



Appeal Decision

Site visit made on 20 August 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/C3105/C/23/3314951

Land at Station Yard, Station Road, Enslow, Kidlington OX5 3AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Cherwell Concrete against an enforcement notice issued by Cherwell District Council.
 - The notice was issued on 15 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a concrete batching plant and the erection of associated apparatus including a conveyor, hoppers and storage tanks.
 - The requirements of the notice are: 1. Remove all concrete batching equipment from the land, including the conveyor, corrugated sheet enclosure, hoppers and tank storage shown edged in green on the plan attached to the notice. 2. Remove all heavy goods vehicles and plant associated with the unauthorised development from the land, including concrete mixers. 3. Remove all stored aggregates associated with the unauthorised development from the land, including crushed stone, gravel and sand. 4. Permanently cease the use of the land for concrete batching, processing and distribution.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice be corrected by in paragraph 4 in the first sentence substituting '4 years' with '10 years.' Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The absence of the date of issue on the enforcement notice does not create uncertainty. The date the notice was issued can be clearly ascertained by reference to the letter that accompanied it.
3. The notice states that the alleged breach of planning control occurred within four years of the date of issue. However, the time limit for taking enforcement action where the alleged breach is the making of a material change in the use of land is ten years, having regard to s171B(3) of the Act. Operational development integral to and solely for the purpose of facilitating a material change of use is also subject to the ten-year time limit. Therefore, I shall exercise the power in s176(1)(a) of the Act to correct the notice to refer to the

relevant time limit. There would be no injustice, either to the appellant or the Council, in doing so.

4. My decision takes into account the revised National Planning Policy Framework (the Framework), published on 19 December 2023.
5. The appellant's written statement of case refers to extending the period specified for complying with the requirements of the enforcement notice to six months. That is not pertinent to the planning merits of the development described in the notice but is relevant to ground (g). Therefore, I shall consider the appeal as if it had also been made on ground (g) even though the appellant did not initially refer to it. There would be no injustice, as the Council have been afforded an opportunity to respond on the additional ground of appeal.
6. Appeals against the enforcement notice were also made on grounds (b), (c), (d) and (e), by different appellants. Those appeals are the subject of separate decisions¹.

Ground (a) appeal

Main Issues

7. The main issues in the ground of appeal are:
 - The effect of the use as a concrete batching plant on the living conditions of occupiers of neighbouring residential property, having regard to noise and disturbance.
 - The effect on highway safety.
 - The effect on protected species.

Reasons

Living conditions

8. The notice attacks a material change in the use of the appeal site to a concrete batching plant ('the use').
9. The site contains buildings arranged around hard surfaced areas. Four metal hoppers, a conveyor, a corrugated metal sheet structure and two cement storage tanks associated with the use are located towards the southern end of the site, along with a portable office building and substantial enclosures containing quantities of sand and aggregates. Additionally, enclosures containing sand and aggregates along with parked cement mixer lorries are on a central portion of the site. To the north of the site is the Oxford Canal and to the east the Cherwell valley railway line. The A4095, from which vehicular access to the site is obtained, lies to the south.
10. Just over the other side of the railway line, opposite the site, is 'Station House,' a substantial detached dwelling. Prior to the use commencing, occupiers of that dwelling are likely to have experienced incidences of noise and disturbance from road traffic on the nearby A4095, particularly at peak times, as well as from passing trains, from activity associated with the lawful commercial use of the site and, perhaps to a lesser extent, from other nearby land in commercial use. Nevertheless, the wider surroundings are largely rural, with agriculture

¹ Appeal Refs: APP/C3105/C/23/3314954 & APP/C3105/C/23/3314955

being the predominant land use. As a result, although background noise levels might be higher at certain times, the occupiers of 'Station House' would for the most part previously have expected to enjoy a considerable degree of peace and tranquillity consistent with the generally rural setting, in particular during the early morning, as well as during evenings and at weekends.

11. The appellant's noise report assessed the use as giving rise to an increase in noise above the background level during the day that was indicative of a significant adverse impact at 'Station House.' The report went on to find that, if a 6m high acoustic barrier were to be erected and noise management measures implemented within the site, noise levels emanating from the use would still be at 5dB above the background noise level at 'Station House'. The Council advised that the noise from the use should be reduced to 5dB below the background level, or at worst the same as the background level, to prevent adverse impact on the neighbouring residential occupiers. As a result, I am not persuaded that the measures proposed in the report would satisfactorily mitigate the adverse effects of the noise emanating from the use and the associated disturbance on the living conditions of the neighbouring residential occupiers.
12. The appellant referred to other mitigation measures that had been implemented at the site. These include soundproofing the loading area and erecting a sound barrier, which I take to mean raising the height of enclosures alongside the railway line. However, there is no firm evidence to support the efficacy of those measures in terms of significantly reducing the levels of noise experienced by the neighbouring residential occupiers. Representations made during the appeal by the occupier of 'Station House,' referring amongst other matters to high levels of noise emanating from the site, does not suggest that such measures are effective.
13. Consequently, noise and disturbance emanating from the use has had an unacceptable adverse effect on the living conditions of occupiers of neighbouring residential property. By not considering the amenity of existing development, the use is in conflict with criterion in Policy ESD15 of the Cherwell Local Plan 2011-2031 (LP). There is also conflict with saved Policy ENV1 of the Cherwell Local Plan 1996, which states that development likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other environmental pollution will not normally be permitted. Furthermore, by not creating a high standard of amenity for existing and future users, the use is inconsistent with the Framework.

Highway safety

14. The A4095 main road rises in an easterly direction in the vicinity of the site access, towards a crest over the railway bridge. There is a 40mph speed limit on this part of the road. From my own observations, most vehicles travelling along the A4095 in the vicinity of the site access are doing so at approaching the maximum permitted speed. The volume of traffic utilising the road increases considerably during peak times.
15. The site access is at an acute angle in relation to the A4095. This means that any HGVs turning left on exiting the site are likely to stray onto the opposite side of the carriageway, at a point where the forward visibility available to oncoming drivers is significantly reduced due to the crest in the road over the railway bridge. Other factors, such as glare from the sun at the beginning and

end of the day and limited streetlighting, are likely to further reduce the visibility available to drivers on this part of the A4095 at times. The geometry of the access also means that HGVs approaching from the east most likely have to perform an awkward manoeuvre to turn right into the site.

16. Currently there is no physical impediment to prevent HGVs from turning left when exiting the site or turning right into the access. Although no such manoeuvres were undertaken during my visit, that does not mean they cannot occur on occasions. As a result, there is a significant risk of collisions taking place between oncoming traffic and HGVs exiting or entering the site. The number of vehicles using the access might be similar to that associated with the previous, lawful use of the site. However, that does not justify allowing the risk to highway users set out above to continue. In the absence of further details, it is difficult to assess the effectiveness of measures purportedly implemented to prevent HGVs from turning left on exiting the site. Besides, only physical measures, for example widening the access so that HGVs can manoeuvre into and out of the site safely, are likely to adequately offset the risk identified.
17. Therefore, the use has an unacceptable effect on highway safety. This is in conflict with criterion in LP Policy ESD15, which requires development to create high quality, safe, attractive, durable and healthy places to live and work in. It is also inconsistent with the Framework, which advises that developments should ensure that safe and suitable access can be achieved for all users.

Protected species

18. The site is adjacent to a part of the Oxford Canal where I am given to understand that the presence of a number of protected species has been recorded. These include the Depressed Water Mussel, which can be adversely affected by silt within waterways. No assessment of the effects of the use on the ecology of the Canal and adjacent habitats, including details of any mitigation measures where necessary, was supplied. As a result, there is no firm evidence that incidences of the use, including surface water run-off arising from dust suppression measures, with consequential effects for water quality in the Canal, along with any external lighting, have not had an adverse effect on protected species.
19. Since I am unable to conclude that there has been no adverse effect on protected species, the use conflicts with LP Policy ESD 10 which supports protecting and enhancing the biodiversity of the natural environment, including by adequately mitigating significant harm. There is conflict with LP Policy ESD 16, which seeks to protect the biodiversity value of the Canal corridor. There is also conflict with LP Policy ESD 8, which supports development where adverse effects on the water environment are avoided. Furthermore, by not avoiding significant harm to biodiversity the use is inconsistent with the Framework.

Other Matters

20. Part of the site is within the Oxford Canal Conservation Area. Also, the site forms part of the setting of the nearby Grade II listed Rock of Gibraltar Public House. There is no dispute that the use does not affect the significance of these designated heritage assets. After carrying out my own assessment, there is no sound reason why I should find otherwise.

Planning Balance & Conclusion-ground (a) appeal

21. The use provides an economic benefit in terms of the additional employment created. Given the relatively small scale of the use in employment terms, I afford this matter modest weight. Conversely, the use causes unacceptable harm to the living conditions of occupiers of neighbouring residential property and unacceptable harm to highway safety, as well as having an adverse impact on protected species. These matters attract significant weight and outweigh the benefit associated with the use. The use therefore conflicts with the Development Plan and there are no material considerations, including the Framework, which outweigh this conflict. Consequently, I conclude that the ground (a) appeal should not succeed.

Ground (g) appeal

22. The ground of appeal is that the period specified for complying with the notice requirements falls short of what is reasonable.

23. The three months specified for complying with the notice requirements is not unreasonably short, having regard to the highway safety imperative of ceasing the use. There is little before me to suggest that there would be insufficient time to search for and secure suitable alternative premises and to relocate the batching equipment whilst also fulfilling existing orders, thereby ensuring business continuity and safeguarding employment as far as is practicable. There is no reasonable assurance that any further planning application made in respect of the use would be given favourable consideration by the Council. Therefore, a longer compliance period would achieve little other than perpetuating the breach and the associated planning harm.

24. The ground (g) appeal fails.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR