



Appeal Decision

Hearing held on 16 May 2024

Site visit made on 17 May 2024

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/L3055/W/24/3337178

The Yard, Great North Road, Newark on Trent, Nottinghamshire NG24 1DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Briggs Metals Ltd against the decision of Nottinghamshire County Council.
 - The application Ref is 3/23/00239/CMW.
 - The development proposed is described on the amended application form as 'reconfiguring and extension of existing recycling yard including raising ground levels, new/extended buildings, weighbridge, external walls and new access'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There are two emerging development plan documents (DPD) of relevance to this case. A draft Waste Local Plan (eWLP) was submitted for examination by Nottinghamshire County Council (hereafter referred to as the Council) and Nottingham City Council in March 2024. An amended Allocations and Development Management Policies DPD (eADMP) was submitted for examination by Newark and Sherwood District Council (NSDC) in January 2024.
3. Both main parties agree that some weight can be afforded to the policies in the DPDs. I have not been provided with details on the extent of unresolved objections or the degree of consistency with the National Planning Policy Framework (NPPF). Nevertheless, given that they have both reached the examination stage, I can afford the two emerging DPDs moderate weight in my decision.

Main Issues

4. The main issues are:
 - a) whether the proposal represents an acceptable form of development in flood risk terms, having regard to the flood zone, off-site implications, and the sequential test;
 - b) whether the proposal represents an acceptable form of development in the countryside; and
 - c) the overall planning balance having regard to any benefits.

Reasons

(a) Flood risk

Policy context

5. Paragraph 165 of the National Planning Policy Framework (NPPF) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, and that where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere.
6. NPPF paragraph 168 sets out the aim of the sequential test which is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
7. NPPF paragraph 169 states that if it is not possible for development to be located in areas with a lower risk of flooding, the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and the development proposed in line with NPPF Annex 3 which sets out flood risk vulnerability classifications. Landfill and sites used for hazardous waste management facilities are classified as more vulnerable, with all other waste treatment sites classified as less vulnerable.
8. The flood risk section of the Planning Practice Guidance (PPG) clarifies the different flood zones in Table 1 including Zone 3b which is the functional floodplain¹. This zone comprises land where water from rivers or the sea has to flow or be stored in times of flood. Land having a 3.3% or greater annual probability of flooding, with any existing flood risk management infrastructure operating effectively, is included within this zone. Table 2 sets out flood risk vulnerability and flood zone incompatibility. For less vulnerable development, the exception test is not required in Zones 1 to 3a. For more vulnerable development, the test is not required in Zones 1 and 2 but is required in Zone 3a. Neither type of development should be permitted in Zone 3b.
9. Policy WCS8 of the Nottinghamshire and Nottingham Waste Core Strategy 2013 (WCS) says that the extension, or redevelopment, or improvement of existing waste management facilities will be supported where this would increase capacity or improve existing waste management methods, and/or reduce existing environmental impacts. WCS Policy WCS14 states that all new or extended waste management facilities should be located, designed and operated so as to minimise any potential impacts on, and increase adaptability to, climate change.
10. Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan 2002 (WLP) sets out that permission will not be granted for a waste management facility where there is an unacceptable risk of pollution or where it affects the integrity or function of floodplains, unless the harm is mitigated by engineering measures and/or operational management systems.
11. Core Policy 10 of the Newark and Sherwood Core Strategy 2019 (NSCS) seeks to tackle the causes and impact of climate change. Amongst other things, the policy requires proposals to steer development away from those areas at

¹ Reference ID: 7-078-20220825

highest risk of flooding, applying the sequential approach to its location. This is detailed in Policy DM5(9) of the Newark and Sherwood Allocations and Development Management Policies (ADMP) which includes the requirement that proposals within Flood Zones 2 and 3 will only be considered where they constitute appropriate development and it can be demonstrated, through the application of the sequential test, that there are no reasonably available sites in lower risk flood zones.

12. In the emerging DPDs, eWLP Policy SP5 states, inter alia, that proposals for waste management facilities should be designed and located to ensure that they are resilient and adaptable to the future impact of climate change, with eWLP paragraph 7.48 noting the risk of flooding and storm damage and the need to avoid inappropriate development in the floodplain.
13. eWLP Policy DM7 supports facilities where they are located in low risk flood areas. Where this is not possible and proposals are within an area of known flood risk, including potential future risks, they will need to demonstrate the sequential test has been applied and a flood risk assessment (FRA) and exception test undertaken where required. The policy also says that facilities will be supported where it can be demonstrated there will be no unacceptable impact on the integrity and function of floodplains and no increased risk of flooding on the site or elsewhere.
14. Section 10 of Policy DM5(b) of eADMP seeks to steer new development away from areas at highest risk of flooding. Proposals within Flood Zones 2 or 3 will only be considered where they constitute appropriate development and it can be demonstrated through the sequential test that there are no reasonably available sites in lower risk zones. Where development is necessary in areas at risk of flooding, the policy also requires the exception test to be satisfied. eADMP Policy DM5(c) sets out the sequential test in more detail.

The flood zone

15. The appeal site is located to the north of Newark on the western side of the A616 Great North Road. The site boundary immediately adjoins and partly overlaps with the existing Briggs Metals Ltd waste site to the south. The appeal site comprises mostly scrub vegetation and a collection of vintage machines, but also part of a building within the existing waste site (which is proposed for partial demolition). Apart from this part of the building, the land in the appeal site is noticeably lower than the existing waste site.
16. The Environment Agency's (EA) national flood map shows that most of the appeal site falls within Flood Zone 3 and specifically Zone 3b. A very small part along the site's southern boundary is Flood Zone 2 along with much of the existing waste site as well as the A616. This is due to man-made raising of the waste site and the road.
17. Flood zones are defined by a range of factors including topography and hydraulic modelling. Aerial photographs of recent flood events in the Newark area are only snapshots rather than conclusive proof of whether the site is subject to regular flooding or not. In any case, while the site may have stayed dry during some storm events, there are photographs following other storms in the past few years where the land is shown as being under water.

18. There is an EA hydraulic model for the Newark area dating from 2012 which the appellant's flood risk consultants BWB have utilised as part of their FRA and hydraulic modelling. While it is unfortunate that BWB's work has not been reviewed or technically checked by the EA, BWB have not argued that the official flood zone status of the appeal site is incorrect. Rather, they have focused on modelling the off-site implications and how best to mitigate any effects. Additionally, there is currently no opportunity to challenge the national EA flood map and any challenge would require detailed evidence.
19. The appellant has queried why the Cattle Market site to the south that used to flood regularly has changed from Flood Zone 3 to 2. However, it has recently been redeveloped and I have insufficient information before me to understand how and why the flood zone status of that site might have changed. Likewise, I do not have enough information on decisions made by NSDC to allow gypsy and traveller development on nearby Tolney Lane in Flood Zone 3 to challenge the flood zone status of the appeal site.
20. Therefore, in the absence of sufficient evidence, I conclude that the flood zone status of the appeal site is Flood Zone 3b where this type of proposed development should not be permitted.

Off-site implications

21. There is general acceptance that if unmitigated, the appeal site would be at high risk of fluvial flooding from the River Trent and its tributaries. This could result in operational difficulties for the proposed waste management business and issues relating to access and egress. Materials, including hazardous items, could float away and potentially pollute or block areas elsewhere. There is also the issue of removing largely undeveloped land from the floodplain which currently helps to store floodwater, and the off-site implications of the proposed development.
22. The appellant proposes raising the appeal site by 1 metre to bring it to the same level as the existing waste site and thereby reduce the risk of flooding. The maximum flood level in this area is considered by the FRA to be 11.94m AOD in the 1:100 year plus 50% climate change event. A draft condition requiring the development platform to be set no lower than 11.94m has been proposed. Nevertheless, it is still necessary to consider how to compensate for the lost floodplain volume within the appeal site.
23. Level for level compensation is not possible due to the absence of land in the appellant's ownership that is outside the floodplain. Volumetric compensation has been modelled by the appellant in terms of lowering land in the appellant's ownership to the south of the existing waste site to accommodate floodwater. However, the model run by the appellant would result in localised areas of increased floodwater depth off-site.
24. The appellant has also modelled no floodplain compensation area which reveals there would be little off-site impact. Therefore, while no modelling of alternative geometries of the floodplain compensation area has been carried out by the appellant, the no compensation area model appears to indicate that this is not necessary.
25. The EA would prefer that the development platform was set 300-600mm above the flood level of the 1:100 plus 30% climate change event of 11.76m AOD,

which would be at least 12.06m AOD. However, even with the 1:1000 year event the maximum flood level would only be 12.00m AOD which questions why an even greater platform is required. Moreover, the effects of a greater land raise have not been modelled and there is no need to provide volumetric compensation at 11.94m AOD as there are no off-site effects at that height. Therefore, I consider the proposal would have an acceptable effect in terms of its off-site implications.

The sequential test

26. Even with the ability to raise the development platform of the appeal site without any off-site implications or need for floodplain compensation, the national and local policy approach is to avoid development in areas of higher risk of flooding via the sequential test.
27. The PPG sets out further information on the sequential approach to the location of development². PPG paragraph 023, amongst other things, states that avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a FRA shows that the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. PPG paragraph 027 clarifies that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed.
28. PPG paragraph 028 defines reasonably available sites as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposal. Such sites do not need to be owned by the applicant to be considered reasonably available. PPG paragraph 029 states that the decision maker needs to consider whether the test is passed with reference to the information it holds on land availability.
29. At the hearing, the parties accepted that the area of search was the Newark area. Although there is a satellite Briggs Metals Ltd site in Mansfield and the business deals with waste from across the East Midlands, it was acknowledged that most of the operation focuses on the Newark area. In the absence of more detailed information or objection, I have no reason to take a contrary view.
30. The existing waste site covers approximately 1 hectare, with the appeal site measuring around 0.37 hectares. The appeal site would deal primarily with electric vehicle (EV) recycling although would also allow for a new access onto the A616 and an additional weighbridge to help vehicles to manoeuvre around the site more easily than at present. While there would be some logic, cost efficiencies and benefits for the existing and proposed operations to remain in the same location, it would be possible for the EV recycling to take place on a satellite site. Therefore, I have had regard to that possibility as part of the sequential test.
31. The appellant submitted a sequential test dated 31 August 2022 as part of the original application documents (Appendix I to the Planning Statement). The

² Reference ID: 7-025-20220825 to 7-030-20220825

parties agree that sites at Cow Lane, Tolney Lane, and Brunel Drive (Greenzone) have been ruled out due to their limited size and/or similar flood zone status, while sites NUA/E/3 and NUA/E/4 have been ruled out because of the proximity to residential areas. The parties disagree whether the two remaining sites NUA/E/1 and NUA/E/2, as well as alternative sites suggested by the Council at the former Goodlife/Daloon food factory on Brunel Drive, Fernwood Business Park, and Godfrey Drive, are reasonably available.

32. Site NUA/E/1 is an employment designation in the ADMP covering the Newark Industrial Estate, which also contains the ADMP employment site allocation known as NUA/E/2 which is accessed via Brunel Drive and Stephenson Way. Part of NUA/E/2 has already been developed for a chicken hatchery but land parcels either side are undeveloped fields next to the A1.
33. The two parcels appear large enough for the existing and proposed waste operation and are both within Flood Zone 1. There is already significant amount of commercial and industrial development visible from this part of the A1 and a well-designed waste facility would not detract greatly from this edge of Newark. Based on the appellant's oral evidence, there is little interest from the site promoters for a waste facility, noting the adjoining offices and chicken hatchery. There are also pockets of medium and high risk surface water flooding within both parcels.
34. The former Goodlife/Daloon food factory site on Brunel Drive is also located within NUA/E/1. It has been cleared recently with only hardstanding remaining. It is similar in size to the two parcels of land within NUA/E/2 and located within Flood Zone 1. Adjoining land uses include trade counters and motor workshops which would not be incompatible with a waste facility. Based on the appellant's oral evidence, there is little interest from the site promoter for such a facility.
35. Fernwood Business Park is situated on the southern side of Newark to the east of the A1 and is within Flood Zone 1. It forms part of a larger ADMP allocation for an urban extension (NAP 2C) with the business park benefiting from outline planning permission for business uses. At my site visit, I observed that the northern half of the business park has been partly developed with some commercial units but also includes a new gym, public house, care home and secondary school. While this indicates a more flexible approach to uses within the business park and there are some remaining vacant plots, the existing and proposed waste facility is unlikely to be compatible with such community uses. There also appears to be little interest from the site promoter.
36. Godfrey Drive forms part of the Newark Showground Policy Area in the ADMP as a mixed-use non-residential allocation (NUA/MU/1). The allocation is subject to potential amendments in the eADMP to add and remove some areas. At present, there is only a drive-thru café at one end and two businesses at the other end specialising in agricultural and construction machinery. The proximity of the showground presents some concerns in terms of compatibility with visitors to events, but there is ample land available and a waste facility could be located appropriately. There is direct access onto the A17, A46 and A1 and the area is in Flood Zone 1. The appellant was unable to provide any oral evidence on availability or market interest at the hearing.
37. In summary, all the above contested sites are sequentially preferable to the appeal site as they are located in Flood Zone 1, although the NUA/E/2 parcels have surface water flooding issues along with land compatibility difficulties.

Fernwood Business Park also has compatibility issues with the seemingly more relaxed approach to allowing community-based uses. In contrast, both the former Goodlife/Daloon food factory site and Godfrey Drive have no obvious land use compatibility issues. While there may be policy conflict with a sui generis waste use in these two locations, some flexibility can evidently be applied based on locations such as Fernwood.

38. The marketing evidence presented by the appellant was limited to oral submissions on the day of the hearing, based on telephone conversations made earlier that week. While I have had regard to these submissions, there is little in the way of definitive proof that the Goodlife and Godfrey Drive locations could not be developed. Therefore, I consider that reasonably available sites in areas of lower flood risk in the Newark area exist. Consequently, the sequential test would not be passed.

Conclusion on flood risk

39. The proposal is located within Flood Zone 3b where such development should not be permitted. The work associated with the FRA demonstrates that the proposal can be made safe throughout its lifetime without increasing the risk elsewhere. However, the sequential test has not been passed. Therefore, the proposal would not represent an acceptable form of development in flood risk terms and so would be contrary to WCS Policies WCS8 (insofar as reducing existing environmental impacts) and WCS14, WLP Policy W3.5, NSCS Core Policy 10, and ADMP Policy DM5. There would also be conflict with eWLP Policies SP5 and DM7 and eADMP Policies DM5(b) and DM5(c) notwithstanding they only carry moderate weight. The proposal would also be contrary to NPPF paragraphs 165 and 168 as well as PPG paragraphs 023, 027 and 028.

(b) Countryside location

40. WCS Policy WCS4 sets out the broad locations for waste treatment facilities, with smaller or medium sized waste treatment facilities supported in, or close to, the built-up areas of various settlements including Newark. Development of facilities within the open countryside will be supported only where such locations are justified by a clear local need, particularly where this would provide enhanced employment opportunities and/or would enable the re-use of existing buildings. Policy SP3 of the eWLP follows a similar approach.
41. WCS Policy WCS7 provides a matrix showing where different types of waste management facilities will be supported, with metal recycling only shown as suitable on land already used or allocated for employment purposes. Policy DM1 of the eWLP contains a similar matrix although refers to metal/end of life vehicle recycling as being suitable on previously developed or derelict land as well as employment land. WCS Policy WCS8 supports extensions to existing waste management facilities subject to the caveats set out above.
42. NSCS Spatial Policy 3 sets out the approach to rural areas with the rural economy supported by encouraging tourism and rural diversification, and by supporting appropriate agricultural and forestry development. The policy seeks to protect the countryside and sets out several criteria to consider for proposals beyond principal villages. Development in the open countryside will be strictly controlled and restricted to uses which require a rural setting.

43. ADMP Policy DM8 clarifies that development in the open countryside will be limited to specific types of development including small scale employment where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs. Proposals for the proportionate expansion of existing businesses will be supported where they can demonstrate an ongoing contribution to local employment.
44. Policy DM8 in the eADMP takes a similar approach but also supports the expansion of existing businesses in the open countryside in areas such as industrial estates. Expansion into adjoining areas can be appropriate subject to acceptable impacts and demonstrating that locations on existing employment allocations or on employment land within urban boundaries or village envelopes are not more appropriate.
45. The proposed development would be located close to the built-up area of Newark and provide enhanced employment opportunities, increase capacity, meet local need, and improve existing waste management methods. However, it would be located within the open countryside and not restricted to a use which requires a rural setting or supports rural employment needs. This is demonstrated by the potential for locations such as the Goodlife site within the Newark Industrial Estate being suitable for such a waste facility. Therefore, while it would accord with WCS Policies WCS4 and WCS8, there would be conflict with WCS Policy WCS7, eWLP Policy DM1, NSCS Spatial Policy 3, ADMP Policy DM8 and eADMP Policy DM8. Consequently, the proposal would not represent an acceptable form of development in the countryside.

(c) Planning balance

46. The parties agree that the proposed development would provide several benefits. Economically, it would allow the existing business to expand to meet increasing demand and provide new services such as EV recycling without having to bear the costs of relocation. The development is also forecast to generate 6-8 full-time equivalent positions. The appellant has engaged with local universities regarding a potential future knowledge transfer partnership for lithium battery processing, although I have limited information that such a partnership would come to fruition. Nevertheless, I can afford significant weight to the economic benefits.
47. Environmentally, there would be sustainability benefits from the increased processing and recycling capacity for scrap metal with around an extra 10,000 more tonnes processed annually. This can be afforded significant weight too.
48. Solar panels would be installed on the partly retained existing building and the proposed new building for non-ferrous metals. Space is available for an electrical sub-station to assist with the future transition of machinery currently reliant on diesel to those powered by electricity, although this would be subject to a separate planning permission. These environmental benefits carry moderate weight. There is potentially less of an environmental impact than having to move to a new location, but I do not have detailed information to support this benefit and so I only afford it limited weight.
49. The existing entrance and boundary treatment along the A616 elevation comprises rather unsightly corrugated metal sheeting. It is also possible to see the various rudimentary buildings and industrial machinery from the road along

with piles of scrap metal. Additional soft landscaping and brick wall detailing form part of the proposed development and would be subject to condition. While this would partly mitigate the effects of the proposal it would also help to address the existing negative impact and so can be afforded moderate weight.

50. The existing highway arrangements would be improved through the provision of a new access onto the A616 and an additional weighbridge to allow vehicles to enter and leave the waste facility in forward gear instead of the currently awkward reversing manoeuvres onto the A616. Additional space within the facility created by the proposed extension would also reduce the number of vehicles that have to park alongside the A616 before accessing the site. These highway benefits can be afforded significant weight.
51. Weighing against the proposed development is the failure to pass the sequential test and the consequent conflict with national and local policies that seeks to steer development away from areas at greatest risk of flooding. While it is not unlawful to develop land within areas of high flood risk, it nevertheless forms an important planning consideration. The development would also not be an acceptable form of development in the countryside and would conflict with various policies in the development plan. Therefore, substantial weight can be afforded to these adverse impacts. They would clearly outweigh the weight afforded to the various benefits listed above.
52. While the proposed development would comply with WCS Policies WCS4 and WCS8 in part (and eWLP Policy SP3) and provide a range of benefits, it would conflict with several other policies relating to flood risk and countryside location, including WCS Policy WCS14, WLP Policy W3.5, NSCS Core Policy 10 and Spatial Policy 3, and ADMP Policies DM5 and DM8. There would also be conflict with the approach to flood risk set out in the NPPF and the PPG.
53. WCS Policy WCS1 sets out a presumption in favour of sustainable development. It states that proposals that accord with the policies in the WCS and, where relevant, other parts of the development plan, will be approved without delay unless material considerations indicate otherwise. For the reasons set out above, the proposed development would not accord with the development plan taken as a whole, and so there would be conflict with WCS Policy WCS1 too. This indicates that planning permission should not be granted.

Other Matters

54. The appellant and interested parties refer to apparently different approaches taken by NSDC on flood risk matters for planning applications on nearby sites such as the former Cattle Market and British Sugar, along with the approach of National Highways towards its proposals for dualling the A46 Newark bypass. However, I have limited information on these other schemes and must assess the appeal proposal before me on its own merits.

Conclusion

55. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellant:

Michael Rudd	Counsel
Stephen Catney	Brown & Co / JH Walter
Alex Scully	Brown & Co / JH Walter
Bill Briggs-Price	Appellant
Sophia Briggs-Price	Appellant
Ellie Briggs-Price	Appellant

For the Local Planning Authority:

Joel Marshall	Nottinghamshire County Council
Jonathan Smith	Nottinghamshire County Council
David Arnold	Nottinghamshire County Council

Interested Parties:

Mark Spencer	MP for Sherwood
Sarah Street	Environment Agency
Lydia Bond	Environment Agency
Louise Creswell	Environment Agency

Documents Submitted during/after hearing:

Extracts from the NSDC Policies Map (Newark North Proposals; Newark South Proposals; Land around Fernwood; Proposed Boundary Amendments NUA/MU/1)