



Appeal Decision

Site visit made on 26 July 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/Z4718/W/22/3294996

Land To North West Hog Close Lane, Victoria, Barnsley HD9 7TE

- 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 Peter Turner against the decision of Kirklees Council.
 - The application Ref 2018/62/93676/W, dated 26 October 2018, was refused by notice dated 17 December 2021.
 - The development proposed is landfill incorporating access and turning facilities, temporary fence and restoration to agricultural use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have received a copy of a draft agreement under Section 106 of the Town and Country Planning Act 1990 (the S106 Agreement). It requires the carrying out of on-site and off-site environmental works and the provision of a maintenance plan.

Main Issue

3. The main issue is whether the proposed development would be an appropriate location with regard to the development strategy for the area.

Reasons

4. The appeal site is an area of agricultural land with a steep sided gulley through its centre. The proposed development would comprise the importation of around 29,207 cubic metres of material comprising 19,258 cubic metres of inert fill, 7,106.5 cubic metres of clay cap and 2,843 cubic metres of topsoil¹. Operations would take place over a three year period, six months of which would be for site restoration. Access to the site would be along an existing track that would be widened and realigned at its entrance from Hog Close Lane and near to the existing wind turbine to provide a turning area. A 1.2 metre high fence would be erected around the site during the infilling and restoration phases. Restoration of the site would be to agricultural use. The proposal also includes an off-site reed bed and ponding area to remove any suspended solids from water arising from the site.
5. The National Planning Policy for Waste 2014 (the NPPW) sets out the Government's ambition of more sustainable waste management and resource use through positive planning, driving waste up the waste hierarchy and

¹ Additional Planning Justification, 9 March 2021 and the Council's officer report dated 16 December 2021

securing the re-use, recovery, or disposal of waste without endangering human health or harming the environment. The NPPW sets out in the waste hierarchy that prevention of waste and re-use of materials should be considered before recycling, recovery and final disposal of waste. Paragraph 7 advises that waste planning authorities should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need.

6. Policies LP43 and LP46 of the Kirklees Local Plan Strategy and Policies, adopted 2019 (the Local Plan) also seek to move waste management further up the waste hierarchy.
7. The submitted information indicates that the waste that would be imported to the site would be that element of construction, demolition and excavation (CD and E) waste that cannot be recycled. I note the appellant's view that the proposed development would be to use the waste for the purpose of reclaiming damaged land and therefore would be recovery rather than disposal. There is no evidence to suggest that such improvement would be likely to occur if waste was not used. On the basis of the evidence available to me, I am not persuaded that the waste would be serving a useful purpose by replacing materials which would otherwise be used to reclaim the land. Rather than being recovery therefore, the proposed development would be the disposal of waste on land.
8. Policy LP46 permits sites for the disposal of waste only where they meet a need which cannot be met by treatment higher in the waste hierarchy. Based on the submitted evidence, disposal would be the highest point in the hierarchy that the proposed waste material could be managed at. Policy LP46 also states that, if it can be demonstrated that there is a proven need, this will be provided at the identified existing or former quarry sites. If all of these quarry sites are unavailable, landraising using inert materials only may be considered provided it can be demonstrated that the material would not be diverted away from the restoration of any quarry void.
9. The information presented on CD and E waste arisings is quite limited. The Kirklees Council Waste Needs Assessment Part 2² (the WNA) sought to identify future waste arisings and capacity. It did this by getting as accurate a picture as possible of current waste arisings and the capacity of existing permitted waste management facilities. Economic and waste trends were then used to forecast future waste growth and subsequently the need for new facilities were projected based on any capacity gaps that were identified. The results of this modelling exercise were that "Kirklees at present has significant capacity for managing inert C&D and excavation wastes through existing landfill capacity throughout the plan period for all scenarios"³. The WNA acknowledges that it presents a picture at a particular point in time.
10. The appellant has estimated that around 128,800 tonnes of CD and E waste may need to be managed via landfill. This is based on the figures for 2013 within the WNA. I note that the WNA recommends that the five year average

² Kirklees Council Waste Needs Assessment Part 2: Growth Forecasts and Assessment of Future Capacity Requirements, January 2016

³ Paragraph 6.4.11 of the WNA

for modelling projections is used for construction and demolition waste and the three year average for excavation waste. However, these figures are not significantly different to the total CD and E 2013 figure presented by the appellant.

11. The figures presented on waste arisings and their management are dated. I appreciate the difficulty in getting up to date information on waste arisings and its management, especially for CD and E waste. Furthermore, the forecasting of future waste arisings is not an exact science, with CD and E waste being largely dependent on the fluctuations of the economy and the construction industry among other things. The amount requiring disposal is further complicated by changes in recycling rates, which the waste hierarchy seeks to increase. Nevertheless, while the situation relating to arisings can be complex, there is likely to have been increases in the rates for recycling such waste and a related reduction in the landfill requirement to meet those waste streams since 2013.
12. The parties have provided information on safeguarded and other sites. There are areas of agreement and disagreement between the parties on the availability of these sites.
13. Both parties agree that Wellfield Quarry is available for CD and E waste. The submitted information indicates that the site has an annual capacity of 41,100 tonnes and a permission end date of 2027.
14. Based on the information presented, it appears that waste could be imported to Peace Wood in conjunction with mineral extraction, the annual capacity would be around 30,000 tonnes with a permission end date of 2032. The Council state that the site owner/operator is in the process of obtaining a permit. The appellant has not presented any substantive evidence to dispute this position.
15. The submitted information indicates that Forge Lane has a remaining capacity of around 39,000 tonnes and has a recovery permit. Both parties identify that a compulsory purchase order is progressing to enable rail improvement works. Although I note the appellant's statement that any remaining capacity will not be certain until an application is submitted for restoration of the site in due course, given the permission end date of 2024, this would have to be relatively soon and likely within the timescales of the proposed development. However, given the use that Network Rail may make of the site is unknown, available capacity is uncertain at this stage.
16. There appears to be agreement that Temple Quarry will intermittently accept waste from other sources. The submitted information indicates that the permission requires the site to be completed by the end of 2029, although capacity is unknown as mineral extraction is continuing and waste stone would need to be accommodated. The appellant's information indicates that the site currently has only a recycling permit.
17. Windy Ridge Quarry is an active mineral site with restoration required by the end of March 2028. The submitted information indicates that the remaining capacity is 150,000 tonnes, although no information is presented on annual tonnages. The appellant contends that the site is unable to accept waste until quarry activity is complete, and there is unlikely to be any capacity in the short to medium term. However, no evidence is presented to further explain or justify this position.

18. While appreciating the Council's position that the lack of an appropriate permit is a separate matter to be resolved outside the remit of the planning process, it does mean that sites without a permit may not be immediately available for the disposal of waste. However, there is a lack of evidence to support the appellant's contention that even if some safeguarded sites were able to apply for a permit today, they are unlikely to be in a position to operate for at least two years. The lack of a permit is not therefore determinative in concluding that a site would be unavailable during the timescale of the proposed development.
19. There are a number of sites identified and agreed by both parties that would not have capacity for CD and E waste or would not be available in the short term. These are Bradley Park, Laneside Landfill and Laneside Reclamation. An application to extend the time period for operations at Carr Hill Quarry was refused by the Council. Consequently, as its permission only runs to August 2022 it cannot be considered as an available site.
20. Out of the sites identified by both parties, Wellfield Quarry is clearly available. Based on the submitted evidence, my view is that it has not been sufficiently demonstrated that Peace Wood should be discounted from potential available capacity.
21. The position appears to be less clear with regard to Forge Lane, Temple Quarry and Windy Ridge Quarry. I appreciate the difficulty in obtaining clear information on the position with regard to landfill capacity. However, based on the submitted evidence, I cannot conclude that these sites would be unavailable during the likely time period of the proposed development.
22. The appellant has drawn attention to an appeal decision⁴ which it is considered is comparable to the current appeal scheme. While the nature of that proposal appears to be similar to the proposed development, the appeal decision only considered matters relating to Green Belt and the character and appearance of the area. I do not have the full details of this case to understand what consideration may have been given to any proven need for additional landfill capacity. I cannot therefore draw any direct comparisons with the appeal scheme that would weigh in its favour.
23. On the basis of the evidence before me, I am not persuaded that it has been sufficiently demonstrated that there is a need for the additional landfill capacity because all other options are not suitable, feasible or available. I therefore conclude that the proposed development would not be an appropriate location with regard to the development strategy for the area. Consequently, it would conflict with Policy LP46 of the Local Plan, the requirements of which have been summarised above.

Other Matters

24. The appellant's evidence refers to the costs involved in managing CD and E waste, partly due to what the appellant states is a lack of capacity in the area. However, while the financial viability of an operation can be a material consideration, there is no substantive evidence before me to clearly demonstrate this site is crucial to maintain a viable business or that charges being levied within the area for the management of this type of waste is

⁴ APP/Z4718/W/19/3232011

excessive. I cannot therefore give much weight to this matter given the lack of evidence.

25. Although the appellant states that the proposal would reclaim land from a former industrial activity, the land has revegetated to a large extent and does not appear as a feature that detracts from the area's landscape character. While the proposed development may improve flooding in the area, no substantive evidence has been presented to demonstrate that this is a significant issue. A biodiversity net gain would result which would be a benefit. However, this would be secured through the S106 Agreement, which is still in draft form, although it appears that the Council does not dispute its content.
26. National and local planning policy seek to support a prosperous rural economy. The submitted information indicates that the levelling of the land would enable an additional 84 sheep to be grazed and so the proposed development would make the site more productive. However, no clear evidence has been submitted to demonstrate that the land needs to be improved or that this is critical to the farming enterprise. Therefore, while acknowledging this benefit, based on the evidence before me, it would not outweigh the conflict with Policy LP46 of the Local Plan.
27. I have not had regard in this decision to concerns over the time taken by the Council to make its decision or the other factors referred to by the appellant during the course of the determination of the proposal by the Council. I have focused on the planning merits of the scheme in regard to the main issue of the case.

Conclusion

28. The proposed development would conflict with the development plan taken as a whole. There are no material considerations worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR