



Appeal Decision

Site visit made on 17 April 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2024

Appeal Ref: APP/J2210/W/23/3323796

Land South of Marley Lane, Hoath CT3 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by A & J Pace against Canterbury City Council.
 - The application Ref CA/21/02265, is dated 15 September 2021.
 - The development proposed is the installation of digestate storage Ecobag with construction of bund.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of digestate storage Ecobag with construction of bund at Land South of Marley Lane, Hoath CT3 4DT in accordance with the terms of the application, Ref CA/21/02265, dated 15 September 2021, and the plans submitted with it.

Application for costs

2. An application for costs was made by A & J Pace against Canterbury City Council. This application is the subject of a separate Decision.

Procedural Matters and Main Issues

3. The development in question has already been carried out and the application was submitted retrospectively to the Council. The appeal is made against the failure of the Council to determine the application within the requisite period. As such, no decision notice was issued by the Council and the jurisdiction for determining the appeal and the application now passes to myself on behalf of the Secretary of State. However, within its subsequent appeal statement the Council has indicated that it would have granted planning permission were it in a position to determine the application.
4. Notwithstanding the above, I am required to determine the proposal on first principles and have done so, taking account of all relevant considerations, including comments from interested parties.
5. Having regard to the information before me the main issues in the determination of the appeal are:
 - i) The effect of the proposal on the character and appearance of the area, including the effect on the setting of Clayhanger Hall, a grade II* listed building;

- ii) The effect on the living conditions of surrounding residents on account of any odour and noise that may be emitted from the proposal;
- iii) The effect of traffic arising from the development on the local highway network and highway safety;

Reasons

Character and Appearance & Setting of Clayhanger Hall

6. The appeal site is situated within the Hoath Farmlands Landscape Character Area (LCA)¹ and the immediate vicinity is made up of gently undulating arable countryside, adjacent to Marley Lane, a rural road which runs from the village of Hoath, eastwards towards the smaller settlement of Chislet. As identified in the LCA much of the farmland has been intensively farmed, including the removal of hedgerows. That is evident along stretches of Marley Lane which has open verges for much of its length affording far reaching views across the landscape. However, within the vicinity of the appeal site an established hedgerow is situated on the southern side of the carriageway, such that views into the appeal site are restricted as one drives or walks past the site. There are no public footpaths within close proximity that would offer clear views of the site.
7. Moreover, the "Ecobag" is set within the ground, surrounded by a bund which further assists in minimising any visual impact. It is discreetly located in the corner of a field which also has well established trees and a hedgerow along its western edge. Overall, the development has very little impact upon the prevailing rural scene which remains dominated by a patchwork of arable fields, with occasional trees and hedgerows. I would go as far as to say that the development would largely go unnoticed to most passers by, unless one made a concerted effort to view it through gaps in the hedgerow. Moreover, even when views are glimpsed it is not uncommon to see developments related to agriculture in a rural setting and the bag is not unduly large or intrusive in that context.
8. Clayhanger Hall, a Grade II* listed building, is situated some distance to the east, separated from the appeal site by intervening farmland and a belt of established woodland. As such, there is little direct intervisibility between the Hall and the appeal development. Nonetheless, the setting of a listed building is not restricted to visual matters and relates to the surroundings in which a listed building is experienced. Little information has been provided in relation to Clayhanger Hall but, from the list description it is a "Wealden Style" Hall-House from the 15th century, with later additions, with exceptional interiors, being a good example of a building of that type.
9. It would therefore appear that the primary reason for listing relates to the building's age, typology and the well-preserved interiors. None of those matters will be effected by the appeal proposal. Nonetheless, the distinctly rural setting is clearly of significance and contributes positively in terms of the way the Hall is appreciated as a house of some status, set apart from other properties and settlements.
10. However, for the reasons set out above, the development is discreetly located, some distance from the Hall and the prevailing pattern of arable land,

¹ As defined by the Canterbury Landscape Character Assessment & Biodiversity Appraisal 2020

interspersed with woodland blocks, hedgerows and tree planting has been maintained. Accordingly, I am satisfied, as was the Council, that the development has preserved the setting of the Listed Building in terms of its visual impact.

11. The development does require significant numbers of agricultural vehicles to fill the Ecobag and subsequently to empty it. I shall consider the highway implications below. However, come what may, the digestate will be spread on the land and those operations will involve significant numbers of tractors and vehicles using the local road network. Accordingly, the development itself has not resulted in a significant change to the setting of the listed building as far as the visual or sensory effects of traffic are concerned.
12. Overall, there has been no harm to the character and appearance of the countryside arising from the development and the setting of the Listed Building has been preserved, such that it complies with policies DBE3, EMP13, HE11 & HE12 of the Canterbury District Local Plan (2017) (the Local Plan) and the relevant design and heritage related requirements at sections 12 and 16 of the National Planning Policy Framework (the Framework).

Living Conditions/ Odour

13. The Ecobag is designed to hold liquid digestate which is the residue from energy crops that are used in Anaerobic Digester green energy plants situated in St. Nicholas-at-Wade and Richborough. The liquid digestate is then spread onto the arable fields as a fertiliser. The land which the bag is intended to serve is made up of a 256 hectare farm unit at Hoath, which is part of a much larger farming enterprise, extending to 4,300 hectares, operated by St. Nicholas Court Farm, said to be one of the largest farms in Kent.
14. A number of interested parties have complained about smells associated with spreading the fertiliser on the land. As with many forms of fertilisation on farmland across the country that spreading does involve the dispersal of what many may perceive to be unpleasant odours for temporary periods in the farming year. I have no reason to doubt that the smells can be unpleasant but they are over a short period and could be said to be part and parcel of what may reasonably be expected in a rural area.
15. However, regardless of the above, it is important to note that permission is not being sought to spread the fertiliser on the land. From the information before me, it is quite clear that will take place regardless of whether the storage bag is located at the appeal site. The alternative is that the fertiliser will be brought direct to the farmland from the energy plants but it would still be spread across the land at the same periods in the year. Thus, the development has not led to any change in that respect.
16. In terms of the Ecobag itself, it is fully enclosed and sealed such that odours are generally contained within to a large extent. At my site visit I could only detect a very faint odour at close range and nothing from further afield, even at the entrance to the site. I recognise that is only a snapshot in time but the appellant has commissioned an odour assessment, prepared by a suitably qualified consultant, in line with guidance from the Institute of Air Quality Management (IAQM), which concludes that the effect of odour on the closest receptors is negligible and that the overall effect is not significant.

17. I have no reason to doubt the accuracy or reliability of that assessment and no comparable assessment has been provided to the contrary. Reference has been made to complaints to the Council regarding odours in relation to the previous storage lagoon but it is not clear if those complaints related to smells from spreading or from the installation itself. There is no record of any action being taken and the Council's Environmental Health department has raised no objection to the current appeal, which would be unusual if they had found any issue in relation to the previous facility.
18. Information from interested parties suggests that the survey was undertaken when the bag was full, such that no deliveries to either fill the bag or empty it were taking place at the time of the survey. Some letters of objection have suggested that greater odours occur at such times, particularly when the bag is being emptied.
19. That is anecdotal to some extent. However, emptying of the bag is likely to coincide with times at which the fertiliser is being spread which may make reliable assessment of where any odour originates from difficult to ascertain, particularly given the remote location of the site from residential properties. In any event, the events in question take place over a limited period within the calendar year, even taking account of the time period for filling the bag. Even if that may involve fluctuation in odours at certain times, I am not satisfied that will lead to a reduction in living conditions beyond what may be considered reasonable in a rural context.
20. The Odour Assessment was carried out during January when the bag was full. Some objectors, including correspondence from Chislet Parish Council, have suggested that this does not take account of the additional heat during the summer months at which time it is alleged that the smell becomes much more significant. However, the bag is generally empty during the summer months once spreading has taken place, being refilled over the winter period from October onwards. That may indicate that some of the concerns relating to odour in the summer relate to the spreading itself and operations arising from emptying the bag as opposed to any odour emanating from the bag when empty.
21. Given the sealed and impermeable nature of the bag, the timing of the refilling and spreading operations and the distance from neighbouring properties I am satisfied that the odour arising will not have unacceptable impacts on adjacent living conditions.
22. With regard to noise, the Ecobag itself has little to no effect. Reference has been made to the noise arising from vehicles queuing to refill during spreading operations but the site is a significant distance from the closest residential property, separated by farmland and woodland. Vehicles waiting with engines running would be unlikely to have any notable impact from that distance and the effects would be limited in duration in any event. With regard to disturbance on the wider area, including vehicles passing through neighbouring villages, vehicle movements associated with spreading will take place regardless. For reasons more fully explained in relation to highway impacts below, I am satisfied that those impacts are no worse and potentially better with the Ecobag in place than without it.

23. Therefore, on the balance of the evidence presented, I am satisfied that the effect on living conditions is within acceptable limits, in line with the aims of policy DBE3 of the Local Plan and paragraph 135(f) of the Framework.

Highway Impacts

24. Marley Lane is a single track rural lane which passes through Hoath to the west. Tractors and tankers seeking to reach the site from the St. Nicholas-at-Wade plant are likely to approach from the A299 in the north before entering and passing through Hoath. From Richborough vehicles are more likely to access via the A28 via Sandpit Hill and Nethergong Hill.
25. The Highway Technical Note (the HTN) provided by the appellant identifies that, in an average year, spreading will take place on 161 hectares of the cropped area of Church Farm. At a standard application of 45 cubic metres per hectare, that requires 7,245 cubic metres of digestate to be spread. Given that each tractor can transport 16 cubic metres per load, that would equate to 453 journeys to the farm, direct to the spreader, from the power plants and the same number of return journeys to the plants, if there was no storage capacity on site.
26. In that scenario, the HTN contends that 9 tractors would need to be utilised per day to supply the digestate spreader over the 7-8 day spreading period, with 126 tractor trips per day.
27. The HTN contends that the benefit of the Ecobag is that it enables the digestate to be brought to the site outside the spreading period, at a slower rate, with one tractor per day operating, making 9 trips (18 two-way journeys), over a 50 day period in order to fill the bag with the required volume. I understand that the Ecobag has the capacity to accommodate the required 7,245 cubic metres. According to the HTN the overall number of journeys between a scenario where the storage bag is utilised and where digestate is brought straight to the site is therefore the same at 906 trips.
28. However, as pointed out by a number of interested parties, that analysis does not appear to take account of the further trips that would be necessary to empty the bag when spreading is taking place. In other words, filling the bag is only part of the job. Once it is full, further trips would still be needed for the tractors/ tankers to fill up from the storage bag, before taking the fertiliser on to the spreader, wherever it is operating on the farm at any given point during the spreading process.
29. What is not clear from the technical note is how many journeys on the road network that would entail. In addition, if digestate was being transported direct to the spreader, as opposed to the Ecobag, it may be that a proportion of the 906 journeys would not need to enter Marley Lane at all because the tractors would go direct to whichever field the spreader was in at any given point. Not all of the fields that make up Church Farm are accessed directly from Marley Lane.
30. Consequently, the picture is not quite as binary as presented in the HTN and the overall number of vehicle trips is likely to be greater under the 'storage' scenario, as opposed to the scenario of transporting direct to the spreader. However, that, of itself, does not dictate that there is a highway safety issue.

31. When the field plan depicting the areas of the farm where digestate is spread is examined, it is clear that large blocks of the fields are contiguous with one another, particularly those running to the north and south of Marley Lane which make up the bulk of the area in question². I was able to see on my site visit that those blocks of land are accessible from Marley Lane, such that once tractors and associated tankers arrive on site each day during the spreading period they would be able to access significant proportions of the farm without having to pass to and forth through neighbouring villages multiple times throughout the day, as would be the case if deliveries were being brought direct from the energy plants which would be the baseline position if no on-site storage was in place.
32. In that scenario, the HTN identifies that 63 tractor loads or 126 trips per day would be needed to keep the spreader operational. Each of those trips would need to pass either through Hoath or via Sandpit Hill/ Nethergong Lane. In contrast, it appears to me that there would be clear benefits of refilling from the Ecobag at a central location on the farm. There would still be a need to pass through adjacent villages to reach the more isolated block of fields to the north³ but the frequency of those movements would still be likely to be less than a situation where there was no storage bag on the appeal site.
33. Thus, even if the overall number of visits may be greater, the level of disruption in the peak spreading period is likely to be reduced, compared to that baseline scenario. Therefore, notwithstanding the fact that the HTN does not fully represent likely journey numbers, I am satisfied that there are benefits in highway terms of having on-site storage on Marley Lane. That will allow for a less intensive period of filling the bag, with a single tractor over 50 days and then, during the 7-8 day spreading period, the impact of continually supplying the spreader will be more contained due to the ability to reach a large amount of the farmland from the appeal site without continually travelling through surrounding villages.
34. Setting aside the above, the main spreading period is limited to 7 or 8 days, at which time there would be a large number of tractors with tankers on the roads in any scenario. Whilst the operations may be inconvenient it is for a short period and the Local Highway Authority have raised no issues in respect of highway safety. Whilst the road is a single-track rural lane, given its generally open nature, forward visibility for the most part is good and other vehicles would be aware of tractors and large vehicles approaching. There are locations on both approaches where forward visibility is restricted at bends in the road but even in that scenario large agricultural vehicles are unlikely to be travelling at great speed and their presence will not be unexpected by other road users.
35. The road is in a poor state of repair but there is no direct evidence that is solely caused by the appeal proposal as opposed to agricultural traffic more generally and the highway authority have raised no objections as to its suitability to accommodate traffic associated with the proposal. Maintenance of the highway is a matter for them.
36. Overall, it is clear that spreading operations cause inconvenience for local road users and residents within Hoath and surrounding villages. I have no reason to doubt that leads to difficult manoeuvres when vehicles meet at narrow points

² Particularly Lots 3 & 4 as shown in Appendix B of the letter from Sarah Cassidy.

³ Particularly Lot 1

on the highway or pinch points around parked cars in villages. However, the baseline position is an established agricultural unit where spreading will take place with or without the storage bag. Whilst the THN does not fully address the likely level of traffic associated with the proposal I am nonetheless of the view that having an on-site storage facility is an appropriate approach having regard to highway impacts for the reasons set out.

37. In that regard, whilst I recognise local frustration regarding the number of large vehicles using local roads at peak spreading times, there are no grounds to withhold planning permission having regard to matters of highway safety or the effect on the highway network. Accordingly, I am satisfied that the proposal complies with the aims of policies DBE3 and T9 of the Local Plan.

Other Matters

38. Reference has been made within respective statements and comments of interested parties as to whether the previous, smaller, Ecobag/ 'Lagoon' would have constituted 'permitted development' under the terms of Class A, Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In particular, interested parties maintain that the previous lagoon would not have amounted to permitted development by virtue of being situated within 400m of the curtilage of a protected building, namely the dwellinghouse at Clayhanger Hall.
39. It is not for me to determine the lawfulness, or otherwise, of an alternative development in the context of an appeal relating to a s78 of the Act. The issue of what constitutes 'curtilage' can be a complex matter to which significant caselaw applies. The information before me is not sufficient to make a definitive conclusion on the issue. In any event, the previous lagoon is no longer in situ and I have considered the appeal development on its individual merits, without taking account of any suggested fall-back in respect of an alternative storage lagoon.
40. The 400m distance referred to within the GPDO is for the purposes of identifying whether development falls within 'permitted development' rights or not. It does not follow that a proposal that is less than that distance, if that is the case, is necessarily unacceptable in terms of its impact. In other words, once a planning application is made it is necessary to assess the proposal on its merits which is what I have done in determining the appeal.
41. When the application was initially registered the Council unilaterally altered the description of development to refer to the installation of a drainage system. The appellant subsequently clarified that no drainage is proposed from the Ecobag and requested that the Council remove the reference from the description. The bag is a sealed system with a geotextile membrane laid underneath to prevent puncture or leakage⁴. Following clarification as to the nature of the proposal the Environment Agency (the EA) raised no objection on the basis that no drainage effluent would arise.
42. Whilst interested parties have raised concerns relating to the potential pollution of the water environment as a result of fertiliser leaking into nearby watercourses there is no reason to suppose that would happen given the design of the system. Moreover, it is clearly in the appellant's interest to

⁴ Appendix D-D of the Appellant's final comments

ensure that the system is maintained, free from any leaks, such that it can serve its intended purpose. Information provided indicates that annual inspection takes place. On the basis of the above, I am satisfied that the installation is adequately designed for its intended purpose and there is no reason to suppose that any pollution or discharge will arise.

43. Whilst no formal screening opinion appears to have been requested or issued, the Council confirmed its view that the development was not EIA development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regs). The appellant has provided a guidance note from the EA which identifies that the type of digestate used in this instance is not considered to be waste. The site is also located on what was formerly cultivated agricultural land. Accordingly, having regard to the descriptions of development and associated thresholds in Schedule 2 of the EIA Regs and the selection criteria in Schedule 3, I see no reason to take a different view to the Council and am satisfied that the proposal does not amount to EIA development and no Environmental Statement is required.
44. Reference has been made to the fact that the application has been submitted retrospectively. Clearly, it is always advisable that planning permission should be sought in advance of completing development and any development undertaken without such permission is at risk of enforcement action. However, I must consider the appeal based on the planning merits of the development and the fact that the application was made retrospectively would not amount to a reason to withhold permission, of itself.

Conditions

45. The Council has put forward two conditions in the event that the appeal is allowed, one relating to ecological enhancement and one relating to hard and soft landscaping. The development occupies land that was formerly in active use for agricultural purposes as part of an intensively farmed arable field which was likely to have been of little ecological value of itself. The bund surrounding the Ecobag has been seeded with wildflower mix and is covered in natural vegetation as I was able to witness at the time of my visit. As such, I am not satisfied that any further ecological enhancement is necessary having regard to the terms of policy LB9 of the Local Plan.
46. Similarly, the natural planting that has already occurred on the bund is sufficient to screen the bag, in addition to adjacent hedgerows and trees, and no further landscaping is necessary to make the development acceptable in visual terms.
47. A third condition seeking to limit the use of the bag to operations associated with Church Farm only was previously considered by the Council but not put forward as part of its eventual case. I agree that such a condition would be difficult to enforce. Moreover, there is no evidence that the development is likely to be used more widely beyond the operations at Church Farm. Its capacity and location both seem designed to meet the needs of that farm unit as opposed to other land elsewhere. Reference to a proposal for a solar farm on land controlled by the unit does not alter my view in that respect. It is not clear if that proposal will be granted planning permission or if it will go ahead. Even if it did, it does not follow that any spare capacity in the appeal scheme would be transported elsewhere. Rather, that would seem unlikely given the location of the site which is well situated to serve Church Farm but poorly

situated to serve a wider area. In those circumstances the condition is not necessary to ensure the development is acceptable in planning terms.

48. Similarly, I am not satisfied that a condition seeking to limit the hours at which the Ecobag could be filled or emptied is necessary. There are presently no restrictions on the time at which agricultural activity, including spreading, can take place. For the reasons set out, I have concluded that the presence of the facility enables the impact of vehicular trips to be managed such that the impact is reduced compared to a scenario with no on-site storage in place. Moreover, any such condition would have the result that any disruption would occur over a longer period than would otherwise be the case. In that context, a restrictive condition would not be justified.

Conclusion

49. For the reasons given above the development accords with the relevant policies of the development plan and the Framework and has preserved the setting of the Grade II* listed building at Clayhanger Hall. There are no other material considerations that would indicate that a decision should be taken other than in accordance with the development plan and it follows that I shall allow the appeal and grant planning permission for the development. No conditions have been put forward that are necessary to make the development acceptable in planning terms.

Chris Preston

INSPECTOR