



Appeal Decision

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/Q2371/X/23/3314781

East Quarry, Appley Lane North, Wigan WN6 9AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter O'Dowd of Maybrook Investments Ltd against Lancashire County Council.
 - The application ref CRT/2022/0001 is dated 20 July 2022.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought for is: The use of imported fill material (inert) to raise the quarry floor to within approximately 1 metre of current water level for safety reasons.
-

Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The address of the appeal site and the description of the development, in the banner heading above, are taken from the LDC application form.
3. Lancashire County Council (the Council) failed to determine the LDC application. However, in its Officer Report it stated that it would have in any event recommended that the application for a certificate of lawful development in respect of the partial filling of East Quarry, Appley Bridge be refused for the following reasons:
 - It is considered that the permitted development rights in Part 17 Class C to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 do not apply to the proposed development. This is because the development would have a dual purpose including the disposal of waste. The proposal would also not fully address the safety issues at the site and would introduce other safety issues that are currently not present at the site. Therefore, it cannot be said that the works are required for the safety of the mine.
 - It is considered that the proposed development is EIA development and therefore the permitted development rights cannot apply to this proposal. The filling works would need to be the subject of a full planning application accompanied by an Environmental Statement.
4. The Council adopted a screening opinion on 13 December 2022 which stated, amongst other things, that *'the proposed development is EIA Development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Reason: Having regard to duration, scale and*

location, it is considered that significant environmental effects are likely and which should be subject to Environmental Impact Assessment’.

5. In June 2023 during the appeal process the appellant requested the Secretary of State (SoS) make a screening direction under section 7 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). On the 13 October 2023 the Planning Inspectorate made a screening direction on behalf of the SoS. This stated, amongst other things, that *‘It is considered that, having regard to the scale, nature and duration of the works, the information available on the likely effects of the proposed development, the precautionary principle and the degree of uncertainty in relation to the environmental impact, as well as the effectiveness and mechanisms for securing the mitigation required to avoid a likely significant effect, that the potential for likely significant effects cannot be ruled out and the level of uncertainty is such that Environmental Impact Assessment is required. The Secretary of State hereby directs that the application is an EIA application for the purposes of the Regulations’.*
6. Additional information was submitted by the appellant in November 2023 and the SoS was requested to review the screening direction. On 19 December 2023 the SoS stated that *‘Having considered the information and having had regard to case law concerning the broad scope and purpose of the EIA regs, we do not feel that this information alters the determination that the Proposed Development is likely to have a significant effect on the environment. The Screening Direction issued on 13 October therefore remains.’*
7. I note that the evidence before me refers to the planning merits of the case. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

8. The main issue is if the Council had refused the application would that refusal have been well-founded.

Reasons

9. Section 192(1)(b) of the 1990 Act provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the ... operations in question. The LDC application sought confirmation that the proposal would fall within development ‘permitted’ under Article 3 and Schedule 2, Part 17, Class C (Class C) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and, as such, planning permission would not be required for the proposed development. Class C relates to the carrying out of development required for the maintenance or safety of a mine or a disused mine or for the purposes of ensuring the safety of the surface of the land at or adjacent to a mine or a disused mine.
10. However, Article 3 (10) of the GPDO states that:

Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the EIA Regulations is not permitted by this Order unless—

(a) the local planning authority has adopted a screening opinion under [regulation 6] of those Regulations that the development is not EIA development [within the meaning of those Regulations];

(b) the Secretary of State has made a screening direction under [regulation 5(3)] of those Regulations that the development is not EIA development [within the meaning of those Regulations]; or

(c) the Secretary of State has given a direction under [regulation 63(1)] of those Regulations that the development is exempted from the application of those Regulations.

11. There is no evidence before me to indicate that paragraph (12) is applicable in this case. There is no dispute that the proposed development is not Schedule 1 development, and the appellant considers that the proposed development is not Schedule 2 development within the meaning of the EIA Regulations. Nonetheless, as stated above the Council has adopted a screening direction under the EIA Regulations that the proposed development is EIA development. Moreover, the SoS has directed that the proposed development is EIA development within the meaning of those regulations. In these circumstances Article 3 (11) of the GPDO states that the development is treated, for the purposes of paragraph (10) as development which is not permitted by the GPDO.

12. Consequently, due to the provisions of Articles 3 (10) and 3 (11) of the GPDO the use of imported fill material (inert) to raise the quarry floor to within approximately 1 metre of current water level for safety reasons would not be development permitted by the GPDO. As such, whether the proposed development would meet the limitations and conditions of Schedule 2, Part 17, Class C of the GPDO does not fall to be considered.

Conclusion

13. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of imported fill material (inert) to raise the quarry floor to within approximately 1 metre of current water level for safety reasons would have been well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D Boffin

INSPECTOR