



Appeal Decision

Hearing held on 14 June 2022

Site visit made on 13 and 14 June 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2022

Appeal Ref: APP/R0660/W/21/3283583

Brookbank Farm, Bridge Lane, Goostrey, Cheshire CW4 8BX

- 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 Mr J Barber against the decision of Cheshire East Council.
 - The application Ref 19/4578W, dated 26 September 2019, was refused by notice dated 24 March 2021.
 - The development proposed is for the change of use to mixed use for agriculture and a waste transfer station / skip hire site, landscaping and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use to mixed use for agriculture and as a waste transfer station / skip hire site, landscaping and associated works at Brookbank Farm, Goostrey CW4 8BX in accordance with the terms of the application, Ref 19/4578W, dated 26 September 2019, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. The proposed use is already taking place. I shall take this into account in my consideration of the matters relevant to this appeal.

Main Issues

3. The main issues are:
 - whether the proposed use would be located in a suitable location with respect to local and national policies, and
 - whether the agricultural holding site includes an established mixed use as a viable fall-back position.

Reasons

Locational matters

4. Brookbank Farm is within the open countryside and accessed from the A535 by Bridge Lane. The appeal site is a parcel of land within a larger agricultural holding. At the hearing Mr Barber stated that the agricultural business included a range of livestock and operated from the majority of barns and land. The proposed waste transfer facility is located alongside the farm buildings, employing the use of several barns and overlooking a large courtyard. An

external storage area, for rubble and soil, is located to the southwest of this courtyard.

5. The National Planning Policy for Waste (NPPW) provides guidance for the location of waste management facilities. To identify suitable sites, it states that development plans should allocate land in line with the waste hierarchy set out in appendix A; favouring recycling over disposal. It also seeks priority to be given to previously developed land, sites identified for employment use and redundant agricultural buildings. Therefore, for policy purposes, the barns now occupied by the proposed use were clearly deemed to be redundant agricultural buildings as they were no longer needed for agriculture. Furthermore, Paragraph 7, seeks waste management facilities to be well designed and to comply with the environmental and amenity considerations of appendix B. It is undisputed between parties that the proposal would comply with appendices A and B of the NPPW.
6. Policy 4 of the Cheshire Replacement Waste Local Plan (2007)(WLP) supports the location for waste management facilities within identified 'preferred sites'. The appellant demonstrated during the application consideration process that a preferred site would not be suitable for the proposed use. WLP Policy 5, with respect to other sites for waste management facilities, states that development would not be supported unless i) preferred sites would be less suitable, ii) it would meet requirements not provided by preferred sites or iii) would be located according to a sequential approach meeting development needs of the Regional Spatial Strategy (RSS). The Council officer report illustrates that the preferred sites would be unsuitable for the proposed use. It also acknowledges that bullet point iii) cannot be given any weight as the RSS has been revoked. As such, taking the above point together, there is policy support for the proposal to be located on site.
7. At the hearing the appellant explained that the business had a customer catchment area that was mostly within 10 miles of the site, with occasional collections travelling a maximum of 15 miles. The majority of waste sorted derived from small construction projects from the local rural area and therefore met a relatively local need. This was corroborated through a discussion about the sorted waste, revealing that most sorted material was bricks and rubble, representing around 50% of the total amount sorted, this was followed by around 20% being wood and 10% scrap metal.
8. Although the appellant's statement of case explained that all bricks and concrete were transferred to Newcastle Under Lyme, this was corrected at the hearing to state that most of this material is actually reused locally and only that which cannot be used in this manner is transferred to Newcastle Under Lyme. These figures may change and can only offer a snap-shot in time as to how the current business operates. However, these provide a robust and reasonable explanation of the close proximity of customers to the site and the relatively close onward destination of sorted material. This demonstrates that the proposal serves a local need with a service that would not be addressed by preferred sites. This would therefore accord with the proximity principle of the NPPW for waste to be managed close to its place of production.
9. Policy PG6 of the Cheshire East Local Plan Strategy 2010-2030 (CELPS) (2017) relates to development in the open countryside. This restricts development and allows for only a limited range of exceptions including the reuse of existing

rural buildings at bullet point ii). Although the Council states that the proposal would fail bullet point v), with respect to an essential need for a business to expand, this does not need to be satisfied as the proposal would comply with ii). Each exception describes a separate free-standing scenario, and the policy makes no suggestion that any proposal must comply with more than one exception. Also, saved Policy PS8 of the Congleton Borough Local Plan (CBLP) allows for development in the open countryside if it is for one or more listed exceptions. This includes development for vi) employment purposes and vii) the re-use of existing rural buildings. Consequently, the proposal would also comply with both of these provisions.

10. There is no requirement for a waste transfer facility to be subject to a sequential test either in national or local policy. Nevertheless, the Council identify that the proposal would conflict with policies EG1, EG2, CO1 and SD1 of the CELPS on the overall basis that the proposal should be located within an urban area.
11. However, CELPS policy EG1 supports employment development on non-allocated sites provided it would be in the right location and would support the settlement hierarchy and spatial distribution of development. The proposal would meet the locational requirements of the NPPW and WLP Policy 5. As such, the appeal site would be in the right location, would support settlement hierarchy and the distribution of existing development within the local rural areas. Furthermore, the proposal would comply with policy EG2 as it would provide opportunities for rural employment for 12 employees which would in turn support rural settlements.
12. CELPS Policy CO1, in relation to sustainable travel and transport, seeks to reduce the need to travel by guiding development to sustainable and accessible locations. Policy SD1, concerning sustainable development, seeks at (2) to prioritise investment and growth within the Principal Towns and Key Service Centres. Nevertheless, this creates a tension with the objectives of policy CELPS PG6(ii) and CBLP policy PS8 (vii) in seeking the reuse of rural buildings. Whilst CELPS policy SD1 establishes a broad approach to development, CELPS policy PG6 and CBLP policy PS8 are more specific to the nature of the proposal and therefore of greater weight in this matter.
13. The proposed use is principally concerned with the collection, sorting and redistribution of sorted material. It is a process reliant on vehicular access onto a good transport network to serve the immediate rural customer catchment area. Due to its catchment area and small scale this need not necessarily be located within an urban area. In any event, the site is relatively well located to enable good access to a classified road and onward local destinations. The appellant identifies that his employees come largely from the local area. Consequently, any sustainable travel gains for staff, if the business were located in an urban area, would be negligible. Furthermore, any proposal that seeks to reuse agricultural buildings would have reduced access to most sustainable travel methods.
14. As such, based on the collection and distribution component of the proposal and its local customer base, the proposed scheme would be located within an accessible and suitable location. Consequently, the proposal would comply with policies PG6, EG1, EG2, CO1 and SD1 of the CELPS and CBLP policy PS8 for the above reasons.

Previous use of the site

15. It is not the role of the Inspector dealing solely with an application for planning permission to conduct an exercise as to lawful use, in order to decide whether the appellant might be able to rely on a previous use being a fallback position. However, in the absence of a Certificate of Lawful Use, an assessment of the weight that should be ascribed to the submitted evidence is necessary.
16. The appellant alleges that the main buildings and yard areas of the farm were previously in mixed use comprising of agricultural and B2 and B8 purposes. In support of this assertion the appellant has provided statutory declarations from himself, Mr P Merry and Court Case papers prepared in 2014.
17. Mr Barber explains that a fertiliser haulage business, that included processing and distribution, occupied available space at the farm from around 2000 to 2014. This included the rental of both land and buildings. The areas used for the business are described as having been both adjacent to and overlapping the agricultural business. It is described as an activity that fluctuated on a seasonal basis, with peak times in the spring when several thousand tonnes of fertiliser was stored at the farm. This evidence is supported by photographs taken by the appellant in 2014 showing the location and extent of the business, including the storage of large blue fertiliser bags, principally located in areas close to the front of the site both in open bunkers and within barns.
18. This evidence is also corroborated by Mr Merry's statutory declaration and the court papers. These further demonstrate that the fertiliser business was both tangible and long standing. This also identifies that in busy periods several heavy goods vehicles would service the site daily. Therefore, whilst fluctuating in scale with respect to its site area, it is clear that on the balance of probabilities, the business was in continuous operation for a sustained period. I am also content that the business was separate to the agricultural activity and was neither ancillary nor incidental to it.
19. The 2010 ariel photograph provided by the Council does not show external storage to the southwest of the barns. However, it shows a large group of blue bags to the rear of a main barn and skip storage on the frontage. This evidence largely supports the appellant's assertion with respect to the location and activities associated with the former use. Consequently, it appears that the ariel photograph does not contradict the nature of the business described in the appellant's evidence. Furthermore, the Council has not provided clear evidence that challenges the type of business described within the appellant's evidence.
20. The appellant identifies that the requirements of the farm and fertiliser business varied over time both seasonally and over the years, preventing clear distinctions being drawn between the areas used by both businesses. Case Law¹ has been drawn to my attention that assists with this matter. This describes how to approach the determination of a planning unit. It explains that, where a variety of activities take place, occasions exist where it is necessary to consider the entirety of a planning unit, such as when it is not possible to determine that one use is incidental or ancillary to another. In the case of a composite use the component activities fluctuate in their intensity

¹ Burdle v Secretary of State for the Environment and New Forest [1972] 1 WLR 1207

from time to time but are not confined to separate and physically distinct areas of land. This would result in the planning unit taking on a mixed use, with a variety of overlapping uses. Based on the evidence provided it appears that such a situation exists in this case with the fertiliser business including greater or lesser parts of the agricultural holding over the years.

21. As a result, the evidence illustrates on the balance of probabilities, that a fertiliser business of varying scales, covering differing parts of the farm holding operated from around 2002 to 2014. Accordingly, the mixed use of the planning unit for agricultural and B2/B8 use appears to be an established historical use. However, it is unconvincing that the business operated at such a scale that it was of greater intensity and therefore greater impact, than the proposed use. As such, although there is relatively compelling evidence that a fallback position exists, I have afforded this matter moderate weight.

Other Matters

22. The proposal would result in some noise and dust effects. Nonetheless, the submitted Noise and Dust assessments both conclude that the effects would be negligible. Although interested parties have questioned a range of issues associated with the methodology associated with the noise assessment, the Council's Environmental Health Officer was satisfied that the assessments were robust and raised no objection subject to conditions. Accordingly, the environmental effects of the proposal could be adequately mitigated through site management controls. These measures could be secured by the imposition of planning conditions and would, in combination, prevent an adverse impact on the living conditions of the nearest neighbouring occupiers.
23. Interested parties have raised concerns that the proposal results in an increased number of vehicles using Bridge Lane. It is also suggested that the junction of Bridge Lane to Cross Road is dangerous and has been the scene of several accidents previously. During my site visit I walked a substantial length of Bridge Lane and observed local roads such as Bomish Lane and Cross Lane and their onward connections to local settlements. Bridge Lane is mostly of sufficient width for two vehicles to pass safely. Although, it narrows in places these sections are relatively short and passing points exist to aid passage. The evidence before me does not indicate that the minimal increase of traffic associated with the proposed use would cause significant harm to highway safety, and I note that the Highway Authority takes a similar view. Furthermore, I am unconvinced that the traffic associated with the proposal would cause an increased risk of damage to the railway bridge or road verges.
24. The Parish Council suggests that whilst the business now has an environmental permit to operate, this allows for substantially more waste to be processed than is currently proposed. However, the future growth of the business, if sought, would be the subject of a separate application and would be assessed on its own merits. This proposal could be restricted in scale and operation by the imposition of conditions that would limit the intensity of the use through traffic movements and the areas of the site permitted to be used for the waste transfer facility.
25. The Council has identified a variance between the proposed layout and the distribution of waste related activities shown within the Planning Contravention Notice. During the hearing the appellant explained that this variance was a result of ongoing discussions with the Council to relocate skip storage from the

frontage to the rear of the site. The effect of this would have been to reduce the visual impact of the waste related use from the public highway. Nevertheless, I have found that the agricultural holding has a mixed use and as such the specific location of the waste related activity would not be determined by its historical configuration.

26. The proposal has resulted in the increase in some new areas of hardstanding. However, these areas are relatively small and surface water could be adequately captured and managed through the imposition of a condition to require details of drainage to be provided within a prescribed timeframe.
27. The Council has identified that if a fertiliser business resumed on site as a lawful fallback, it would not include external storage due to new regulations. Although acknowledged, it has not been identified that the proposed development would cause visual harm from external storage, being located in a discrete and screened part of the site.
28. Brookbank Farmhouse, a grade II listed building, is a three-storey brick farmhouse with interesting brick detailing and two side stacks. In exercising my statutory duty, I find its significance derives from its architectural interest and traditional rural character. Intervisibility between the building and the appeal site is partially obscured by intervening tree and hedge landscaping and fencing. The external storage of stacked skips, close to the shared boundary, could be limited by the imposition of a planning condition to prevent an adverse visual impact. Moreover, the noise and dust associated with the use would be limited. Consequently, the proposal would preserve the setting of the listed building.
29. The appeal site is within the Council's heritage consultation zone of Jodrell Bank Observatory: a UNESCO world heritage site which is a designated heritage asset. The proposed use is to the rear of the frontage barns of the farm. The proposal would result in a similar use to its former mixed use which also included external storage of materials, equipment and vehicles. As a result, the proposal would conserve the Outstanding Universal Value and integrity of the observatory.

Conditions

30. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I have imposed the standard conditions with respect to approved plans as advised by the PPG for clarity and certainty. Conditions are also necessary to limit the number of vehicle movements on and off site to manage the scale of the operation in the interests of highway safety and the living conditions of nearby residential occupiers.
31. A condition is necessary to limit the hours of use of the business to protect the living conditions of neighbours. Policy 29 of the WLP states that the normally permitted hours of use for a waste management facility are 07:30 to 17:00 Monday to Friday and 07:30 to 13:00 on Saturdays. It also states that longer working hours may be acceptable subject to this not resulting in adverse wider impacts. The appellant has proposed an earlier start time of 07:00 Monday to Saturday and for the business to close later Monday to Friday at 18:00.

32. At the hearing the Council stated that it's Environmental Health Officer raised no objection to the proposed weekday start times but advised that the Saturday start time should be limited to 08:00. Whilst I note the proximity of several dwellings to the site, none are especially close to the access or operational areas of the site and the operational part of the site is a sizeable distance from neighbours. Also, the associated traffic would be of low volume and would be restricted by a separate condition. Furthermore, noise outputs can be adequately managed in the interests of neighbour's living conditions by requiring the development to comply with the recommendations of the noise and dust assessments. As such, the limited noise caused by an extended 07:00 start and 18:00 finish would not result in material harm to neighbour's living conditions in this context.
33. The external areas associated with the business are located behind agricultural buildings. As such, the activity associated with the business would be well screened from the public realm. I am cognisant that the site may be visible to railway passengers on the nearby elevated railway line. However, any such views would be fleeting and would take in the view of a working farm and associated expected activity and external storage of this mixed-use site.
34. It is also necessary to impose conditions to protect ecological interests through seeking compliance with the ecological assessment, to prevent vegetation clearance and secure a landscape scheme. Also, to prevent disturbance to nearby residents, all skips containing waste should be fully sheeted on site to suppress dust. Furthermore, a condition is required to ensure external storage only takes place within the designated areas in the interests of the character and appearance of the area. It is also necessary to ensure that skips are properly sheeted when leaving the site to prevent debris falling onto the highway and thereby affecting highway safety.
35. The external material storage area consists of mounds of bricks and concrete. This is to the rear of the site and adjacent to an earth bund. Views of this part of the site from outside the site are limited due to the height of neighbouring barns, a mature landscape screen to the rear and the bund. The Council seek for stored material to not exceed a height of 3 metres. However, I am content that this limit can be increased to 3.5 metres, as sought by the appellant, due to the high density of local screening. Furthermore, conditions would be necessary to manage unexpected contamination and for a drainage system to be provided in the interests of the operators of the site and to ensure the site is properly drained respectively.
36. I have not imposed the Council's suggested condition for external lighting as it would not be necessary. Furthermore, conditions suggested by the Parish Council, including with respect to vehicle weight restrictions, would not be reasonable or necessary due to the limited intensity of the use and its associated vehicles. Also, a condition requiring community liaison would not be enforceable due to the lack of clarity of party's responsibilities.

Conclusion

37. The proposal would comply with local and national policy with respect to the suitable location for waste management facilities and would satisfy the proximity principle. Furthermore, the proposal would make use of redundant agricultural/rural buildings and provide employment for the rural community.

Furthermore, having applied moderate weight to the fallback position, the proposal would also appear to result in the reuse of previously developed land.

38. The proposal would accord with the development plan when taken as a whole. For the above reasons, the appeal is allowed, subject to the attached conditions.

B Plenty

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Barber	Appellant
Mr Freddie Humphreys	Counsel, Kings Chambers
Mr Rawdon Gascoigne	Director, Emery Planning
Ms Lynn Jones	Consultant, Emery Planning
Mr Robert Devon	Emery Planning

FOR THE LOCAL PLANNING AUTHORITY:

Emma Williams	Principal Planning Officer, Cheshire East Council
Philippa Radia	Senior Planning Officer, Cheshire East Council

Schedule of conditions

- 1) The development hereby approved shall be carried out in accordance with the Location Site Plan ref 19/60/01A, except where it may be modified by the below conditions.
- 2) The total number of vehicle movements to and from the site associated with the development hereby approved shall not exceed the following levels on any working day: 24 skip vehicle movements (12 arrivals, 12 departures) and 2 bulk HGV movements (1 arrival, 1 departure).
- 3) Throughout the development hereby approved, a record shall be kept by the operator of the number of vehicles associated with the development which enter and leave the site with the corresponding times on every working day. The records shall be made available to the Local Planning Authority on request within five working days upon receiving the written notification.
- 4) No operations carried out in connection with the development hereby approved including any loading/unloading, movement of waste, operating of machinery and movement of vehicles shall be undertaken outside of the hours of: Monday to Friday 07:00 to 18:00 and Saturday 07:00 to 13:00. There shall be no activities (including any on-site operations or vehicle movements) carried out at any time on Sundays, Public and Bank Holidays.
- 5) No removal of any vegetation shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.
- 6) The mitigation measures identified in section 6 of the odour and dust assessment, by Smith Grant dated September 2019, shall be implemented in full for the duration that the waste management facility is in operation.
- 7) The mitigation measures identified in section 4.20 to 4.23 of the noise assessment, by Hepworth acoustics dated September 2019, shall be implemented in full for the duration that the waste management facility is in operation.
- 8) The yard immediately to the North of the General Agricultural Building and Waste Storage Building on drawing no. 19/60/01A shall be maintained to ensure a consolidated surface, for the duration that the development, is in operation.
- 9) No vehicles and/or mobile plant used exclusively on site, in connection with the waste management facility, shall be operated unless they have been fitted with white noise alarms to ensure that, when reversing, they do not emit a warning noise that would have an adverse impact.

- 10) Within 4 months of the date of this consent, a scheme of landscape planting shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme. Once agreed the approved details shall be implemented in full in the next available planting season following approval and shall be retained for the duration of the development. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
- 11) The mitigation measures identified in table 5.1 of the ecological assessment, by avian ecology dated 24/9/19, shall be implemented in full for the duration of the development.
- 12) There shall be no external open storage of waste and no storage of skips outside of the areas identified on the approved site layout plan.
- 13) All skips containing waste shall be full sheeted when stored externally on site. No skips stored externally on site shall exceed a height of 2.5 metres. No stockpiles of any material (waste or product) stored externally on the site shall exceed a height of more than 3.5 metres.
- 14) All vehicles involved in the transportation of waste shall be fully sheeted prior to leaving the site.
- 15) If, during development, unexpected contamination is found to be present at the site then no further development shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented within six months of being agreed as approved.
- 16) Within 4 months of the date of this permission, a drainage strategy for managing all surface water and foul water runoff shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full within 6 months and maintained in perpetuity.

End of conditions