



Appeal Decision

Hearing held on 19 April and 24 May 2022

Site visits made on 5 and 19 April 2022

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/F4410/W/21/3273717

Unit 1, Pastures Road, Mexborough S64 0JJ

- 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 Adrian Catlow against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 20/01323/FUL, dated 11 March 2020, was refused by notice dated 11 December 2020.
 - The development proposed is Retrospective change of use of land to Sui Generis for the recycling of concrete, bricks, rubble and soils into a sellable by-product to provide recycled aggregates; construction materials storage; civils engineering operation use and proposed erection of modular building.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. The appellant submitted a written costs application at the hearing. It was agreed that the Council should have seven days to respond. This is the subject of a separate decision.

Preliminary Matters

3. The appeal is for a retrospective change of use of land for a recycling business operating in conjunction with a groundworks and engineering business which has a Certificate of Lawful Existing Use or Development Certificate (CLEUD)¹ and which operates on one part of the appeal site. This allows the operation of *a civil engineering business, comprising the storage of materials and aggregate associated with the business; storage of associated vehicles and machinery; deliveries of waste materials acquired through the business operations; and as a base for business staff only*. The appeal before me is concerned only with the regularisation of the current screening, crushing and processing of material and the use of the area of the appeal site outside the area shown on the CLEUD.
4. The description of development in the banner is taken from the appeal questionnaire.
5. The officer's report sets out policy tests relating to the Core Strategy 2011-2028 (CS), the Saved Unitary Development Plan 1998, and the emerging Local

¹ 21/00164/CPE

Plan (LP). Since the appeal was lodged the LP has been adopted and I confirmed at the hearing that the recently adopted LP policies are to be given full weight in my reasoning. It is also apparent from the Council's statement that LP Policy 4 has replaced CS Policy CS5 which was not cited in the decision, and that LP Policy 46 has replaced CS Policies CS1 and CS14, which were.

6. There is inconsistency in the description of vehicle movements to and from the site, and in the use of the term *two-way journeys*, throughout the evidence. At my first site visit the transport consultant explained that a two-way journey counted each leg separately. As such, 30 trips in and 30 trips out would amount to 60 two-way journeys. For consistency I have used the consultant's definition in my reasoning.
7. The appellant advanced the argument at the hearing that the noise arising from additional vehicle movements is not included in the reasons for refusal. However, although the reference to *dust, noise and traffic movements* may be ambiguous, I am satisfied that this phrase does not explicitly exclude noise from additional traffic. In any case, it was raised by interested parties and I see no reason to exclude this concern from my reasoning.

Main Issues

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

- The living conditions of occupiers of the nearby housing development, with particular regard to noise and disturbance, and airborne particulates.

Reasons

Policy background

9. The site is located within a long strip of designated employment land situated between a canal and a large residential estate. LP Policy 4 is concerned with employment strategy and states that uses other than Classes B2, B8 and E(g) will be supported, provided the development meets one of the listed criteria A, B or C. One of these, criterion A, is that the development supports existing or permitted employment uses on the site. As part of the site is being lawfully used as a related engineering operation, I conclude that the proposals would meet criterion A.
10. The policy goes on to state that in those circumstances the development should also meet a further three criteria. These are that the site has easy access to other employment land uses (D), that the proposed use is appropriate in scale, design and location and will not adversely affect the operation of adjacent employment land or uses through environmental, amenity or traffic problems (E) and that there is compelling evidence that the land or buildings are no longer viable for use Classes B2, B8 and E(g), (F).
11. The site is located within a few miles of the M1 and M18. Although I found that routes to the site from the motorways involved travelling through built-up areas or on minor rural roads, there are other large industrial estates nearby which presumably have the same access restrictions. As such I see no reason to suppose that the site does not have access to other employment uses, or ready access to its Yorkshire customer base.

12. Although the development is classed as *sui generis*, there is nothing before me to indicate that it would not be suitable in principle on land allocated for Classes B2, B8 and E(G) use.
13. I appreciate that there is no evidence that the site would no longer be viable for Classes B2, B8 or E(g). However, nor is there evidence before me that the proposed development would displace those other uses. Moreover, the site would remain in employment use which appears to be the overarching aim of the policy. In any case, at determination, the officer's report concludes that the change of use would be capable of forming a sustainable proposal when assessed against emerging plan policies. It is unclear to me why the Council's position has now changed in this regard. Although the use falls within *sui generis* it is not dissimilar to commercial or industrial uses which would be allowed on the site.
14. In addition, the entire site sits within Flood Zones 2 and 3 which could limit options for other employment uses. The lawful engineering works for part of the site might also limit the attractiveness of the wider site for other employment uses. As such, I find no particular conflict with criteria D or F of LP Policy 4.
15. However, the evidence before me indicates that environmental, amenity and traffic problems are concerns, and that there is a conflict with criterion E. This is discussed below.

Living conditions

Noise

16. There is a large body of complaint concerning noise and disturbance arising from the site. The evidence indicates that recycling operations began in early 2020. Consequently, surveys and assessments carried out after January 2020 will be likely to include a combination of works permitted under the CLEUD, as well as, to some extent, the operations that are now before me.
17. BS 8233:2014 states that *sites which generate noise should take account of noise and an assessment should be made of the possible effects of the effect ofthe proposed development on the existing ambient noise outside the site.* This document also states that *people vary widely in their sensitivity to noise,* and relation to construction and open sites that the main factors that affect the acceptability of *noise arising from those sites include ambient noise levels, the duration of site operations, hours of work, noise characteristics and additional mitigation.*
18. The noise survey² submitted identifies one noise sensitive location, which appears to be the rear garden of a dwelling on Falcon Close, on the opposite side of Pastures Road from the site. This location is considered to be representative of all likely noise sensitive locations affected by the proposed operations.
19. The survey measured noise at the site entrance for one hour on a weekday afternoon with the crusher operating, and for a further hour without the crusher operating. I see no reason to disagree with the survey that the sound of the crusher experienced at the site entrance is not significantly higher than

² Wardell Armstrong September 2020

traffic noise in terms of volume, for receptors at that location and for those hours on a weekday afternoon. These findings concur with my observations at my visits, also on a weekday. When standing on the corner of Dove Road, opposite the site entrance, although the crusher had a broadly consistent and low grinding noise which appeared to be at a different frequency from the traffic, it was no louder than passing traffic. I could not hear the screening machine when standing at the site entrance.

20. However, the survey states that the crusher noise was not considered to be distinctive and therefore no penalties were added to the survey results. This does not accord with my observations that the low grinding noise was distinctive and identifiable. This could be highly annoying for particular receptors, particularly when there are lulls in passing traffic, and when it continues for long periods.
21. Moreover, the proposals before me are not wholly related to the operation of the crusher. Although the CLEUD permits machinery and vehicle movements which will generate noise, the evidence indicates that the level of vehicle movements and quantum of material being moved for those lawful operations³ are considerably less than what is now occurring and what is before me. Moreover, the CLEUD relates to operations on a far smaller site. There is nothing before me to indicate that there has been any noise measurement of the wider working site over a typical working day, that is of a typical cycle of screening, including movement of the diggers, vehicle alarms, and associated HGV movements, in addition to the crushing, as might be experienced by nearby residents. Nor is there anything before me to indicate what the ambient background noise levels are at Falcon Close outside the very limited hours of the survey.
22. It is also unclear what the level of vehicle movements in and out of the site was during the survey. The current level of HGV movements is around 60 two way journeys per day⁴. This is significantly above what appears to be the trip generation associated with the lawful transfer of construction materials, estimated at around 100 trucks per month. In terms of the overall HGV traffic along Pastures Road, the survey indicates that 60 two way journeys to the site would not make a significant difference. However, vehicles entering and exiting the site will be slowing down, changing gears, stopping, and turning in and out of the site. This is very likely to generate noise characteristics, as well as vibration, that are different from passing traffic. Although it appears that vehicle movements into the site were measured as part of the survey, those journeys are not identified on the base data⁵ so I am unable to conclude whether what was measured was representative of the proposals.
23. Moreover, the development also seeks a considerable uplift in HGV movements to 120 two way movements which reinforces my concerns around potential noise and vibration issues.
24. As such, whilst I recognise that in terms of BS4142 the noise survey has rated and assessed sound emanating from the crusher for a period of one hour, it has limited value in enabling me to assess the overall noise likely to be

³ Delegated report, 21/00164/CPE, Section Crushing, Screening, Processing Waste Materials

⁴ Transport Report April 2021

⁵ Graph 3 of 4 ML1 without crusher

- experienced by residents, and associated with the full operational use of the appeal site.
25. The argument is advanced that some dwellings close to Pastures Road have acoustic windows, but I give this limited weight as there will be periods when residents wish to be in their gardens or have their windows open. I do not accept that it is necessarily reasonable to expect residents to mitigate their experience of noise generated by the site, by closing their windows⁶.
26. Moreover, although I did not find the crusher noise particularly intrusive when I visited the site, this was for a very limited period. I can appreciate that over far longer periods residents may find it present and intrusive, which amounts to an Observed Adverse Effect according to the hierarchy set out in Planning Practice Guidance⁷. This is likely to alter behaviour, attitudes or have other physiological responses. That sounds levels are currently present and intrusive, and having an effect on attitude and behaviour is reflected in the extent of public interest and complaint.
27. Moreover, the appellant is seeking to allow the crusher to operate for over ten hours on a weekday and for five hours on a Saturday. These periods are likely to extend beyond the peak traffic hours when the crusher and other operations would be likely to be more audible, and would also be accompanied by the noise and disturbance arising from increased vehicle movements, as set out above. Notwithstanding that this is employment land, these proposed hours seem quite extensive and likely to intrude into periods when residents might expect rest and relaxation. One bit of evidence states that weekend operations would be for emergency operations only, but this is at odds with the suggested condition regarding use of the crusher on Saturdays.
28. I acknowledge that the representations from interested parties are not presented in an empirical format that can be readily compared with the noise survey. Nonetheless, I conclude that there is a genuine annoyance arising from noise emanating from the site and there is very little evidence to enable me to conclude that these concerns are unfounded. The noise arising from the development is very likely to be at least at the lowest observed adverse effect level (LOAEL), for some nearby residents.
29. Furthermore, even if I accept that the noise level is no higher than the LOAEL, Planning Practice Guidance (PPG) states that the action should be to mitigate and reduce to a minimum⁸. As the survey was undertaken when the blockwork wall was in place, I conclude that some mitigation is in place. No other measures have been proposed to reduce noise levels. Although operating hours could be varied, the appellant did not appear to be open to this suggestion at the hearing.
30. I appreciate that background sound levels at 51 dB $L_{A90\ 1\ \text{hour}}$ during the survey measurement period are around what would be acceptable for external amenity areas as set out in BS 8233. However as noted above, there is nothing before me to indicate what background sound levels are at other times. Although brick boundary walls along Pastures Road might provide some mitigation for

⁶ Wardell Armstrong correspondence 3 May 2022

⁷ ID: 30-005-20190722

⁸ Noise Exposure Hierarchy

the gardens behind, these are two storey houses and open windows at first floor level would not be protected by the walls.

31. As such, the noise survey provides a very selective snapshot of noise associated with the change of use. The information does not enable me to conclude conclusively that noise arising from the recycling operation is not currently having, and would not continue to have, a detrimental effect on the living conditions of nearby residents. Moreover, the intensity of operations is likely to increase. Whilst I acknowledge that some noise is generated by the site's lawful operations, I am unable to assess what that level of noise is.
32. The appellant argued that emissions could be controlled by enforcement. However, with regard to noise emissions, there is no noise emission plan or agreed thresholds for noise emanating from the site. And as set out in BS 8233, people vary in their responses to noise. The level of noise considered to be a nuisance under the permit may well be different from that considered to affect living conditions for nearby residents.
33. Moreover, in respect of noise emissions, it appears mitigation is already in place and there is no evidence before me to suggest that additional measures are available. In any case, enforcement powers under the permit do not remove the need for consideration of the operations under the local development plan.

Dust

34. A large proportion of the site is surfaced in unbound materials, and the storage, movement, loading, unloading, screening and crushing of loose building materials will provide a ready source of airborne particulates. It is not disputed that the site and its operations generate dust.
35. There is open countryside to the immediate east, including arable fields, and other areas with unbound surfacing in the vicinity which would also be a source of dust. There is also nearby building work. Moreover, exceptional weather conditions can deposit dust which was picked up in very distant locations. However, it was stated at the hearing that this residential estate is the only estate with ongoing complaints and concerns arising from dust, and I cannot rule out there is a link. I appreciate that the appellant carried out surveys of airborne particulates, but the results are not before me. In any case, it seems unlikely that dust coming from a distant source would be deposited on this estate only.
36. The complaint logs to the Council and the Environment Agency (EA) begin in April 2020 and the complaints concerning dust have continued throughout 2020 and 2021, with the final entry being around the time the hearing was scheduled. The complaints and objections appear to highlight dust deposition outside the site and possible health complaints. However, I accept that photographs of dust generation within the site do not necessarily indicate that dust is leaving the site confines. Moreover, the complaint log does not identify where the dust is being seen or being deposited.
37. I appreciate that the appellant has made every effort to control dust arising from the site and its operations. However, although there is a dust management plan (DMP), and the sprinklers have a reach that extends to most of the site to damp down stockpiles and surfaces, the DMP's deployment

appears to rely mainly on observation from staff within the site. Moreover, on one of my site visits there was a time lag between wishing to turn the system on, and its actual deployment, to allow the feeder tank to fill. Although the DMP can be turned on by security when the site is closed, this would require constant monitoring. For some periods at least, this would be when the site was dark and conditions generating dust transfer may not be immediately apparent.

38. However, there is nothing before me to indicate that greater automation and/or timers could not address some of these issues. Moreover, the complaints are not linked to particular weather conditions, specific operations linked to the appeal development, nearby building work, or specific failures of the Dust Management System (DMP). The dust's composition has been analysed and although it could well have emanated from the site, that cannot be proved. As such, it is difficult for me to assess the level of everyday nuisance caused by dust, or the efficacy of the DMP on the basis of what is before me, particularly as the lawful operations would themselves be a source of dust.
39. Furthermore, the EA has given a permit for recycling works on the site. The EA confirmed that it has visited the site on several occasions, usually unannounced. Despite being in receipt of many complaints regarding dust, the EA is unable to conclude that dust arising from the site is a significant issue. It is also satisfied that the DMP is adequate if implemented correctly.
40. The permit sets out that emissions of substances not controlled by emission limits shall not cause pollution. The operator shall not be taken to have breached this rule if appropriate measures to prevent or minimise those emissions have been taken. The test is to prevent or minimise emissions. I do not doubt that the DMP and other measures are reducing or minimising dust emissions from the site, but this does not necessarily amount to a satisfactory situation for local residents, which is the test before me. The ongoing complaints suggest that either the dust mitigation is not being implemented correctly or it is not adequate. Or it may be that the amount of dust considered to be a nuisance by the EA is less than that considered to be a nuisance by local residents.
41. However, on balance I conclude that the operator is clearly taking steps to minimise emissions and if the DMP operated as planned, airborne materials would be considerably reduced, and would provide at least a partial solution to the dust concerns. Moreover, as noted above, the lawful operations may also contribute to dust issues to some extent.
42. In the absence of other concerns, and given that there are various procedures in place to control dust, I would consider whether it would be appropriate to give temporary permission for the recycling works. This would enable a more a detailed examination of the operational issues associated with the DMP and the extent to which other measures are required. Moreover, if allowed, boundary planting could assist in limiting dust movement.
43. However, as set out above in respect of noise, and to a lesser extent in respect of dust, I conclude that the development would have an adverse effect on living conditions for the reasons set out above, and this would be contrary to LP Policy 46 which states that non-residential and commercial development shall have no unacceptable negative effects on the amenity of neighbouring land uses or the environment, and LP Policy 4 (E) as set out above. It would also be

contrary to Paragraph 130 (f) of the National Planning Policy Framework which requires development to have a high standard of amenity for existing and future users.

Other matters

44. The noise survey identifies that the site is bordered by a hotel and public house, and the plan shows that they are closer to the crusher than the identified noise sensitive location. These businesses were not included in the Council's reasons for refusal, but noise is raised as a concern by the manager of the hotel. Moreover, both businesses are further from traffic noise on Pastures Road. Although the main issue of living conditions relates to occupiers of the residential estate, it seems very likely that the noise experienced in the car park and outdoor sitting area would be different to that recorded in the noise survey and I am unable to conclude that it would be less intrusive than for the residents of the housing estate.
45. Highway safety was raised as a concern by interested parties, and there is evidence before me which shows lorries and vans, some which bear the Catlow logo, being parked and driving in the residential estate opposite the site. However, these are public roads. I accept that parking, idling and using the estate roads is unsatisfactory in that it causes irritation and may raise highway safety risks. However, without more detailed information of the vehicles involved and their loads, even if I give any weight to those instances, it is very difficult to attribute such use to the operations associated with the appeal before me, as they could equally be associated with the ongoing lawful use of the site.
46. Moreover, having driven around the estate it is difficult to envisage a situation where lorry drivers would take a short cut through the estate in preference to the more direct Pastures Road, on more than an exceptional basis. Moreover, the appeal development would require the use of an additional gate and a one-way circulation within the site. I appreciate the Council's concern that there is a lack of clarity around the exact timings of vehicle movements within the site, particularly as it is unlikely that vehicles will arrive at regular intervals. However, the site appears to be large enough to accommodate several HGVs in a queue, particularly if there is a dedicated entrance and exit.
47. I acknowledge that the second gate is not currently operational. However, I have to base my reasoning on the premise that if the appeal is allowed, it would be. Moreover, I am aware that there are options available to the highways authority to restrict certain vehicle movements on public roads if required.
48. As set out above, the transport surveys indicate that even with the proposed uplift in vehicle movements, the HGV movements associated with the site would contribute less than 10 per cent of overall HGV movements along Pastures Road. This is not a significant increase. The transport survey also indicates that the additional turning movements at the junction of the site and Pastures Road would not exceed road capacity. This is not disputed by the Council. As such, I am unable to conclude that the development would cause additional highway risk or compromise highway safety.
49. Representations have been received in respect of floodlights. However, these predate the current occupation of the site and are not part of the works being

requested under this appeal. Other representations have raised concerns in relation to dust on the canal and its impact on biodiversity but there is no substantiated evidence in this regard and the EA confirmed that it has no concerns.

50. Although not raised as a reason for refusal, the Council's appeal evidence includes references to harm to visual amenity. This has also been raised by interested parties. Although at road level the operations within the site are not particularly visible, as they are screened by boundary planting, the planting is limited in height. Photographs submitted in the evidence clearly show that from nearby first floor windows there are views of machinery and the tops of stockpiles. The stockpiles are also visible from the canal behind the site.
51. The appellant wishes to limit stockpile height to 4.5 metres as this enables the digger driver to have an eyeline above the level of the crusher hopper, which is in line with best practice when loading the crusher. I see no reason to disagree with this argument.
52. However, notwithstanding that trees or taller hedging takes time to establish, I am satisfied that in the event that the appeal was allowed, a planting scheme and/or other boundary treatments could in time provide screening. I appreciate that this would not be an instant solution, but that is the case wherever trees or hedging are proposed to mitigate development. It was suggested that the blockwork walls could be raised to screen the stockpiles. Although these would be modular structures, they would be more permanent than the stockpiles and I am not persuaded that they would be any less unsightly.
53. The Council has not raised any concerns in relation to the modular buildings, access onto Pastures Road, flood risk, ecology, or the noise and disturbance arising from traffic if this was limited to 40 two way trips per day. On the basis of that is before me, I see no reason to disagree.

Planning Balance and Conclusion

54. The development would have significant benefits arising from additional employment and the local recycling of construction materials. Moreover, the land is designated for employment use. The development would be acceptable in principle, subject to satisfactory impacts on residential amenity.
55. However, although I have conclude that the benefits arising from the development would outweigh the harm arising from dust, which could in any case be further mitigated, I have been unable to conclude that the noise associated with the change of use would be at acceptable levels. Consequently, I conclude that the benefits arising from the development, to which I attribute significant weight, do not outweigh the harm to residential amenity.
56. I conclude therefore that the development would fail to accord with the local development plan taken as a whole and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

A Edgington INSPECTOR

APPEARANCES

COUNCIL

Jess Duffield	Doncaster Metropolitan Council
Andrea Suddes	Doncaster Metropolitan Council
Gavin Levett	Doncaster Metropolitan Council
Andy Wiltshire	Doncaster Metropolitan Council
Cllr Pickering	Doncaster Metropolitan Council
Cllr Chapman	Doncaster Metropolitan Council
Cllr Pickering	Doncaster Metropolitan Council
Philip Robson	Kings Chamber
Gary Levett	Environment Agency

APPELLANT

Adrian Catlow	Catlow Engineering
Ian Darbyshire	Catlow Engineering
Charles Banner	Keating Chambers
S Dexter	Clarion Solicitors
Caitlin McFall	Clarion Solicitors
Will Mulvany	Wardell Armstrong
Malcolm Walton	Wardell Armstrong
Andrew Moseley	AMA Transport

INTERESTED PARTIES

John Cotterill