



Appeal Decision

Hearing Held on 17 January 2023

Site visit made on 18 January 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2023

Appeal Ref: APP/X2600/W/22/3305638

Kirby Cane Quarry, Leet Hill, Yarmouth Road, Kirby Cane, Norfolk NR35 2HJ

- 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 Lyndon Pallett of L P Pallett Quarry Ltd against the decision of Norfolk County Council.
 - The application Ref FUL/2021/0050, dated 29 November 2021, was refused by notice dated 14 April 2022.
 - The development proposed is described as Use of part of the existing quarry for the recycling of CDE waste and soils for a temporary period until 31/12/2025.
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Decision

1. The Appeal is allowed, and planning permission is granted for Use of part of the existing quarry for the recycling of CDE waste and soils for a temporary period until 1 August 2024 at Kirby Cane Quarry, Leet Hill, Yarmouth Road, Kirby Cane, Norfolk NR35 2HJ, in accordance with the terms of application Ref FUL/2021/0050 dated 29 November 2021, subject to the conditions listed in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above is from the planning application form. The Council advanced a suggested planning condition for the development to cease by 1 August 2024. Having sought the views of the Council and appellant, while the appellant does not favour the shortened end date, I am of the view that no-one would be prejudiced by amending the description to refer to an earlier end date, if I consider it necessary. This is reflected in the decision paragraph above.
3. Since the Council refused permission the Highway Authority (HA) removed a highway safety objection, so the Council is not pursuing reason 1 and part of reason 2 for refusal on its decision notice. In respect of reason 2, I clarified which of the stated policies the Council maintains the development does not comply with. This is reflected in the main issues, and findings below.

Costs

4. An application for costs is made by Mr Lyndon Pallett of L P Pallett Quarry Ltd against Norfolk County Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:

- whether or not the proposed development represents a sustainable form of development with particular reference to its location; and,
- the effect of the proposed development upon quarry restoration.

Reasons

Background

6. The appeal site is currently part of an operational sand and gravel quarry. It is understood to have been the subject of various permissions throughout its history, including permission Refs C/7/2015/7018 and C/7/2015/7019 which are the main extant mineral permissions before me (herein 'the current mineral permissions'). Although Heavy Goods Vehicles (HGVs) are controlled by planning conditions, there is no specific mention in the conditions of daily limits or the maximum amounts of materials to be exported. The permissions set a final date of 31 December 2025 for the site areas to be restored.

Location

7. Policy CS6 of the Norfolk Minerals & Waste Development Framework 2010 – 2026 (2011) (the MWDF) states that waste sites at existing mineral workings will be acceptable in principle subject to a temporary permission. As a temporary proposal to utilise existing infrastructure including wash plant and stocking area for recycling up to 50,000 tonnes of Construction, Demolition and Excavation (CDE) waste on an operational quarry, ceasing no later than the existing end date, the proposal complies with CS6.
8. Policy CS5 of the MWDF outlines general locations for waste management proposals having regard to the proximity principle. The preference is for major or strategic facilities to be well-related to the Norwich Policy Area, Great Yarmouth urban area, King's Lynn or Thetford. Paragraph 6.25 of the supporting text confirms this means 10 miles or less from the four main settlements (or 5 miles or less from the main market towns for non-strategic sites). The Council could not advise me where the 10 mile distance originated.
9. The appeal site is not located within the required distance. However, paragraph 6.25 is clear that it is not intended the distances must be adhered to rigidly in all circumstances, without any flexibility. Policy CS5 also states that given the largely rural nature of Norfolk, notwithstanding the general locational preference there may also be some sites less well related to the major population centres. Proposals in these locations should demonstrate they are either: (i) well related to the major road network; or (ii) take advantage of cross border opportunities for efficient waste management; or (iii) enable the re-use of brownfield sites unsuitable for other uses.
10. It was not put to me this part of the policy is not applicable to strategic sites and the Council confirmed the proposal meets (i) and (ii). Given the use of 'or', a proposal only needs meet one criterion. The site is a short distance for vehicles to access the A143 from which a number of settlements can be accessed. It is no more than 10km from settlements such as Loddon within the County and Bungay and Beccles/ Worlingham in Suffolk. Moreover, Lowestoft

is only approximately 17km away. Submissions suggest such settlements are allocated for a significant number of future homes¹ so will have significant construction waste arisings.

11. The appellant argues there is insufficient capacity for CDE recycling. Material currently may be used for infilling or recovery as part of other restoration proposals, and there is a strong demand for recycled products. Some arisings will be readily used in construction or taken to other facilities. However, the Council could not provide evidence to dispute the appellant's view there is a strong demand for further CDE recycling capacity in the area including within Suffolk.
12. I was informed there is no capacity target for CDE waste recycling, but the MWDF seeks a year on year increase in reuse. At paragraph 3.38 it acknowledges additional inert waste recycling infrastructure would be needed. Of 10 other sites within a 20km radius (5 within Norfolk, 5 within Suffolk) referred to me, all but one undertakes a dry recycling process. The appeal site wash plant is able to produce a higher quality recycled product than dry recycling, with greater applications resulting in little residual waste. Therefore, it is well located for cross border opportunities for efficient waste management and would contribute to moving waste up the waste hierarchy.
13. I am informed mineral from the appeal site travels up to approximately 25 miles away, including to the main population centres of Norwich and Great Yarmouth. It is expected HGVs delivering mineral would return with CDE waste, utilising trips that might otherwise return empty. Having heard all that I did, the proposal meets criteria (i) and (ii) of CS5, and would be sustainably located. Therefore, the proposal is compliant with CS5 as a whole. It is also consistent with similar aims in the National Planning Policy for Waste (2014) (the NPPW).
14. Policy WP2 of the emerging Minerals and Waste Local Plan (2022) (the EMWLP) seeks to restrict many types of proposals to within 5 miles of Norfolk's urban areas or 3 miles of a main town. It includes no reference to cross-boundary provision. The EMWLP is yet to be submitted for examination. I am informed that of the 4 objections received to the policy, 2 are related to distance but none are on sustainability grounds. Nevertheless, it is yet to be examined and matters such as the distance requirements have not been given full scrutiny by an Inspector having regard to the policies of the National Planning Policy Framework (2021) (the Framework) or the NPPW. Therefore, having regard to paragraph 48 of the Framework, I attribute Policy WP2 limited weight.
15. The Council cited a conflict with Policies WP3 and WP4 of the EMWLP. WP4 seeks to direct recycling proposals to certain types of land and does not quote distances. Such land includes sand and gravel workings on a temporary basis to no later than the cessation for the mineral extraction and at least 12 months prior to the restoration completion date. WP3 has similar objectives. Insofar as this main issue is concerned, I find no conflict with WP3 or WP4.
16. For the reasons set out above the proposed development is considered to represent a sustainable form of development with particular reference to its location. It does not conflict with Policy CS5 of the MWDF as a whole, the relevant provisions of which I have set out above.

¹ Paragraph 4.11 of the Appellant's Statement of Case.

Restoration

17. The appeal site includes the Leet Hill Kirby Cane Site of Special Scientific Interest (the LHSSSI) designated for the important sections through a sequence of Middle Pleistocene sand and gravel deposits. The approved low-level restoration scheme is to create acid grassland, a waterbody, and graded quarry slopes retaining exposures of strata for which the site is designated.
18. Condition 1 of the current minerals permissions require restoration by 31 December 2025. I am informed that in 2021 the appeal site still had a considerable reserve left. The appellant believes they will be unable to meet the end date, so would look to seek an extension in time for both mineral permissions. However, there is currently no applications as such, so my assessment is upon meeting the required end date.
19. I have before me and heard, substantive evidence in respect of whether certain actions are restoration requirements to be completed by 31 December 2025, or fall to be management and aftercare, after the end date. This has a bearing upon whether the appellant's end date for this proposal might be considered to inhibit achieving restoration. Steps of the approved scheme in dispute include a 12 month weathering period and seeding to acid grassland.
20. Condition 1 of the current mineral permissions require restoration in accordance with another condition (Nos 21 and 19 of the respective permissions) by the end date. These respective conditions refer to the illustrative restoration plan (Ref 1125/R/1 v4), as amended by schemes to be approved pursuant to other conditions for a detailed Restoration Management Plan (RMP). The RMP must include a number of details, which shall be implemented over a 5 year period following the completion of restoration (conditions 8), or that may be amended if special features of the LHSSSI are found (conditions 10).
21. Condition(s) 8 create a degree of overlap between restoration and aftercare, and I note the opinion in previous officer correspondence that aftercare and management 'are one and the same'². The Planning Practice Guidance (PPG) for Minerals glossary (ref. ID 27-221-20140306) defines restoration of land as its return to an acceptable condition whether for the resumption of a previous use or a new use. Aftercare is defined as operations necessary to maintain restored land in a condition necessary for an agreed afteruse.
22. Plan Ref 1125/R/1 v4 shows contours, exposed faces, the creation of acid grassland by seeding and planting to be completed by the end date unless otherwise modified by the RMP. Paragraphs 4.3 and 4.4 of the RMP explain that vertical and horizontal elements of restoration will be allowed to weather for about a year, before being sown to acid grassland. From what is before me, these requirements cover the significant majority of the appeal site. It does not explain the 'first year' of what, to which it refers. The year at which seeding will take place is not further specified. Tree planting will take place in the first planting season following soil placement (4.14).
23. If weathering and seeding does not take place, loose material will be present, it would not be an acceptable standard of restoration and there would be no acid grassland, so the restoration plan (Ref 1125/R/1 v4) would not be achieved.

² Page 3 of the letter from Nick Johnson (Head of Planning) to Mr D K Symes 26 December 2016.

These actions are part of returning land to an acceptable condition, not maintaining it. As a matter of judgement, the RMP does not permit restoration to take place outside the end date. Therefore, were I to permit this recycling proposal to cease after 1 August 2024, based upon all that is before me, the proposal would fail to meet the approved restoration scheme in plan Ref 1125/R/1 v4 and it would conflict with conditions 1 and 21/19 of the current mineral permissions.

24. There was no later date put to me that would ensure that seeding takes place to ensure the areas are seeded to allow it to be restored to acid grassland as set out on the restoration plan. In the absence of substantive evidence to the contrary, 1 August is the latest date I can accept for the cessation of the development in 2024.
25. The site has produced less mineral annually than envisaged. It has a sizeable floor area for processing and stocking, and I am informed the wash plant can process 142 tonnes of material per hour. I have no reason to believe the lower production is as a result of operational or space constraints. Periods of down-time to wash the plant between waste and mineral operations would be short. Based upon the evidence before me, there is adequate capacity to process the maximum waste tonnage and work the remaining reserve by 1 August 2024.
26. Any future prioritisation of one operation over another would be a commercial choice. However, there is adequate capacity available to undertake both processes by the end date. I see no reason why permitting the waste operation would operationally affect mineral extraction such that it would unavoidably or inherently result in a delay in restoration. As it would use the same plant, and a set stocking area there would not be additional built development requiring further operations to realise restoration, so it would not be reasonable to expect a detailed timetable of operational works.
27. I have considered the Council's view that allowing this appeal might set a precedent for similar development that would delay restoration at other sites. Each application should be considered on its own merits having regard to the evidence provided and site specific circumstances. For the reasons set out above, subject to the imposition of suitably worded conditions, this proposal would not delay the approved restoration scheme for this site. Therefore, this matter attracts little weight.
28. Policies WP3, WP4 and MP7 of the EMWLP expect proposals for CDE recycling at sand and gravel workings to enable restoration and restrict operations to at least 12 months prior to the date for restoration. Requiring this proposal ceases by 1 August 2024 would not conflict with those EMWLP policies. The location within the LHSSSI might conflict with a locational requirement in Policy WP2. However, in-light of my findings above and given it would not alter the restoration scheme, there would be no harmful effects upon the LHSSSI, so the conflict attracts little weight. An earlier restoration date would not conflict with Policy CS6 of the MWDF.
29. Subject to the imposition of a suitably worded planning condition in respect of the end date as set out above, the proposal would not adversely affect quarry restoration. Therefore, it would not conflict with the aims of Policy DM14 of the MWDF insofar as this seeks the appropriate restoration and after-use of a site is achievable within the proposed timescales.

30. The Council's delegated report makes reference to a conflict with Policy DM15 of the MWDF. However, it was confirmed that given the removal of the HA objection, there is not a conflict with DM15 in respect of this issue.

Other Matters

31. A hedge close to the junction of Old Yarmouth Road with Church Road has been removed, meaning the HA's required visibility splay of 43m at 2.4m distance is met. The land forming the splay is in the highway under the control of the HA, so the Council and appellant agree a Grampian condition for this temporary proposal is not necessary. I see no reason to disagree.
32. To avoid the carriage of extraneous material and water onto the highway, the HA requested a condition to upgrade the first 10 metres of the existing vehicular access. The underlying surface might be fundamentally solid, and the HA has agreed to repair a pothole associated with the installation of a culvert. However, there is cracking and some of the top layer of material has broken-up elsewhere on the access. Despite what might be a comparatively limited increase in vehicle movements having regard to its historic use, a planning condition to require a scheme of access improvements is necessary given the cracking and breakage of parts of the surface.
33. The overall number of HGV movements would be limited by a condition controlling the CDE tonnage. The operator believes the backhaul rate would result in a daily average increase from 22 movements (11 in, 11 out) to 36 (18 in, 18 out). While backhauling has financial and sustainability benefits, it is not guaranteed with every HGV movement. However, the worst case scenario of 54 movements (27in, 27 out) from no backhailed loads is highly unlikely, and there is likely to be marked sustainability benefits from this proposal.
34. I note interested parties have referred to various highway concerns. All HGVs are expected to turn right, with a scheme and signage under the current mineral permissions to secure this. This too could be secured against this proposal. The HA does not object to visibility at the site access, and from what I saw it provides adequate visibility. The HA does not object to the proposal taking into account the carriageway width. It is sufficient for a car and HGV to pass along the entire length between the site access and Church Road. There are 3no. 50m sections where two passing HGVs would need to slow to judge and adjust progression. I noted a number of verges for refuge with little damage from HGVs. Given the traffic flow, forward alignment and additional HGVs, I see no reason the development would harmfully affect highway safety.
35. I observed site operations from the surrounds, mindful of the concerns raised by the Parish Council and interested parties. The Council's environmental quality adviser and the Environment Agency do not raise an objection. The minerals operations are controlled by those planning permissions. Paragraph 188 of the Framework is clear that the focus of planning decisions should be on whether a development is an acceptable use of land, rather than the control of processes or emissions, where subject to separate pollution control regimes. Planning decisions should assume these regimes will operate effectively. The Council shares this view. I am satisfied the proposal could operate without harmful emissions in respect of dust, noise or groundwater, and the site would be robustly regulated under the Environmental Permitting regime.

36. The site is approximately 1.5km from the Broads Special Area of Conservation, Broadland Special Protection Area and Ramsar site. Having regard to my duties under the Conservation of Habitats and Species Regulations 2017 (as amended) I sought evidence and questioned the parties further. The Boards is a low-lying wetland complex with connecting river systems and a mosaic of wetland and associated habitats. It includes designated habitats with a rich array of flora and fauna, including protected, important or rare invertebrates, mammals, amphibians, over-wintering and breeding rare and vulnerable birds, comprising the qualifying features.
37. The conservation objectives can be summarised as to maintain or restore the integrity of the sites by maintaining or restoring the extent, distribution, structure, function and supporting processes of the qualifying habitats and the habitats of qualifying features and species, the population of the qualifying features, and the distribution of the qualifying features and species. Based upon what I heard and the evidence before me, I am satisfied there would be no pathways to effects from this proposal, including in respect of nutrients as the appeal site is not within their drainage catchment. I conclude there would not be likely significant effects on the integrity of the Habitats sites.
38. Natural England has not provided a consultation response to this proposal. While within an Impact Risk Zone (IRZ) for the Geldeston Meadows SSSI (approximately 1.6km away) this proposal is significantly below the thresholds for waste management development. There is also nothing before me to suggest it would meet the IRZ thresholds for the Stanley and Alder Carrs, Aldeby SSSI (4.5km away). The Council's ecological adviser doesn't highlight any concerns. I see no reason there would be any pathway to effects as a consequence of this proposal. As it utilises existing operational quarry area, there would be no adverse effect upon the protected Sandy Stiltball fungus.

Conditions

39. I have considered the Council's conditions and where appropriate amended the wording to align with the PPG more closely. For certainty a condition requiring the development is carried out in accordance with the approved plans is necessary. In the interests of highway safety, a condition is necessary to require a scheme to upgrade to the highway access. It is necessary for this to be a pre-commencement condition to ensure the approved further use is not commenced without any necessary upgrading works.
40. In the interests of certainty and to protect the character of the area a condition is necessary to restrict the annual quantity of material processed. To ensure proper restoration in accordance with the current minerals permissions taking account of weathering of soils and seeding in time to allow the creation of acid grassland, a condition to limit the permission to expire on 1 August 2024 is necessary. In this condition I have omitted the Council's reference to associated plant and infrastructure as this plant and infrastructure is also present and permitted under the current mineral permissions, and this appeal proposal is for the use of that plant only.
41. In the interests of highway safety, conditions are necessary to require vehicles do not deposit material on the highway and the implementation of the approved HGV routing management plan. In the interests of the living conditions of neighbouring occupiers a condition restricting the hours of use is necessary.

Conclusion

42. The proposal is compliant with adopted policies for the location of new development and is sustainably located in relation to sources of CDE waste arisings. Over its duration, there would be sustainability benefits from backhauled loads, increasing recycling capacity, moving waste up the hierarchy and reducing the requirement for land won aggregate. These are benefits that attract moderate weight in favour of the scheme.
43. Subject to an earlier end date as I have set out, the proposal would not prejudice the restoration of the site. It is compliant with policies in respect of matters such as heritage, landscape and visual effects, flood risk and drainage, groundwater, biodiversity, the living conditions of neighbouring occupiers, resource and energy efficiency, cumulative effects, highway and access matters. Overall, the benefits of the development outweigh the harm and conflicts with draft EMWLP policies.
44. The development is compliant with the development plan, the NPPW and the Framework taken as a whole. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, for the reasons given, the appeal is allowed.

Dan Szymanski

INSPECTOR

----- Schedule of Conditions -----

- 1) The development hereby permitted shall commence not later than three years from the date of this permission. Within seven days of commencement, the operator shall notify the County Planning Authority in writing of the exact starting date.
- 2) The development hereby permitted shall be carried out in accordance with the Planning Application Form dated 29 November 2021 and Plan/drawing Ref. 1125/S/2 v1 dated 28 July 2021 (Recycling Facility - Site Plan).
- 3) Prior to the commencement of the use hereby permitted, the existing vehicular access onto Old Yarmouth Road shall be upgraded for the first 10 metres as measured back from the near channel edge of the adjacent carriageway, in accordance with details that have been previously submitted to and approved in writing by the County Planning Authority. The scheme shall be implemented as approved.
- 4) No more than 50,000 tonnes of construction, demolition, and excavation waste materials shall be brought onto the site per annum.
- 5) The development hereby permitted shall cease on or before 1 August 2024.
- 6) The development hereby permitted shall be operated in accordance with the Lorry Management Plan submitted on 17 January 2023, titled 'Discharge of Condition 3 of Planning Permission no. C/7/2015/7018 and Condition 3 of Planning Permission no. C/7/2015/7019', for the life of the development hereby permitted.
- 7) Vehicles leaving the site shall not be in a condition whereby they deposit mud or other loose material on the public highway.
- 8) No operation authorised or required under this permission, including the movement of vehicles and operation of any plant, shall take place on Sundays or public holidays, or other than during the following periods:
07:00 – 18:00hrs Mondays to Fridays; and,
07:00 – 13:00hrs Saturdays.

End of Schedule.

APPEARANCES

FOR THE APPELLANT:

Mr John Brigham, BSc (Hons) MRTPI (JB Planning Services);

Mr Tony Doyle, BEng (Hons) MSc MCIHT TPS (Director, Doyle Transport Planning);

Mr Lyndon Pallett (Director, Lyndon Pallett (Group) Ltd).

FOR THE COUNCIL:

Mr Michael Zieja, BA (Hons) MSc (Planner (Apprenticeship) Norfolk County Council);

Mr Ralph Cox, MRTPI (Principal Planner, Norfolk County Council);

Stephen Halls (Norfolk County Council).

SUBMITTED DOCUMENTS

KC-1: Geodiversity Feature Assessment Form – ED (29 January 2022) by Norfolk Geodiversity Partnership.

KC-2: Lorry Management Plan submitted on 17 January 2023, titled 'Discharge of Condition 3 of Planning Permission no. C/7/2015/7018 and Condition 3 of Planning Permission no. C/7/2015/7019.