard to these putative reasons for refusal in my consideration of the appeal.
3. The portacabins to be used for the general office, canteen and toilets are already located on the site and I have determined the appeal on this basis.
4. In July 2021, after the submission of the appeal, a revised *National Planning Policy Framework* (the Framework) was published. As a result, I sought the views of both main parties regarding this. I have determined the appeal on the basis of the national and local policies as adopted at the present time.
5. During the application process, the appellant submitted a revised site plan that enlarged the site. He asked for this to be used in the appeal. The Council have stated that they did not accept or consult on this plan. I have considered whether it would be appropriate to take the revised plan into account in this case, and I have concluded that it would not, as to do so would potentially run

contrary to the Wheatcroft principles. The key test in this regard, is whether dealing with the proposal in that way would so change the development that to grant permission on that basis would deprive those who should have been consulted on the changed development, the opportunity to make representations. As I cannot be assured that all those consulted would not be prejudiced by an enlarged site I cannot proceed on that basis.

6. A landscaping plan was also submitted at the same time, and the Council have stated that this too was not accepted and consulted on. I have used this as an indicative plan of what could be done and have made the need to submit a landscaping scheme a condition.

Main Issue

7. The main issue in the appeal is the effect of the proposal on the character and appearance of the area.

Reasons

8. The appeal site is located within an area defined as open countryside by the *Cheshire East Local Plan Strategy (adopted July 2017)* (CELPS). The site consists of a skip yard and waste transfer station immediately adjacent to Cappers Lane, an unmade access road that runs along the western boundary of the site and which leads to two agricultural buildings. Only the larger of these agricultural buildings is in the appeal site. In between the front of the site and the agricultural buildings at the rear is an open grassed area that also does not form part of the appeal site. The appellant indicates that he runs an agricultural business as well as the skip hire business from the site.
9. The appeal scheme consists of a number of elements. The Council have raised no concerns in respect of the siting of the 3 portacabins on the front part of the site or the extension of the existing skip yard to provide an additional skip storage area. I see no reason to disagree with this conclusion. The Council's concerns relate to the change of use of the agricultural building to a mix of soil and general storage and vehicle maintenance and the expansion and change of use of the yard area adjacent to this building from agricultural land to soil screening.
10. Policy PG6 of the CELPS indicates that within the open countryside only certain forms of development are permitted. It is common ground that the appeal proposal does not fall into any of these. However, part 3 of the policy sets out situations where exceptions may be made. These include: the re-use of existing rural buildings where the building is permanent, substantial and would not require extensive alteration, rebuilding or extension; and development that is essential for the expansion or redevelopment of an existing business. Part 5 states that the acceptability of such development is subject to compliance with other policies in the plan and particular attention should be paid to design and landscape character, so the appearance and distinctiveness of the countryside is preserved and enhanced.
11. To support the rural economy, Policy EG2 of the CELPS supports developments that encourage the retention and expansion of existing businesses, particularly through the conversion of existing buildings but, amongst other things, also requires that such developments are well sited and conserve and where possible enhance the character and quality of the landscape. The need for

- developments to conserve and, where possible, enhance the landscape character and quality is also a requirement of Policy SE4 of the CELPS.
12. It is not disputed that the agricultural building is a permanent and substantial structure. In addition, the proposal would allow the expansion of the existing business, enabling it to screen and store soil on the site. However, to accord with these policies it would need to preserve the character and quality of the landscape in the area.
 13. The agricultural building comprises 5 bays that are currently used for storage and the maintenance of agricultural vehicles and equipment. The change of use of the building would not make any external changes to the building, nor would it require any rebuilding or extensions to it. As the changes proposed in what is stored in the building and the types of vehicles maintained in it would be internal changes, they would not have any impact on the character and appearance of the area. As such, the change of use of the building would preserve the character and quality of the landscape.
 14. The land that would be utilised to expand the hardstanding adjacent to the building and for the soil screening is currently part of the grassed area. Its change of use would result in a change in its character and appearance. However, the amount of land affected is limited in size, and the overall character of the open countryside would not alter significantly, particularly bearing in mind that the area around agricultural buildings is often quite untidy and unattractive.
 15. Moreover, I observed that, as this area is some distance from the road and is set back behind the skip yard, the visibility of this area from the public realm is negligible. Conditions to control the height of the soil in the screening area, the landscaping of the area and where open storage can take place would all ensure that this remains the case.
 16. Consequently, I am satisfied that the change of use of the building and the adjacent land would preserve the character and quality of the landscape in the area.
 17. Overall, I consider that the proposal would not harm the character and appearance of the area. Accordingly, there would be no conflict with Policies PG6, EG2 and SE4 of the CELPS outlined above.

Other Matters

18. The proposal would increase the use of the access road leading to the rear of the site. The hard surfacing of this, which can be secured by condition, would reduce the dust created by its use. I am satisfied that this, together with the submission of a dust management plan, would be sufficient to ensure that the proposal would not have a detrimental impact on neighbouring occupiers and uses in terms of dust generation.
19. A noise impact assessment was submitted with the application. Whilst I note the concerns raised by third parties regarding this, the report was reviewed by the Council's Environmental Health Team who concluded that, subject to the mitigation measures proposed being secured by condition, the proposal would not adversely affect nearby occupiers. In the absence of any substantive evidence to the contrary I see no reason to dispute this conclusion.

20. Given that I consider that subject to conditions the scheme would not unacceptably harm the living conditions of nearby residents with regard to dust, and noise and disturbance, I conclude that there would be no violation of their human rights.
21. Whilst the proposal would increase the amount of hardstanding on the site, I am not persuaded that this would significantly increase the risk of flooding in the area.
22. The application was accompanied by a Transport Statement that concluded that the proposal would not result in any highway safety or capacity issues and these findings have been accepted by the Highway Authority. Given this, and from my own observations, whilst I note the concerns raised by third parties and the Parish Council, I am satisfied the proposal would not be detrimental to highway safety. In addition, the driving habits of drivers coming to and from the site when on the highway is not something that can be controlled by planning.
23. It is not the role of planning to restrict competition but, in any case, I see no reason why allowing this proposal gives any commercial advantage to the company because it is located in a rural area.

Conclusion and Conditions

24. For the reasons set out above, I conclude the appeal should be allowed.
25. As the appeal scheme has in part already been implemented the standard implementation condition is not necessary, but to provide certainty it is necessary to define the plans with which the scheme should accord. In the interests of the character and appearance of the area conditions are required to control the height of skips and soil stored on the site and the landscaping of the site. To protect the living conditions of nearby occupiers, conditions are required to: control the operating hours of the uses permitted; control the type of reverse warning alarms used on vehicles; prevent the use of PA systems / amplified music on the site; limit the number of vehicle movements along the access road each day; ensure the access road is hard surfaced; and require the submission and implementation of a dust management plan.
26. The Council also suggested conditions relating to the hours of operation of the existing skip yard. These are already controlled by conditions on previous applications relating to this part of the site and these would not be negated by the granting of the appeal. Therefore, I do not consider these are necessary.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Proposed Site Plan Drg No 20/08/01; and Proposed Elevations and Floor Plans Drg No 20/08/02.
- 2) Skips, both empty and those used for the storage of recycled waste, shall not exceed a height of 2.5 metres from ground level.
- 3) Soil deposited and stored within the soil screening area shall not exceed a height of 2.5 metres from ground level.
- 4) Soil screening shall take place only between the hours of 08:00 and 17:00 Monday to Friday and 09:00 to 13:00 hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 5) HGV movements along the access road to the soil screening area shall be limited to a maximum of 10 vehicle movements a day (5 in and 5 out) unless solely to access the agricultural building and land.
- 6) All vehicles which require audible reversing warning devices shall only operate with broadband reverse warning alarms when on the site.
- 7) There shall be no operation of a public address system or amplified music/broadcasts in the service yard /area of hardstanding hereby approved except for in the case of emergencies.
- 8) The change of use of the agricultural building, the expansion of the yard area in front of it and its use for soil screening shall not take place until a landscaping scheme has been submitted to, and approved in writing by, the local planning authority. These details shall include:
 - i) means of enclosure;
 - ii) boundary treatments;
 - iii) planting plans;
 - iv) a schedule of plants noting species, plant supply sizes and proposed numbers and densities;
 - v) hard surfacing materials;
 - vi) a layout plan for the area around the building that identifies where there will be no outdoor storage of plant or materials; and
 - vii) an implementation and a management and maintenance programme.

The landscaping works shall be carried out in accordance with the approved scheme and in accordance with the agreed implementation programme. The completed scheme shall be managed and maintained in accordance with the approved scheme of management and maintenance.

- 9) The changes of use hereby permitted shall not commence until the hard surfacing of the access road shown in Drg No 20/08/01 has taken place in accordance with a scheme that has first been submitted to, and approved in writing by, the local planning authority. The access road shall be retained as such thereafter.

- 10) The changes of use hereby permitted shall not take place until a dust management plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include:
- i) identification of all fugitive dust sources at the site;
 - ii) details of the dust mitigation measures to be employed;
 - iii) details of all dust suppression measures; and
 - iv) methods to monitor emissions of dust arising from the proposed uses.

The site shall be operated in accordance with the approved dust management plan thereafter.