



Appeal Decision

Site visit made on 2 August 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th August 2024

Appeal Ref: APP/P0240/W/23/3327759

Land on the North West side of the road leading from Brook End to Beeston Green, Beeston, Bedfordshire SG19 1PG

- 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 Mr Gary Smith (Gs Landscaping Limited) against the decision of Central Bedfordshire Council.
 - The application Ref is CB/22/04957/FULL.
 - The development is the change of use from agricultural land for purposes of B8 storage and distribution: Creation of security earth bunds around the perimeter area with the inclusion of a new security gate.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appellant's appeal form, which is more concise than the longer description given on the planning application form. However, I have had regard to the latter in assessing this appeal. This indicates that the appellant is seeking planning permission for use of the land to recycle demolition and excavation waste through the processes of blending, screening and crushing of soils and stones to produce aggregates.
3. The Council and interested parties have considered the appeal on this basis and the appellant has invited that any planning permission granted be restricted to those specific purposes as opposed to a general B8 open-air storage use. Consequently, I have determined the appeal on this basis, and I am satisfied that no party would be prejudiced by me doing so.
4. The appellant confirms that works have begun but are not yet complete. The earth bunds have been constructed, however there were no obvious signs at my site visit of any equipment or plant/machinery on the site, or stockpiled waste materials or aggregates associated with the use. As the bunds are not shown in any drawings, I have assessed them based on my observations.
5. The appellant confirms that the proposed vehicle access to the appeal site, which would extend through a gap in the bund on the site frontage, is no longer part of the proposal. As the Council and interested parties have expressly considered the suitability of the existing site access to serve the use, they would not be prejudiced by me assessing the appeal on this basis.

6. Compared to the previous iteration of the National Planning Policy Framework ("the Framework"), there are no changes relevant to the substance of this appeal in the revised version. Therefore, the parties to this appeal will not be prejudiced by me not seeking further comments on the changes to the national policy context. All references to the Framework in this appeal relate to the revised document published December 2023.

Main Issues

7. The main issues in this appeal are the effects of the appeal development on:
- The character and appearance of the site and area.
 - The living conditions of nearby occupiers with particular regard to noise and disturbance, dust emissions and air quality.
 - Highway safety.
 - Biodiversity and protected species.
 - Flood risk with particular regard to drainage and water quality.

Reasons

The character and appearance of the site and area

8. The Central Bedfordshire Landscape Character Assessment 2015 ("the LCA") identifies the appeal site as within the Clay Valleys, and specifically landscape type 4B 'Lower Ivel Clay Valley'. The key characteristics of this landscape type, insofar as they relate to the appeal site, are large and medium scale geometric fields bordered by hedgerows.
9. The appeal site is highly visible from the narrow rural lane and to recreational users of the public footpath that runs along its north-east boundary. Whilst large commercial buildings at the nearby metal fabrication works (MFW) are visible in the distance, along with dwellings in the settlement, the appeal site is generally contiguous with the surrounding agricultural fields and blocks of woodland. In this context, the appeal site is appreciated as part of an essentially rural scene, representative of the key characteristics of the LCA, with open fields providing long distance views across the landscape, particularly to the west and south.
10. The evidence before me indicates that prior to construction of the bunds, the appeal site was a field with a more or less level topography, representative of the key characteristics of the LCA. It would have blended in with its surroundings and allowed views across it of the surrounding rural landscape, particularly from the adjacent public footpath. Consequently, it would have made a positive contribution to the character and appearance of the area, and the intrinsic character and beauty of the countryside.
11. The earth bunds on the appeal site are becoming colonised to varying degrees by Ruderals. In time, they are likely to display a densely green planted appearance consistent with the natural tones of the surrounding rural landscape. Nonetheless, being steeply profiled with largely consistent crest levels, they appear as incongruously artificial landforms markedly at odds with the generally flat open fields in the rural landscape. Whilst presumably constructed to conceal parts of the use, they obstruct views across the

- landscape detracting significantly from the appreciation of its rural qualities as described in the LCA, particularly in views from the nearby public footpath.
12. The evidence from the various parties, including the appellant, suggests that the use involves the open storage of waste and recycled materials stockpiled in mounds, together with assorted items of mobile plant and machinery, albeit none were present on the site during my visit.
 13. Whilst described as not of significant height, I have limited evidence to demonstrate that mounds of demolition/excavation wastes and aggregates would not be visible projecting above the earth bunds. In my experience, plant and machinery is often brightly coloured and industrial in appearance, and the photographs before me indicate this to be the case. The appearances of these elements, concentrated on the appeal site, would be incongruous in the context of the rural landscape.
 14. I am not persuaded on the evidence before me that agricultural use of the appeal land would have had similar or greater visual impacts on the countryside. Although just a snapshot in time, the agricultural tractors and machinery being operated on nearby fields appeared transient in nature, with no obvious facilities in the area for the open storage of machinery or significant mounds of crops.
 15. Taking all this into account, the bunds I observed on the appeal site have, and the appeal development described in the evidence before me would be expected to have, a visually intrusive and inharmoniously industrial appearance in the rural landscape. Consequently, it would adversely affect the established qualities of the landscape and thus the intrinsic character and beauty of the countryside. Although these visual effects would generally be localised in extent, they would be significant in magnitude, particularly when experienced from the road and public footpath.
 16. For these reasons, I conclude on this issue that the appeal development harms the character and appearance of the site and area, contrary to Policies SP7, EMP3, EMP4, EE5 and EE8 of the Central Bedfordshire Local Plan 2015-2035, July 2021 ("the CBLP"), insofar as employment development on non-allocated sites will be supported where, amongst others, adverse impacts on landscapes, can be appropriately mitigated. The appeal development is also contrary to Framework Paragraphs 135.c) and 180.b), which require development to be sympathetic to landscape setting, and to contribute to and enhance the natural environment.

Living conditions

17. The appeal is not accompanied by any technical noise assessment undertaken by a suitably qualified expert. However, both main parties and several interested parties have given detailed qualitative descriptions of the effects of the operation in terms of noise and disturbance.
18. In the absence of any authoritative evidence to the contrary, and taking account of the evidence before me, I would expect the use to cause relatively sharp and sudden noises as waste materials and aggregates are unloaded from vehicles, handled by mechanical equipment on the site, and loaded onto vehicles before being transported away. The mechanical grading and crushing of materials would be expected to generate relatively loud and percussive

noises, particularly given the likely forces needed to reduce hard materials into smaller more uniform sized aggregates, potentially over prolonged periods. This would likely be accompanied by the noise of running engines of the machinery and vehicles being operated and manoeuvred around the appeal site, and driven along the nearby roads.

19. Although described as small scale with only occasional concrete crushing, there is limited information on working days or hours of use. Therefore, the pattern of the noise effects could be somewhat random and unpredictable, adding to a sense of disturbance to nearby occupiers.
20. Agricultural use of the appeal site would be expected to have generated a commensurate level of noise and disturbance resulting from heavy machinery used in processes such as crop cultivation. However, I have limited evidence to suggest this would have been anything other than transient or seasonal in nature, or that it would have generated comparable noise effects to the appeal use.
21. I have no substantive technical evidence to demonstrate that the noise effects of the use would be masked sufficiently by traffic noise on the A1 or emanating from the industrial processes at the MFW. Road noise from traffic was audible from the appeal site as a generally low-level steady state background hum, consistent with the vehicle speeds that I observed. To my mind, the character of noise generated by the use would likely be very different to road noise.
22. Noise from the MFW was not audible from the appeal site. Whilst my visit was only a snapshot in time, I have no authoritative evidence that the noise environment experienced at my visit was abnormal for the area. I have not been referred to any concerns or complaints to the Council about the MFW, or from previous agricultural use of the appeal site, whereas the appeal use has generated a number of representations from nearby residents.
23. The evidence suggests that the closest residential property is around 120-130 metres away from the site. The earth bunds around the perimeter may have some noise attenuating effects. However, in the absence of any substantive technical evidence to the contrary, I cannot be satisfied that the likely character and loudness of the noise effects of the appeal use, even though not audible on my visit, would not significantly harm the living conditions of residential occupiers in the locality.
24. The evidence before me does not demonstrate that the use could be effectively controlled by planning conditions to make it acceptable in noise terms, or whether such controls would be achievable and could meet the tests for imposing planning conditions. For example, restrictive operating hours or noise limits could nullify the benefit of a planning permission were it to be granted and would not, in my view, pass the test of reasonableness. Therefore, such controls would, to my mind, be arbitrary and unsupported by any objective analysis of their effectiveness.
25. The apparent disparity between the appellant's use of the appeal site and the B8 use described on the planning application form casts significant doubt in my mind as to whether the Council's Senior Public Protection Officer's supportive stance on the application, which is expressed in the briefest of terms, took account of this. As such, it has limited relevance and weight in my considerations.

26. The processes involved in the use described would be expected to generate dust as materials are crushed and ground in the open. The prevailing wind direction means that a number of residential properties are down wind of the appeal site. There is some photographic evidence of dust ingress to nearby homes and settling on vehicles. I have limited evidence to demonstrate that dust could be adequately controlled to avoid causing a nuisance to nearby occupiers of land and buildings. As such, I have no basis to find that dust emissions from the use would not be harmful to air quality and the living conditions of nearby occupiers.
27. It is put to me that the use is being operated in accordance with the parameters of the Environment Agency's (EA) environmental permit for the site. I am mindful that the planning system should not be used to duplicate other regulatory regimes. However, those parameters are not before me, and I have limited authoritative evidence to demonstrate that they would safeguard the living conditions of nearby occupiers of land and buildings. As such, the existence of an environmental permit has limited relevance and weight to my considerations. It does not alter my conclusions above relating to the harm caused to the living conditions of nearby occupiers.
28. For these reasons, on the evidence before me, I conclude on this issue that the appeal use harms the living conditions of nearby occupiers with particular regard to noise and disturbance, and air quality through dust emissions. As such, it is contrary to CBLP Policies SP7, EMP3, CC8 and HQ1, which seek to ensure that development would not have unacceptable adverse impacts on the local environment and residential amenity in respect of pollution including noise or air quality. It would also conflict with the Framework's requirements in Paragraph 135.f), insofar as it states that planning decisions should ensure that developments create places with a high standard of amenity for existing users.

Highway safety

29. The use would be served by the existing site access which joins the narrow rural lane on the outside of a bend in the road, just inside of the 30 mph speed limit. The lane is mostly single width between its junction with Vinegar Hill to the west and the built up part of the settlement a short distance away to the east. This section of the lane is subject to the national speed limit, albeit vehicle speeds seemed lower than this at my visit. Although a snapshot in time, I have limited evidence to demonstrate that the road conditions I observed were abnormal.
30. There is limited evidence before me of the number of vehicle movements generated by the extant agricultural use of the land, which given the seasonal nature of arable agriculture are likely to have been sporadic. Furthermore, I have no substantive evidence detailing the numbers of large vehicles, such as heavy goods vehicles that use the lane, albeit several parties refer to a school bus using the lane.
31. Whilst large vehicles may use the lane, the signage at either end makes it clear that it is unsuitable for heavy goods vehicles. I saw that forwards visibility of oncoming vehicles in a number of places along the lane, is restricted by roadside trees and planting, particularly approaching bends. This is highly likely to force drivers of vehicles travelling in opposing directions to reduce vehicle speeds through braking before either passing each other using the grass verges or using one of a small number of informal passing places.

32. The main parties dispute the number of vehicle trips generated by the use. The disparity appears to be based on the different figures stated on the planning application form of the through-put of construction, demolition and excavation wastes each year. Even if I were to use the appellant's estimate of 6-8 daily journeys into and out of the site, I saw that the belt of roadside trees to the east of the existing site access appears to significantly limit the visibility of drivers exiting the site, even accounting for the 30 mph speed limit. There is limited evidence that pruning of the trees, which are outside of the appeal site and may not be in the public highway, could be secured through any planning permission.
33. This, together with the narrow width of the road and its pronounced curvature at the point of access would, in the absence of any technical evidence to the contrary, provide drivers of vehicles exiting or entering the site and drivers within the carriageway with insufficient visibility to see each other. As such, the use of the site access represents a significant increase in the potential for conflict between road users that could result in collisions and injury, particularly involving heavy commercial vehicles.
34. Visibility towards the west appeared satisfactory given the relatively low vehicle speeds that I observed. However, even if an appropriate site access arrangement could be achieved, given the existing conditions on the lane in terms of its width, standards of forward visibility and infrequent passing bays, I am not persuaded that intensifying its use would provide safe road conditions for users of the rural lane. There is no mechanism before me to ensure that heavy commercial vehicles associated with the use would be precluded from travelling along the rural lane west of the appeal site.
35. I have not been provided with accident data for the road network near to the site. However, an absence of accidents would not be a satisfactory proxy for assessing the safety of the use, nor does it demonstrate that it would be safe in terms of highway safety.
36. Based on my observations at the site visit and in having regard to the evidence of all parties, I conclude on this issue that the appeal development would have a detrimental effect on highway safety. As such, it would not respond positively to its context, contrary to CBLP Policies EMP3, T2 and HQ1, insofar as they require development to not have a detrimental effect on highway safety. Safe and suitable access to the appeal development has not been provided for the use which has an unacceptable impact on highway safety contrary to Framework Paragraphs 114 and 115.
37. The thresholds for triggering submission of a Transport Assessment are not before me in this appeal. Despite the lack of detail regarding on-site parking there is unlikely to be overspill parking on the narrow rural lane. As such, I find no conflict with CBLP Policies T1 and T3, albeit this does not weigh in favour of the appeal use.

Biodiversity

38. There is limited substantive evidence that the operations carried out on the appeal site to date have caused harm to protected species, or that protected species are likely to be present on or using the appeal site. The Council's Ecologist has no objection to the appeal use.

39. The appeal site is sizeable and includes lengthy earth bunds along boundaries. However, there is limited evidence to demonstrate how much of the site would be in operational use and thus the proportion that would be retained to create biodiversity enhancement. Therefore, I am not persuaded with sufficient confidence that the use would be capable of delivering a net gain in biodiversity.
40. For these reasons, I conclude on this issue that the appeal development would not achieve a net gain in biodiversity on the appeal site, contrary to CBLP Policies EMP3, EE2 and HQ1, insofar as they require development to create new biodiversity features to achieve a net gain in biodiversity value. It therefore conflicts with Paragraph 180 of the Framework, which state that development should minimise impacts on and provide net gains for biodiversity.

Flood risk and the water environment

41. There is a watercourse between the road and the raised earth bund along the frontage of the appeal site. The Council's evidence, which is not contradicted by the appellant, is that the EA flood zone map shows around half the appeal site as located within Flood Zone 2, which corresponds to a medium probability of flooding.
42. Framework Paragraph 173 requires planning applications for all development in Flood Zones 2 and 3 to be supported by a site-specific flood risk assessment (FRA). The objectives of a FRA, as set out in the Planning Practice Guidance¹ are to establish, amongst others, whether a proposed development is likely to be affected by current or future flooding from any source, whether it will increase flood risk elsewhere, and whether the measures proposed to deal with these effects and risks are appropriate.
43. I did not observe any hard surface on the appeal site. Despite photos of water ponding on the appeal site, I have no authoritative evidence to contradict the appellant's statement that the land has a permeable free-draining sub-base and therefore it would not increase surface water run-off. Nonetheless, the appeal is not supported by a FRA as required by the Framework. I have no authoritative evidence to contradict the EA's objection that the bunds have the potential to impact the natural water flow of any local ditches or watercourses, or interfere with site drainage. As such, I find that the appeal development has increased the risk of flooding.
44. The appellant confirms that drainage would be disposed of to an onsite lake/pond. The EA and the Internal Drainage Board (IDB) raise related concerns that materials used in the construction of the bunds and those processed on the site could potentially contaminate surface water and pollute the water environment.
45. The IDB's evidence, which is not contradicted by any authoritative evidence from the appellant is that surface water from the site could enter the watercourse bordering the appeal site, close to the bunds, which flows into a Local Nature Reserve (LNR) a short distance away. The CBLP Policies Map appears to show the location of the LNR and the parts of the appeal site at risk of flooding. As the use involves waste materials it is necessary to take a precautionary approach to this issue. Consequently, the appellant has failed to

¹ Paragraph: 020 Reference ID: 7-020-20220825

demonstrate that harm to water quality and the water environment, including its ecological value, would be avoided.

46. Technical evidence demonstrating that surface water run-off does not harm the water environment or increase flood risk are fundamental to the substance of this appeal and its acceptability. To defer this evidence for future consideration under planning conditions could unreasonably nullify the benefit of a planning permission. It would also unfairly deprive any party with an interest in the outcome of this appeal with an opportunity to comment on the technical evidence, thus leading to injustice.
47. On the evidence before me I conclude on this issue that the appeal development has increased the risk of flooding on and off the appeal site and it harms water quality in the local water environment. For these reasons, the appeal development would be contrary to CBLP Policies EMP3, CC3, CC4, CC5 and HQ1, insofar as they seek to ensure that development does not unacceptably increase the risk of flooding and is not detrimental to water quality and the natural environment.
48. The appeal development conflicts with Framework Paragraph 173, the requirements of which are summarised above, and Framework Paragraphs 189 and 191, which state that decisions should ensure a site is suitable for its use taking account of any risks arising from contamination, including likely effects of pollution on the natural environment, as well as the potential sensitivity of the wider area.

Other Matters

49. The appeal development is a beneficial use to the local economy and to the environment in terms of recycling demolition and excavation waste that could otherwise be landfilled. However, the appellant has not contradicted the list of other providers identified by several interested parties that reportedly offer similar services in the local area to those provided on the appeal site. This casts doubt over the relative rarity of this type of development and service in the locality and thus the scale of the benefits that it provides. I therefore attribute moderate weight to these benefits, insufficient to outweigh the harms.

Conclusion

50. For the reasons given above I have found that the appeal development harms the character and appearance of the site, the living conditions of nearby occupiers, highway safety, flood risk, water quality and has failed to deliver a net gain in biodiversity. These harms bring the development into conflict with the development plan, which weighs significantly against the grant of planning permission.
51. The benefits of the development together with the scope of any planning conditions suggested by the Council, the environmental permit granted by the EA, or the provisions of the Framework, are not sufficient to outweigh the harm and indicate that a decision should be made other than in accordance with the development plan. Consequently, the appeal should be dismissed.

G Sylvester

INSPECTOR