



Appeal Decision

Site visit made on 6 April 2023

by J Woolcock BNatRes MURP DipLaw MRTPI
an Inspector appointed by the Secretary of State
Decision date: 31 May 2023

Appeal Ref: APP/P0240/W/22/3303557

Brook Farm, Salford Road, Hulcote, Milton Keynes MK17 8BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D Dass against the decision of Central Bedfordshire Council (CBC).
- The application Ref:CB/21/01418/MW, dated 25 March 2021, was refused by notice dated 21 January 2022.
- The application sought planning permission for the creation of a noise attenuation bund with the erection of an acoustic fence on land to the east, west and south of Brook Farm without complying with conditions attached to planning permission Ref: CB/16/05361/MW, dated 17 February 2017.
- The conditions in dispute are Nos.3 and 4, which state that:
Condition 3
"The deposit of inert waste required to form the bund hereby permitted shall be completed by 19 November 2019. Written notification of the date of cessation of the deposit of inert waste shall be sent to the Local Planning Authority within 7 days of such cessation."
Condition 4
"The development and restoration hereby permitted shall be carried out in accordance with the detailed scheme of phasing as shown on the "Phasing Programme" drawing no. A0561-003 Rev C (dated 16.02.17). The bund shall be constructed in accordance with the "Pre-settlement Contours" shown on Simic Drawings 05A and 06A (dated Nov 2012) as approved by decision letter dated 14 March 2013 under scheme reference no. CB/13/00262/MWS. Entry into phase 2 and each subsequent phase shall not proceed without the prior written consent of the Local Planning Authority, which shall be dependent on progress in the restoration of the previous phases, in accordance with the approved scheme."
- The reasons given for the conditions are:
Condition 3
"To ensure that operations are completed within an acceptable timescale and to prevent the prolonged disturbance to the local environment in accordance with saved Policy GE26 of the Bedfordshire & Luton Minerals & Waste Local Plan 2005."
Condition 4
"To ensure the satisfactory, orderly and progressive restoration of the site in accordance with saved Policy GE26 of the Bedfordshire & Luton Minerals & Waste Local Plan 2005."

Decision

1. The appeal is allowed and planning permission is granted for the creation of a noise attenuation bund with the erection of an acoustic fence on land to the east, west and south of Brook Farm, Milton Keynes, MK17 8BS in accordance with the terms of the application, Ref CB/21/01418/MW, dated 20 April 2021, and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Preliminary Matters

2. Planning permission was granted on 14 November 2011 for the creation of a noise attenuation bund with the erection of an acoustic fence on land to the east, west and south of Brook Farm (the description of the development is abbreviated in this appeal decision to 'bund creation'). This permission was subject to 29 conditions.¹ The permitted bund would be a maximum height of 8 m and require the import of 285,000 m³ of inert waste. A minor amendment removed a proposed balancing pond.² Condition 1 states that the permission shall extend to the area edged with a dashed red line on Hinton Cook Drawing No.001. This permission is referred to in this appeal decision as the 'original permission' and the site as the 'appeal site'.
3. The Environment Agency granted an Environmental Permit (EP), dated 13 February 2013, to G Moore Haulage Limited for waste operations at the appeal site.³ The EP was transferred to Ashvale Haulage Limited in 2017.⁴
4. Pre-commencement conditions for the original permission were discharged in 2013. Condition 2 required the permission to be begun not later than the expiration of 3 years from the date of the permission. Commencement was triggered on 19 November 2013 by the stripping of topsoils to prepare the initial tipping phase, construction of a temporary soil storage mound and works to create a temporary internal haul road. Written notification of the date of commencement was sent to the local planning authority.
5. Condition 26 of the original permission stated that no material shall be imported to form the bund, apart from excavated material from the adjacent flood plain compensation area shown on Waldeck drawing 10-5006/305 RevP1, unless and until the flood plain compensation area has been completed in full in accordance with a planning application to be submitted and approved in writing by the local planning authority.
6. Planning permission was granted on 13 August 2012 for "the excavation of land to create a flood compensation area in connection with the construction of an earth bund", subject to 16 planning conditions.⁵ This permission is referred to as the 'flood compensation area (FCA) permission' in this appeal decision. The permitted engineering works involved the stripping of topsoils, excavation of 3,270 m³ of material from a roughly semi-elliptical area of about 2.1 ha and then replacement of the topsoils to allow the land to be returned to agriculture. The ground was to be lowered by a typical depth of 18 cm.

¹ CB/11/02613/MW.

² CB/12/04146/MWNM.

³ EPR/LB3633RS.

⁴ EPR/FB3209XL.

⁵ CB/12/01592/MW.

7. The application site for the FCA adjoins, but lies outside, the appeal site. In the decision notice the site address for the FCA is given as "Brook Farm, Salford Road, Hulcote MK17 8BS." Certificate B of the application form cited the Notice Recipient as "Mr Rogers, Hulcote Farm, Salford Road, Hulcote Milton Keynes". The FCA permission relates to the submitted plan Waldeck Drawing 10-5006/305 RevP1. Pre-commencement conditions were discharged and the FCA development commenced on 19 November 2013 with topsoil stripping operations in preparation for reduction of ground levels.
8. Operations on both the appeal site and FCA site were halted in December 2013 due to persistent wet weather conditions and then suspended due to a legal dispute between the applicant and the FCA landowner. The validity of the FCA permission was questioned by the landowner of the FCA site, but in the absence of any successful challenge it remains an extant permission that has been implemented.
9. Permission was granted on 17 February 2017 for "Proposed Development: Variation of condition 3 of planning permission CB/11/02613/MW to extend the time limit until November 2019 for completing the deposit of inert waste to form a permitted noise attenuation bund and updates to the phasing programme for the works (condition 4)." ⁶ The permission was subject to 31 conditions and cited Drawing Nos. A0561-001 Rev A (Location Plan), A0561-002 Rev A (Site Plan) and A0561-003 Rev C (Phasing Programme). The phasing programme comprised Phases 1-4. Following the *Finney* judgment, a minor amendment removed the reference to a specific time limit in the development description.⁷ This amended permission is referred to as the '2017 permission' in this appeal decision.
10. In March 2017, works resumed on the appeal site with the stripping back of vegetation and further topsoils from Phase 1. A temporary screening mound was formed on the western boundary of the appeal site. There was a tragic accident in March 2017 in which the applicant (Mr Burke) and family members died. Matters were further delayed whilst executors dealt with the Burke Estate.
11. Works to adjust the levels of the FCA were carried out in 2019. However, the topsoils were not re-spread. The conditions for the FCA permission include an outstanding requirement to submit a topographical survey upon replacement of the topsoils to demonstrate that the compensatory floodplain storage landform accords with the approved drawing.
12. The November 2019 Planning Statement submitted with the application now at appeal states that the variation was to complete the depositing of inert waste by November 2024. It also refers to completion within a 3-year period. The Phasing Programme submitted with the application indicated completion of Stage 4 in October 2024, 31 months after the commencement of preparation for construction of Bund 1 in April 2022. I have, therefore, dealt with the appeal on the basis of an application for bund creation with depositing of waste to cease no later than 36 months from the date that any new planning permission was granted.

⁶ CB/16/05361/MW.

⁷ CB/20/04615/MWNM.

13. CBC refused the application for five reasons; (1) uncertainty about provision of a necessary flood compensation proposal, (2) concern about a partially completed noise bund, (3) landscape and visual harm from the current 'semi-started' state of the site and the likelihood of a partially completed bund, (4) insufficient information about noise mitigation measures necessary to adequately protect the occupiers of dwellings within the Brook Farm complex, and (5) material changes in planning circumstances since the 2017 permission was granted and that it had not been shown that the overall benefits outweighed the conflict with policies and guidance.
14. The development plan for the area includes Central Bedfordshire Local Plan 2015-2035 July 2021 (CBLP); Bedford Borough, Central Bedfordshire and Luton Borough Councils Minerals and Waste Local Plan: Strategic Sites and Policies adopted January 2014 (MWSSP); and saved policies of the Bedfordshire & Luton Minerals & Waste Local Plan 2005 (MWLP)
15. I have also had regard to the National Planning Policy Framework (NPPF), the Waste Management Plan for England (WMPE), the National Planning Policy for Waste (NPPW) and the National Planning Practice Guidance (PPG).
16. Section 73(2) of the 1990 Act provides that for section 73 applications the authority shall consider only the question of the conditions subject to which planning permission should be granted, and
 - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
17. The PPG states that in granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on the earlier planning permission. However, the drafting of section 73 provides the power to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them, in addition to considering the disputed conditions.
18. In dealing with this appeal against refusal of a section 73 application the description of the development remains the same as the description for the original permission. The appeal site also remains the same.

Main Issues

19. The main issues in this appeal are the effects of extending the period for depositing inert waste and amending phasing for the development on flood risk, the character and appearance of the area and the amenity of the locality.

Reasons

Flood compensation area

20. An Internal Drainage Board (IDB) controlled watercourse enters the Brook Farm landholding from underneath the M1 motorway and follows the southern

boundary of the appeal site. An IDB ditch enters the land from a culvert on Salford Road and flows into the watercourse. The Buckingham & River Ouzel IDB advised that the creation of the bund will require the IDB's consent as it involves raising ground within the flood plain and the lowering of ground as compensatory flood storage and the culverting of an existing watercourse. The IDB added that it does not issue retrospective consents.

21. CBC considers that there is no longer an acceptable flood mitigation scheme in place for the bund because further ground reduction (or a modified area of land for compensation) is required to satisfy the IDB's compensation requirements. If that is the case the situation would be comparable to that which existed in 2011 insofar as CBC granted permission for bund creation in the absence of a planning permission for a flood mitigation scheme.⁸ CBC acknowledges that the IDB did not appear to be saying that drainage consent should be withheld because land levels had already been lowered.⁹ Land Drainage Consent is a separate regulatory requirement and a matter for the IDB. In this case, the requirement to obtain approval from another regulatory authority should not be determinative in deciding whether to grant planning permission.
22. There is a dispute between the appellant and the owner of the land required for the approved flood compensation area about access to complete the works permitted by the FCA permission. That is a private matter for the relevant parties.
23. The proposed bund would occupy about 1.4 ha of the flood plain and require compensation for the loss of 3,270 m³ flood storage capacity. There is no compelling evidence before me to indicate that flood compensation in this case is an insurmountable obstacle to bund creation. I am not convinced, in the circumstances that apply here, that this issue is fatal to allowing a revised timetable for the Phasing Programme. Given the planning history here, I consider that it would be reasonable to afford the appellant an opportunity to resolve matters concerning a flood compensation scheme, but to impose a reasonable time limit to do so. This is a matter that could be addressed by the imposition of a condition requiring a flood compensation area to be completed in accordance with a scheme benefitting from planning permission prior to the import and depositing of inert waste on the appeal site.
24. National policy requires compensation for the loss of flood storage capacity due to construction of the bund. However, subject to the imposition of appropriate planning conditions, bund creation would not increase the risk of flooding on or off the appeal site, and so would not conflict with CBLP Policy CC3 about flood risk management, or with saved MWLP Policy GE19 concerning flooding. Allowing the appeal on this basis would accord with Section 14 of the NPPF.

Phases 3 and 4

25. The owner of the land on which Phases 3 and 4 would be located has advised that due to unrelated circumstances he will not be making his land available for the development if the appeal to amend or remove Conditions 3 and 4 were allowed. Another party stated that it has a long-term option agreement with the landowner over the part of the appeal site identified to deliver Phases 3 and 4 and will be promoting it as a suitable location for other development through

⁸ Condition 26 of the original permission cited above.

⁹ Paragraph 5.2.6 Statement of Case on behalf of CBC.

the review of the Central Bedfordshire Local Plan, which is due to start next year.

26. CBC considers that the appellant's ability to complete the consented landform is material to the planning merits of the application. A partially completed noise bund limited to Phases 1 and 2, CBC submits, would be significantly different in character from the development that was originally conceived. CBC argues that without Phases 3 and 4 the scheme would not deliver the benefits that justified the granting of the original permission.
27. However, planning permission runs with the land. The existence of ownership constraints on implementation need not necessarily prevent the grant of planning permission for a scheme that might otherwise be acceptable in planning terms. There is no certainty that allowing the appeal would result in a partially completed development. Neither the landowner's objection, a third party's option agreement for part of the appeal site or CBC's second reason for refusal weigh significantly against allowing the appeal on its planning merits.
28. The PPG states that conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. It adds that such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.¹⁰ Nevertheless, it would be necessary to include details about the operator's control of all land required to facilitate construction of the development in a scheme of Phasing to be approved, so as to minimise the likelihood of a partially completed scheme.¹¹
29. Subject to the imposition of appropriate planning conditions, I find no conflict with CBLP Policy EE14 and saved MWLP Policy GE26 concerning restoration. Neither would the proposal be at odds with saved MWLP Policies GE9 about landscaping and GE18 regarding disturbance.

Landscape impact

30. CBC submits that the landscape and visual harm arising from the current 'semi-started' state of the site cannot be adequately mitigated by undertaking the development, as it considers progression of work in accordance with the proposed modified timescale is very unlikely. There is also concern that landscape and visual harm would not be outweighed by the reduced benefits of a partially completed bund. However, as set out in the previous section of this appeal decision, I am not convinced that a partially completed bund is an inevitable outcome if the appeal succeeded and planning permission was granted.
31. Nevertheless, it was apparent from my site visit that the earthworks undertaken to date on the appeal site include roadside bunds and soil mounds that are engineered structures that appear out of keeping in this transition landscape between the urban area/major transport infrastructure and the

¹⁰ Paragraph: 005 Reference ID: 21a-005-20190723.

¹¹ Section 72 (1) of the 1990 Act provides that conditions may be imposed on the grant of planning permission for regulating the development or use of any land under the control of the applicant or requiring the carrying out of works on any such land, so far as appears to the authority to be expedient for the purposes of or in connection with the development authorised by the permission.

adjoining rural countryside.¹² The resultant harm to the local landscape and visual amenity of the area is of moderate significance. This harm would persist whilst the development remained stalled. Harm would intensify when construction operations were being carried out.

32. However, if the development was completed in accordance with the approved restoration, landscaping and aftercare conditions, bund creation would, in time, be reasonably absorbed into this transitional landscape, with some localised and long-term landscape and visual benefits. The *Planning balance* section of this appeal decision refers to the need to restore the appeal site to its original condition if bund creation could not be progressed in a timely manner. If that scenario were to apply there would be a neutral impact on the character and appearance of the area.
33. Subject to the imposition of appropriate planning conditions, I find that the granting of a new permission would not be likely to have an unacceptable adverse impact on the character and appearance of the area. On this basis the proposal would not conflict with CBLP Policy EE5 and saved MWLP Policy GE9 concerning landscape character and value. Planning conditions could also secure compliance with restoration policies CBLP EE14 and saved MWLP GE26.

Residential amenity

34. The Brook Farm complex contains the grade II listed Brook Farm House with an ancillary granny flat annexe, along with office units now converted to three dwellings (1-3 The Barns). There are also sheds and buildings used for commercial purposes. The commercial area and 1-3 The Barns are accessed off Salford Road via the access road that would be used by HGVs to import inert waste for bund creation. Brook Farm House is served by a separate access off Salford Road. The appeal site lies between Salford Road and the M1 motorway. An elevated section of the A421 is about 450 m from Brook Farm House, with the motorway about 200 m to the south. It was apparent from my site visit that traffic noise is an intrusive feature in the locality.
35. The noise attenuation bund would significantly improve the amenity of the area for those living and working within the Brook Farm complex. However, construction of the bund would result in noise and disturbance at times. This would be particularly so for the occupiers of 1-3 The Barns, because they share the access to the appeal site and due to the proximity of parts of Phase 2 and Phase 3 with limited intervening screening. However, the planning permission for the conversion of 5 office units into 3 dwellings (now 1-3 The Barns) was granted in October 2016, long after the original permission had been implemented.¹³ A condition was imposed that none of the dwellings could be occupied until a scheme for protecting the dwellings from road traffic noise had been implemented.
36. CBC did not require any further noise mitigation measures when it granted the 2017 permission in February 2017.¹⁴ Furthermore, a condition of the EP states that emissions from the activities shall be free from noise and vibration at

¹² In the Central Bedfordshire Landscape Character Assessment the appeal site lies within the Salford-Aspley Clay Vale, which is described as a gently undulating arable landscape, but with the dominant visual and audible presence of the M1.

¹³ Application Number CB/16/00927/FULL.

¹⁴ The 2017 permission reinstated conditions of the original permission concerning reversing alarms and restricted working hours.

levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved noise and vibration management plan to prevent or where that is not practicable to minimise the noise and vibration.¹⁵

37. Extant planning and pollution controls provide some protection from intrusive noise for the occupiers of 1-3 The Barns. However, in this case, I see no conflict with NPPF paragraph 188 if a planning condition requiring a construction noise management plan were to be imposed, in the interests of the amenity of neighbouring residents, if the appeal was to be allowed.¹⁶ I am satisfied that there is sufficient information before me about noise and disturbance to enable the proposal to be assessed in accordance with saved MWLP Policy GE1.
38. Given the existing controls on noise, along with provisions for the approval of a construction noise management plan before the import of inert waste to the site, I consider that the development could be undertaken without an unacceptable adverse impact on nearby occupiers by reason of noise and disturbance. I find no conflict with CBLP Policy CC8 regarding pollution, or with saved MWLP Policy GE18 regarding disturbance. The noise attenuation bund, when constructed, would be a significant environmental benefit for the purposes of applying MWSSP Policy WSP14.

Difficulties of implementation

39. There are some difficulties of implementation in progressing bund creation in this case. Where such difficulties are relevant to the planning merits of the decision, they may justify refusal.¹⁷ However, it seems to me that the difficulties here largely arise from ownership and procedural considerations that are not of much relevance to the underlying planning merits of the scheme. Ownership and procedural constraints may be resolved in the future for reasons that are not currently foreseeable. Given the history of this development, I am satisfied that it would be reasonable for the appellant to be given an appropriate opportunity to address these matters.

Planning balance

40. CBC found in 2011 that the planning balance fell in favour of the creation of the noise attenuation bund. In 2017, after some earthworks had been undertaken, CBC again found that the benefits of the scheme outweighed the harm, and that extending the duration of the construction period would accord with the development plan. The planning balance that applies here is whether the long-term benefits of bund creation outweigh the harm arising during its construction. One factor contributing to the harm is how long the works remain stalled. The longer the overall construction period the greater the harm.
41. For the reasons set out above, the current condition of the appeal site results in harm to the character and appearance of the area without providing any

¹⁵ Condition 3.3.1 EPR/LB3633RS/A001.

¹⁶ NPPF paragraph 188 states that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes).

¹⁷ *Satnam Millennium Ltd v Secretary of State for Housing, Communities & Local Government* (2019) EWHC 2631 (Admin).

amenity benefits. The longer this harm persists the more the planning balance tips against bund creation. Eventually a time would be reached when the harm attributable to on-going construction would outweigh the benefits. In determining this appeal, I have considered whether the planning balance has tipped against bund creation, and if not, whether it would be necessary and reasonable to impose conditions on a new planning permission to secure construction of the bund before that tipping point was reached.

42. Taking into account all the evidence before me, I find that the benefits of the creation of the noise attenuation bund currently outweigh the harm. However, for the planning balance to remain positive for the development it is important that the bund is constructed in a timely manner. If that cannot, for whatever reason, be achieved, the site should be restored to its former state as it was prior to the grant of the original planning permission. In my judgement, if compliant bund construction has not commenced with the import and depositing of inert waste within two years it would be necessary and reasonable to require reinstatement of the site to its state on 14 November 2011. On this basis, I consider that the planning balance falls in favour of allowing the appeal.

Other Matters

43. I have taken into account all the other evidence submitted, including the objection from Hulcote & Salford Parish Council, which raised similar objections to CBC, as well as concern for highway safety because of the existing roadside bunds. However, there is no technical highway evidence to indicate that these bunds are a safety hazard. Furthermore, subject to the imposition of appropriate planning conditions, there is no objection from the highway authority. The Parish Council referred to public health concerns, but this would primarily be a matter for enforcement of the EP.
44. Having regard to section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the aims of section 16 of the NPPF, I am satisfied that the proposed revision of operational timescales would not have a detrimental impact on the setting of the listed farmhouse. I find no conflict with saved MWLP Policy GE15.
45. Other relevant matters, including archaeology and biodiversity could be adequately addressed by planning conditions.

Conditions

46. Alternative wording for some of the conditions suggested by CBC was explored in a written exchange with the appellant and CBC. Having taken all the evidence into account, I consider that it would be necessary and reasonable to impose the following conditions, which do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on the earlier planning permission. The numbering of conditions is as set out in the Schedule of Conditions attached to this permission.
47. To accord with the application and to comply with relevant statutory requirements for depositing of waste materials it would be necessary to impose a condition requiring that the depositing of waste must cease not later than the expiration of a period of 36 months beginning with the date of this permission. Condition 2 would be necessary to comply with section 72(5) and Part 1 of

schedule 5 of the 1990 Act and to accord with saved MWLP Policy GE26 and CBLP Policy EE14.

48. To accord with national and local policy about flood risk it would be necessary that a flood compensation area was completed in accordance with a scheme benefitting from planning permission prior to the import and depositing of waste on the site for the purposes of forming the bund. It would also be necessary to secure approval of a Phasing scheme and a construction noise management plan before the import and depositing of waste. For the reasons set out above, it would be necessary to include details in the Phasing scheme about the operator's control of land required to facilitate all stages of bund creation. Conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. However, in the absence of convincing evidence that there are no prospects at all of compliance with the above provisions, I am satisfied that these conditions pass the relevant tests. Condition 3 would be necessary to prevent increased flood risk and to restrict this permission to the development applied for in accordance with saved MWLP Policy GE19 and Policies CC3 and CC4 of CBLP, to ensure the satisfactory, orderly and progressive restoration of the site in accordance with saved MWLP Policy GE26 and CBLP Policy EE14, and to safeguard the amenity of the area.
49. It would be necessary in the interests of the character and appearance of the area to secure the reinstatement of the site to its previous condition, as it was prior to the implementation of the original permission, if the import and depositing of waste on the site for the purposes of forming the bund had not commenced within 24 months. It would also be reasonable in this scenario to provide 3 months for the submission of a reinstatement scheme to CBC for approval. Condition 4 would be necessary to secure the satisfactory reinstatement / restoration of the site within a reasonable timescale in accordance with saved MWLP Policy GE26 and CBLP Policy EE14.
50. It would be appropriate to restate the undisputed conditions that are still subsisting and capable of taking effect. It would be necessary to:
- Define the permission and ensure the development was carried out in accordance with the approved plans (Conditions 1 and 5).
 - Protect the amenity of neighbouring properties in the surrounding area in accordance with saved MWLP Policy GE18 and CBLP Policy CC8 (Conditions 6 and 7).
 - Impose measures in the interests of highway safety in accordance with saved MWLP Policy GE23 and CBLP Policy T2 (Conditions 8, 9, 10, 11 and 12).
 - Minimise nuisance to nearby residents by reason of noise and dust in accordance with saved MWLP Policy GE18 and Policies CC8 and HQ1 of CBLP (Conditions 13, 16 and 17).
 - Minimise any disturbance by reason of mud and dust and in the interest of highway safety in accordance with saved MWLP Policy GE18 (Conditions 14 and 15).
 - Exercise control over the development and protect the amenities of neighbouring properties in accordance with CBLP Policy CC8 (Condition 18).
 - Define the limits of operations and allow for monitoring of other planning conditions (Condition 19).

Protect the structure of the soils and to ensure the satisfactory restoration of the site in accordance with saved MWLP Policy GE26 and CBLP Policy EE14 (Condition 20).

Safeguard nesting birds and protected species on site in accordance with saved MWLP Policy GE13 and CBLP Policy EE3 (Conditions 21 and 22).

Control floodlighting and minimise disturbance to the local environment in accordance with saved MWLP Policy GE13 (Condition 23).

Ensure a satisfactory restoration of the site in accordance with saved MWLP Policy GE26 and CBLP Policy EE14 (Condition 24).

Record and advance understanding of the significance of heritage assets in accordance with the NPPF and saved MWLP Policy GE14 (Condition 25).

Enable access for the Highways Agency to maintain the bridge and the Internal Drainage Board to maintain the watercourse (Condition 26).

Ensure relevant documents were available to operators (Condition 27) and to record the rate of progress of the development (Condition 28) for monitoring purposes.

Conclusion

51. On the main issues in this appeal, I find that the effects of extending the period for the depositing of inert waste and amending phasing for the permitted development would not, subject to the imposition of appropriate planning conditions, have an unacceptable adverse effect on flood risk, the character and appearance of the area or the amenity of the locality.
52. Subject to the imposition of appropriate planning conditions, I find no conflict with MWSSP Policy WSP14, which provides that the disposal to land of inert wastes will be permitted where it gives rise to an environmental benefit. The proposal accords with the development plan as a whole. It would also be consistent with WMPE and NPPW concerning the waste hierarchy.
53. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without some of the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

J Woolcock

INSPECTOR

SCHEDULE OF CONDITIONS (1-28)

1. Planning permission shall extend to the area edged with a dashed red line on Hinton Cook Drawing No.001. Unless required otherwise by a separate planning condition of this permission, the development hereby permitted shall only be carried out in accordance with the original planning application dated 14 July 2011 and the accompanying supporting information as amended by details received on 17 October 2011, 2 November 2011 and 8 November 2011, as further modified by the non-material amendment application CB/12/04146/MWNM, the planning application dated 17 November 2016, the planning application dated 25 March 2021 and drawing nos. A0561-101 RevA (Location Plan) and A0561-102 RevA (Site Plan). The bund shall be constructed in accordance with the "Pre-settlement Contours" shown on Simic Drawings 05A and 06A (dated November 2012) as approved by decision letter dated 14 March 2013 under scheme reference no. CB/13/00262/MWS.
2. The depositing of inert waste must cease not later than the expiration of a period of 36 months beginning with the date of this permission. Written notification of the date of cessation of the depositing of inert waste for each Phase of the development hereby permitted shall be sent to the local planning authority within seven days of such cessation.
3. No inert waste shall be imported to and deposited on the site unless and until:
 - (1) A flood compensation area for the loss of flood storage due to the development hereby permitted has been completed in accordance with a planning application that has been submitted to and granted planning permission by the local planning authority or by the Secretary of State on appeal.
 - (2) A detailed scheme of Phasing, including details about the operator's control of all land required to facilitate all Phases of the development hereby permitted, has been submitted to and approved in writing by the local planning authority or by the Secretary of State on appeal.
 - (3) A construction noise management plan has been submitted to and approved in writing by the local planning authority or by the Secretary of State on appeal.

Thereafter the development hereby permitted shall be carried out in accordance with the approved scheme of Phasing and the approved construction noise management plan. Entry into Phase 2 and each subsequent Phase shall not proceed without the prior written approval of the local planning authority, which shall be dependent on progress in the restoration of the previous Phases, in accordance with the approved scheme of Phasing.

4. If the import and depositing of inert waste on the site for the purposes of forming the bund hereby permitted has not commenced within 24 months of the date of this permission, a restoration and after-care scheme to reinstate the site shall be submitted for the written approval of the local planning authority. The reinstatement scheme shall be submitted to the local planning authority no later than 27 months from the date of this decision. The scheme shall provide for the

reinstatement of the site to its previous condition, as it was prior to the implementation of the original permission CB/11/02613/MW, and shall include provision for the removal of plant, machinery, equipment and internal haul roads, re-spreading of soil storage bunds to return the land to pre-existing levels and cultivation and seeding of the land, accompanied by a timetable for implementation of these works, along with a 5-year management / aftercare period. The reinstatement scheme approved by the local planning authority or by the Secretary of State on appeal shall be implemented in accordance with the approved timetable and the reinstated landscape shall thereafter be retained. The local planning authority shall be notified in writing of the date that the 5-year aftercare period commences within seven days of that occurrence.

5. On completion of earthworks in each phase of bund construction, but before planting is undertaken, a survey of levels of the bund shall be carried out and the results submitted to and approved in writing by the local planning authority. The survey shall demonstrate that the bund has been constructed in accordance with pre-settlement levels approved under Condition 1 of this permission.
6. No operations authorised or required under this permission, including Heavy Goods Vehicle (HGV) movements to and from the site, shall take place on site except between 07:00 hours to 18:00 hours Mondays to Fridays and between 07:00 hours and 12:00 hours on Saturdays. For the purposes of this and all subsequent conditions, a HGV means a Heavy Goods Vehicle above a gross weight of 7.5 tonnes.
7. No operations hereby permitted shall take place on Sundays or Public Holidays.
8. There shall be no more than 160 HGV movements entering and exiting the site in any one working day, pro-rata for part working days. For the purposes of this condition, a single HGV entering and leaving the site, irrespective of whether it is loaded or empty, shall count as two HGV movements.
9. A record of daily HGV movements shall be maintained at all times and shall be sent to the local planning authority every three months for the duration of the permitted operations. Such record shall be made available for inspection by the local planning authority within seven working days of any written request.
10. This permission shall not extend to the layout of the site access as shown on drawing No. LP01 B submitted with the original planning application referenced CB/11/02613/MW.
11. No import of inert waste to the site shall take place unless and until the mitigation measures to allow convenient manoeuvring of HGVs into and out of the site have been fully implemented in accordance with the highway access scheme, referenced CB/13/00263/MWS, as approved by decision letter dated 18 March 2013.
12. No HGVs shall turn left on exiting the site onto Salford Road.

- 13.No vehicle used regularly on site such as an earth mover shall be operated unless fitted with a broadband reversing alarm.
- 14.At all times precautions shall be taken to keep roads free of mud and dust arising from the site.
- 15.No operations hereby permitted shall take place except in accordance with the wheel cleaning scheme, referenced CB/13/00264/MWS, as approved by decision letter dated 18 March 2013. No vehicle shall leave the site without first passing through the approved wheel cleaning system.
- 16.No vehicles shall move around the site at a speed greater than 10 mph, and speed limit signs shall be erected and maintained in prominent positions along the haul road throughout the landfilling and restoration of the site.
- 17.A water bowser shall be available on site and used to damp down the haul road during dry and/or windy periods.
- 18.The bund hereby permitted shall be constructed of dry, clean and uncontaminated inert waste material and no other waste shall be imported to the site.
- 19.No operations hereby permitted shall take place in each phase except in accordance with the scheme delineating the limits for depositing inert waste, referenced CB/13/00265/MWS, as approved by decision letter dated 19 March 2013.
- 20.No operations hereby permitted shall take place except in accordance with the scheme of soil handling, referenced CB/13/00268/MWS, as approved by decision letter dated 14 March 2013.
- 21.No operations hereby permitted shall take place except in accordance with the recommendations and mitigation actions contained within: the scheme for protected species monitoring and mitigation, referenced CB/13/00269/MWS, as approved by decision letter dated 4 March 2013; the Preliminary Ecological Appraisal by Green Environmental Consultants dated March 2020 (Report number 503/8); and the Reptile Mitigation Strategy & Method Statement by Green Environmental Consultants dated May 2020 (Report number 503/10).
- 22.No clearance of vegetation or soil stripping shall take place except between September and February, being outside the bird nesting season, unless a prior survey has been undertaken to ensure that no nesting birds will be disturbed, and only then with prior written notification to the local planning authority.
- 23.No floodlighting shall be used on site unless and until a scheme for floodlighting has been submitted to and approved in writing by the local planning authority. Thereafter, no floodlighting shall be used unless in accordance with the approved scheme.

24. The site shall be operated and, when depositing of inert waste has ceased restored, in accordance with the detailed landscaping scheme submitted under scheme reference CB/13/02065/MWS and approved by letter dated 8 August 2013. Each Phase of the restored site shall be subject to a 5-year management / aftercare period which shall be carried out in accordance with the scheme submitted under scheme reference CB/13/02065/MWS and approved by decision letter dated 8 August 2013.
25. No operations hereby permitted shall take place except in accordance with the Written Scheme of Archaeological Investigation approved by decision letter dated 6 November 2013 under scheme submission CB/13/03575/MWS.
26. The 9-metre-wide access track route shown on Simic Drawing 01A (October 2011) shall be made accessible at all times for the Highways Agency to obtain vehicular access to the M1 overbridge and for the Internal Drainage Board to obtain access to watercourse no.3.
27. Throughout the period for depositing inert waste and restoration, a copy of this planning permission including all documents, plans and details of pre-development schemes shall be displayed on the site during working hours in a location that is readily accessible to any person undertaking the development.
28. Details of the tonnage of inert waste material imported to the site shall be submitted to the local planning authority by 31 March each year covering the preceding year (1 January to 31 December).