



Appeal Decision

Site visit made on 12 November 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 January 2025

Appeal Ref: APP/H0520/W/23/3320852

Buffaload Logistics Limited, Grove Parc, Grove Lane, Ellington, PE28 0DA

- 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 Ms Julie Ann Feltwell (Buffaload Logistics Limited) against the decision of Huntingdonshire District Council.
 - The application Ref is 21/01763/FUL.
 - The development proposed is change of use of land and premises from Use Classes B1, B2 and B8 (authorised by planning permissions 06/01759/FUL and 19/02142/FUL) to a mixed use of Use Classes E, B2, B8 and haulage yard (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since submission of the appeal, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2024) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the most relevant policies to the appeal, I have not reverted to the parties for comment.
3. The appellant explains that the appeal site is used by Buffaload Logistics Limited (Buffaload) for their headquarters and main storage and distribution depot. It is further explained that it is a family owned and run business with a fleet in excess of 240 vehicles and a storage capacity of over 22,000m².
4. The appellant's view is that the main part of the site operates under planning permission reference 06/01759/FUL granted in August 2006 (the 2006 permission) for the "Erection of buildings and refurbishment of buildings for B1, B2 and B8 uses (industrial / warehousing)". The red line boundary of that site is irregular shaped. It is bounded to the north and west by Grove Lane, to the south by the A14 and to the east by open farmland along a stepped boundary, widening from north to south.
5. The 2006 permission does not include the adjacent rectangular area of land in the north-east corner between Grove Lane and the first step in the eastern boundary, which is included within the current appeal site boundary. Planning permission reference 19/02142/FUL was granted in April 2021 for the change of use of that land from agriculture to parking in connection with the adjacent haulage yard (use class sui generis), subject to Condition 1 which restricts the use to a limited period of fifteen months.

6. At the end of the fifteen months, the condition requires the use to cease, and any works undertaken in connection with the use to be removed and the land restored to its condition before the development took place. However, the condition was not complied with, and the land is subject to two enforcement notices.
7. One alleges the material change of use of the land from agricultural use to use as a mixed use site for haulage yard and for storage and distribution in connection with the adjacent mixed-use site¹. The other alleges engineering operations comprising the formation of a hardstanding and operational development comprising the erection of a building. Appeals have been made against both notices and I have also been appointed to determine the same².
8. Notwithstanding the appellant's view that the use of the main part of the site is either authorised by the 2006 planning permission or immune from enforcement action through the passage of time, it is explained that Buffalod sought to regularise the overall position in accordance with the wishes of the Council, through a new application for a "Mixed use of Use Classes E, B2, B8 and haulage yard". This appeal is against the refusal of that application.
9. The appellant seeks to stress that the application did not propose any new "development" as defined by s55 of the 1990 Act, or any intensification of existing uses. Rather, it simply sought to regularise the use of the site for the avoidance of doubt, to remove any ambiguity, to include the land covered by 19/02142/FUL, and to address landscaping and net biodiversity gain. It is argued that the Council's decision and reasons for refusing the application demonstrate a fundamental misunderstanding of the proposal, whereby no additional development or intensification was proposed.
10. However, should the appellant wish to ascertain whether an existing use or development is lawful, the correct approach is to make an application under section 191 of the 1990 Act for a certificate of lawfulness of existing use or development (LDC). Within the context of an appeal under s78 of the 1990 Act it is not within my remit to formally determine whether the main part of the site operates under the 2006 permission or whether any aspect is immune from enforcement action by virtue of the time limits of s171B of the 1990 Act.
11. Nevertheless, I shall consider the evidence insofar as it is material to this appeal and, to that end, the weight that should be attributed to any potential fallback position and how that should be weighed against any harms identified. I stress that my findings in that regard are for the purposes of this appeal only and do not prejudice any future LDC application the appellant may wish to make.

Main Issues

12. The main issues are whether the development is acceptable in principle and the effect on:
 - the character and appearance of the area;
 - users of the public right of way (PROW);

¹ The full allegation is "without planning permission, the material change of use of the land from agricultural use to use as a mixed use site. The site is now being used as a haulage yard and for storage and distribution in connection with the adjacent mixed-use site".

² Appeal References: APP/H0520/C/23/3320858 and APP/H0520/C/23/3320859

- the strategic highway network and highway safety;
- the living conditions of residents in Ellington, with particular regard to noise and disturbance;
- flood risk; and
- protected species and biodiversity.

Reasons

Principle of development

13. The appellant states that Buffaload has operated from the site since 2011/2012 and considered that the 2006 permission covered all of their activities at the site. It is argued that the proposal involves no new buildings or changes to existing uses, but merely acknowledges that the use of the land potentially comprises a mix of Classes E (offices), B2 (for the on-site workshop), B8 (for the dominant storage and distribution activity), and (potentially) a sui generis use as a haulage yard (rather than that use being ancillary to the other authorised uses).
14. Under the provisions of s171B(3) of the 1990 Act, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. However, the first aerial photograph from 2013 shows a much lesser usage and land-take compared to the current operation. The main activity at that time is largely restricted to the rectangular area in the north-west corner of the site. There is only a minor incursion into the southern part of the land with a relatively low number of parked lorries and/or trailers.
15. There does not appear to be any hardstanding areas in the southern part of the site, rather the land appears to be either bare earth or grassed. The temporary planning permission land appears to be in agricultural use. Whilst both the land take and usage had increased by 2018/2019, the difference to the existing remains significant.
16. The appellant's assertion that there has been no change to the operations since 2011 is not therefore borne out by the evidence before me. Consequently, I can only ascribe very limited weight to any suggestion of lawfulness achieved through the passage of time, insofar as it relates to the existing extent of the mixed-use of the site.
17. The Council highlights that the decision notice for the 2006 permission does not list the approved plans, although some are referred to in certain conditions. In any case, a non-material amendment to the 2006 permission was approved in September 2017, under reference 17/01219/NMA, to allow the addition of a condition specifying approved plans. I haven't been provided with that decision notice but the Council state that the approved plans include site plan drawing number 26 Rev J and planting plan drawing number QD 393/12 Rev J. However, the Council state that the approved planting plan appears to be Rev M, which has been provided, rather than Rev J. In any event, the appellant does not argue that the plan provided is incorrect, or even that the details are substantively different.
18. Although the current operation remains within the red line boundary of the 2006 permission, save for the addition of the temporary permission land, the

approved site plan shows three phases of buildings with the remainder of the operational area given over to car parking and HGV circulation, and access to the loading bays in each of the buildings.

19. However, the phase 2 and 3 warehouse type buildings have not been built and the land in and around that area, as well as the land to the south running to the edge of the brook, which is shown on the planting plan as a wetland area with tree planting and footpaths, is primarily being used for parking lorries and trailers, as a washdown area for the same and for vehicular refuelling. The land between the A14 and the southern edge of the brook is also shown on the planting plan for landscaping whereas it is currently being used as a staff car park.
20. Condition 2 of the 2006 permission also states that phase 1 shall be used for B1/B2 purposes only, and phases 2 and 3 for B8 purposes only. However, the use of the existing phase 1 buildings appears to be Class B8 in nature. The Class B1 office use appears to be within a separate building on its western side, which is not shown on the approved site plan. The buildings which appear to be used for Class B2 workshop purposes, on the eastern side of the phase 1 buildings, are also not shown on the approved site plan and extend outside of the site boundary into the adjacent land, marked as woodland.
21. Therefore, despite the appellant's assertions to the contrary, it is plainly not the case that there are no new buildings. That said, it appears that the buildings either side of the phase 1 buildings (excluding those on the adjacent temporary permission land), were in place at the time of the 2019 aerial photograph. In the absence of evidence to the contrary, it is therefore likely that those buildings are now immune from enforcement action by virtue of the time limits of s171(B)(1) of the 1990 Act, having been substantially completed more than four years ago³.
22. In terms of the temporary planning permission, that time expired in July 2022, whereupon the condition required the use to cease, operations to be removed and the land restored to its condition before the development took place. Based on the description of development and the aerial photographs, that would be an agricultural field. Moreover, following the expiration of the temporary planning permission, the likely lawful fallback position would be the resumption of an agricultural use.
23. However, the land is largely surfaced with a concrete hardstanding and lorries and trailers are parked on the same. Buildings have also been erected on the land and used for the purposes of HGV maintenance. It is not shown that the use of the land or the erection of buildings benefits from a grant of planning permission, or that any aspect has become immune from enforcement action through the passage of time. Indeed, as noted, the land is subject to two enforcement notices concerning both use and building operations.
24. Bringing the above together, the 2006 application site covers most of the land subject to the current application and the land is evidently being used in part for Class B1 (now part of Class E), B2 and B8 purposes, which are included in the approved description of development.

³ For the avoidance of doubt, I stress that finding is purely for ascribing weight to relevant material considerations, and does not convey a formal position, which, as noted, can only be determined by way of a LDC application.

25. However, the majority of the land is given over to the parking of lorries and trailers used in connection with the distribution of goods. The operation also includes facilities for washing down vehicles and refuelling. Taken together, such activities are consistent with a sui generis haulage type operation. So too are the associated Class B2 workshop buildings which are likely used to maintain and service the haulage vehicles. The office use is likely to support all uses taking place at the site, as well as potentially other business locations.
26. Therefore, whilst the appellant refers to a "suggestion" of a haulage use, that appears to be a primary use, certainly in land take terms. Moreover, the haulage type uses extend beyond the area approved for the Classes B1, B2 and B8 uses, into parts of the site approved as wetland landscaping. Also, little of the operational development approved has been built. Part of what has been built, is not shown to form part of the 2006 permission.
27. As a matter of fact and degree, the existing uses and operations at the site do not therefore fall within the scope of the 2006 permission, whilst, as noted, the temporary permission is time expired.
28. The application to expand the mix of uses at the site to include a haulage yard therefore likely reflects that which is taking place on the land and is retrospective in nature. The inclusion of Class E in the description of the proposed development, rather than Class B1, reflects the amendments to the Use Class Order in 2020 which incorporated the latter into the former.
29. I note the Council's view that the primary use of the site is haulage and that the identified Classes E, B2 and B8 uses are ancillary to that sui generis haulage use. However, whether those uses are primary uses in their own right or ancillary to the haulage use, is not for me to decide in the context of this appeal made under s78 of the 1990 Act. I have been appointed to determine the acceptability of an application which was made for a change of use to a mixed use of Classes E, B2, and B8, and haulage yard (sui generis), and that is what I have considered.
30. Nevertheless, what is proposed is a single mixed use comprised of haulage yard, offices, vehicle workshop and storage and distribution uses. As a single mixed use, it is sui generis.
31. The Council are also of the view that the 2006 permission has not been implemented in accordance with the approved plans and conditions. Nevertheless, a LDC was granted in January 2010 to the effect that the 2006 permission was lawfully implemented on 10 August 2009⁴.
32. The Council accept that as confirming commencement of development but assert that the LDC did not seek to prove the use on site was lawful. This point has not been addressed by the appellant and I have not been provided with a copy of the LDC for consideration.
33. Based on the description, it is likely that the LDC was sought to confirm that the development had begun within the statutory period, for the purposes of keeping the permission alive, rather than to confirm the use of the site was lawful. Even if it did confirm lawfulness of the uses at that time, it wouldn't necessarily assist the appellant now because the aerial photographs, even

⁴ Ref: 0901501CLED

from some four years later in 2013, show a very different operation to that currently taking place.

34. Whilst as noted, it is not within the remit of this appeal to determine whether the permission is extant and whether the appellant could revert to what was approved, it is nonetheless a material consideration insofar as understanding the fallback position that is available.
35. Whilst the 2006 permission would likely curtail the existing extent of activities, given the nature of the appellant's business and the significant investment evidently made at the site, there is a greater than theoretical possibility of that permission being used. Moreover, I've not been made aware of any intervening permissions, which have been implemented and which would make it physically impossible to implement the 2006 permission. I therefore attach significant weight to it as a fallback position.
36. In considering the principle of development, paragraph 87 the Framework states that decisions should recognise and address the specific locational requirements of different sectors, including making provision for storage and distribution operations at a variety of scales and in suitably accessible locations that allow for the efficient and reliable handling of goods, especially where this is needed to support the supply chain, transport innovation and decarbonisation.
37. Paragraph 88 also states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings.
38. Huntingdonshire's Local Plan to 2036 (LP) Policy LP 10 states that development in the countryside will be restricted to the limited and specific opportunities as provided for in other policies of the plan. The Council highlight LP Policy 19 as the most relevant policy. That supports the expansion of an existing business within its existing operational site.
39. What constitutes an existing operational site isn't defined and the Council argue that could be interpreted as the lawful area. I do not disagree. In this case, the existing operational site is that shown in the approved site layout plan of the 2006 permission. The expansion into the southern part of the site and into the temporary planning permission land should therefore be assessed against the relevant criteria of LP Policy 19 for the expansion of existing businesses outside its existing operational site. Even so, the principle of development is still supported by LP Policy LP 19, albeit subject to criteria.
40. The Council's reasons for refusing the application (2-8) specifically refer to conflict with criterion h., which requires the scale, character and siting of the proposal will not have a detrimental impact on its immediate surroundings and the wider landscape.
41. Whilst my findings differ in part, I agree, for the reasons set out below, that there isn't sufficient information to demonstrate that criterion is satisfied.
42. Accordingly, it is not shown that the principle of development is supported by LP Policies LP 10 and 19, or Grafham and Ellington Neighbourhood Plan 2020-2036 (NP) Policy GENP 5. Those state, amongst other things, that the expansion of an existing business outside the built-up areas will only be supported where it can be demonstrated that there are operational

requirements for a countryside location and the scale, character and siting of the proposed use will not have a detrimental impact on the countryside or the amenity of nearby properties, and that the expected traffic can be safely accommodated on the highway network.

Character and appearance

43. The appeal site projects from the northern side of the A14 into land surrounded on three sides by largely open agricultural fields. The village of Ellington is positioned on the opposite side of the A14 but the overall character of the area and the setting to the business is rural open countryside, albeit bisected by a busy dual carriageway.
44. The current activities at the site are significant in their extent and associated activity. Combined, the buildings in the northern part of the site, the siting of containers, the substantial areas of hardstanding with lorry and trailer parking, as well as the associated facilitating infrastructure including wash down and vehicle fuelling, result in a highly urbanising, industrial character, very much at odds with and harmful to the prevailing character of the area.
45. However, significant urbanising development has already been accepted for parts of the site, albeit with a partly wooded and landscaped setting. Indeed, the 2006 permission includes three warehouse buildings which would be significantly taller than the existing phase 1 buildings. Although the footprint of the phase 2 units combined would be broadly comparable to phase 1, the phase 3 building would have a much larger footprint, being around three times the size.
46. Perhaps because of the thrust of the appellant's case, little attention is given to the fallback issue, so I have little to indicate that phases 2 and 3 would be built out in the event that this appeal is dismissed. Nevertheless, as noted, given the appellant's business, there is a greater than a theoretical possibility that the development might take place.
47. I note that the Council's Landscape Officer refers to the need for a landscape and visual impact assessment (LVIA) to establish the significance of effects compared to the 2006 permission, and to identify opportunities to avoid, minimise and mitigate against any arising effects.
48. For those same reasons I agree that an LVIA would be helpful. Nevertheless, based on the evidence before me, the phase 2 and 3 units would be positioned in parts of the site which do not have any buildings and because of their substantial size would have a very significant impact on the character and appearance of the area in this largely open, rural landscape, even if finished with recessive colours.
49. In comparison, the existing operational activity in those areas is largely confined to the parking of lorries and trailers, which are clearly lower and transient, compared to the permanent buildings. Nevertheless, they are mostly white in colour and easily seen above the existing solid timber boundary fencing and through the more visually permeable security fencing to parts of Grove Lane.
50. The Council refer to the approved planting plan for the 2006 permission being designed to screen the proposed buildings but given their size and the limited additional tree planting shown, particularly on the eastern side of phase 3, I

am unconvinced that would be achieved to a meaningful degree. In principle, there is greater potential for successful screening to be achieved for the lower vehicles than the 2006 approved buildings.

51. Whilst I do not have a landscaping plan or strategy to show how that may be achieved, it is likely that the approved buildings would be significantly more prominent, particularly from the east and the A14 where they would be seen as a somewhat incongruous and arbitrary feature within the context of a countryside location.
52. However, compared to the fallback position, there is additional harm arising from the loss of landscaping in the southern part of the site and the introduction of strong urbanising features therein, including hardstandings, parked lorries and trailers, vehicle fuelling and washing facilities, fencing and other security measures.
53. There is also harm from the development of the temporary planning permission land. As I do not have plans for the new buildings in that area, it is not possible to make a fully informed judgement of the relative sizes. Based on my own observations, the new workshop buildings appear taller than the phase 1 buildings but are still likely to be materially shorter than the phase 2 and 3 buildings.
54. The 2006 permission did appear to show the retention of a wooded area, to the east of phases 1 and 2 (on the temporary permission land), which would have significantly screened buildings and activity from that direction and likely made a positive contribution to the overall quality of the landscape.
55. However, the aerial photographs show that land had been cleared of trees by 2013. Moreover, the temporary permission granted was for a change of use from agriculture, rather than forestry, and the permission requires the land to be restored to its condition before the development took place at the end of the temporary period, which appears to be open agricultural land. That is therefore the baseline position for the land, rather than woodland.
56. The inclusion of the temporary permission land within the site does 'round-off' and remove the northern most step to the eastern boundary, so does not appear illogical within the context of the wider site. Nevertheless, I am mindful that that argument could also be used to address the step further south, with the subsequent additional encroachment.
57. Moreover, the rounding off takes development immediately adjacent to the PROW running along the eastern side of the site whereas previously there would have been an intervening agricultural field acting as a visual buffer. That encroachment is clearly harmful to the enjoyment of the PROW.
58. However, against that, the size and height of the approved phase 3 building immediately adjacent to the PROW would be much more visually imposing than the existing operation. Nevertheless, beyond the southern extent of the phase 3 buildings the environment and enjoyment of the PROW is substantially prejudiced by running through operational parts of the site, whereas the 2006 permission shows the footpath running through a landscaped area.
59. The appellant argues that it is well established that temporary planning permissions are, by their nature, a "trial run" to see if there is any resultant harm, and, in that regard, it is argued there has been none. In that context I

note that the officer report for the temporary planning permission states that the Council considered that a solution could be found to the lack of screening of the site such that refusal of the application would not be appropriate or justified taking into account all material planning considerations. Instead, it was considered that a temporary permission would allow the applicant time to work with the Council to develop a range of solutions for the site, with particular regard to landscaping and biodiversity.

60. Whilst the appellant states that the Council failed to engage with proposals for landscaping and net biodiversity gain, no such proposals or information have been provided in support of this appeal, such as a landscaping scheme, which shows that the harm arising to the character and appearance to the area could be acceptably mitigated. I am also mindful of the constraints arising from the extent of hardstanding within the site and the limited opportunities for planting. I do not therefore have sufficient confidence that the harms arising from the existing configuration are capable of being addressed by way of a condition requiring a landscaping scheme to be agreed.
61. Bringing the above together, the existing development is clearly harmful to the character and appearance of the area and contrary to LP Policies LP 10, LP 11, LP 12, and LP 19, and to NP Policy GENP 5. Those policies state, amongst other things, that development must recognise the intrinsic character and beauty of the Countryside.
62. Although the overall effects could well be less harmful than the fallback position, without a LVIA and landscaping strategy, I am unable to make that judgement with sufficient confidence. I therefore agree with the Council that there is insufficient information to understand whether the development is capable of being acceptably mitigated, so as to comply with the relevant development plan policies on this issue.

Users of the PROW

63. The nearest PROW runs in a southerly direction from the north-east corner of the site, alongside the fenced eastern side boundary before running through the site, at the point where it juts out, then turning at right angles in a westerly direction towards Grove Lane, along the northern side of the brook.
64. I appreciate that the appellant has kept the PROW open, and its alignment appears unaltered. However, there is a 'Construction Area' warning sign on the gate at the point where the PROW meets the fenced boundary to the site. Whilst I'm sure that is well intentioned insofar as users should proceed with caution, there is nothing to indicate that the PROW actually continues beyond the gate, which is the same height as the fence, thereby precluding forward views.
65. Inside the site, users would feel like they shouldn't be there; that they would be trespassing. That is because the appearance and activity reflects that of a haulage yard, with numerous lorries and trailers parked up. There is nothing that I could see within the site to indicate to users that the PROW crosses through the operational area to the gate in the southern fence line, or vice versa. Nor are there any markers on the inside of those gates to point to that being their purpose.

66. Moreover, it is a busy environment where lorries crisscross the PROW, thereby creating potential conflict with pedestrians who are likely unfamiliar with the operation.
67. That arrangement is in stark contrast to the 2006 permission which shows a network of footpaths in this general area as part of a landscaping strategy outside the operational area of the business. The fallback position therefore represents a significant improvement over the current arrangement, which compromises the amenity value of the PROW and the enjoyment of users. Moreover, no information is provided to demonstrate what, if any, measures are in place to avoid harm to pedestrian safety.
68. The development is therefore contrary to LP Policies 10 and 16 which state, amongst other things, that where a proposal would affect an existing public right of way, the route should be protected or enhanced within the proposed development and where this is not possible it should be diverted to a safe, clear and convenient alternative route.
69. I note that the Council also cite conflict with LP Policy LP 19 criteria h., but given its primary focus on matters relating to character and appearance, I consider it to have limited relevance to this main issue. I reach the same view in respect of NP Policy GENP 5.

The strategic network and highway safety

70. The appellant argues that Buffaload has been operating out of the main part of the site since 2011 and that there has been no change to its operation in all of that time. However, that is not borne out by the evidence which points to a significant change in the operational character, both in land take and land use terms.
71. Nevertheless, I assume that because of the appellant's stance, the application was not supported by a transport assessment or even a transport statement. Indeed, very little highways information has been provided. Consequently, I am unaware of the number and timings of the vehicular movements generated by the mixed use, or that which has already been accepted as part of the 2006 permission, so as to make a comparison.
72. The appellant refers to the business having a fleet of 240 vehicles, but it is unclear how many operate from the appeal site, although it is likely a significant number. It follows that there is potential for a significant number of HGV movements into and out of the site. There is also a significant amount of staff parking in the southern part of the site, shown for landscaping in the 2006 permission, which will also generate its own pattern and number of movements.
73. Moreover, the southern part of the site adjoins the slip road to the A14 (east bound), which forms part of the Strategic Road Network (SRN). It is therefore unsurprising that National Highways recommend that planning permission not be granted until further information is provided, highlighting the proximity of the A14 and the need to assess the use of the site and how it relates to the SRN.
74. Although the position of the main operational site access is shown on the submitted plans, no details are provided for the access to the staff car park or of the car park itself. I saw that there are two access points: one is located on

the junction radius between Grove Lane and the A14 slip road, the other is a little further north, adjacent to the brook.

75. It is again unsurprising that the Local Highway Authority (LHA) raise safety concerns over the access positioned within the junction radius on the basis that it is potentially dangerous and incorrectly constructed. Indeed, at that point there is significant scope for conflict between vehicles speeding up on the slip road to join the A14, slower lorries turning in and out of Grove Lane and vehicles entering and leaving the staff car park.
76. The LHA advise that any access should be relocated to its original location further north towards the brook, and properly constructed and suitably detailed with dimensioned plans provided. National Highways similarly request that the accesses are identified on a plan in order to fully assess the application and the potential impact on the SRN.
77. The appellant appears to have at least partly heeded the advice of the LHA, insofar as the corner access was not being used at the time of my site visit; the gates were closed, and temporary barriers were in place. Access and egress were solely being achieved via Grove Lane, adjacent to the brook. However, as noted, plans have not been provided to demonstrate that it is acceptably laid out.
78. Based on my own observations there are potentially visibility issues to the north as well as potential for conflict between cars entering and leaving the site due to its geometry and humped alignment.
79. I therefore find that insufficient information has been provided to demonstrate that the development is acceptable in terms of its effect on the SRN and highway safety. That is contrary to LP Policies LP 16 and LP 17 and NP Policy GENP 5. Those policies state, amongst other things, that a proposal will be supported where it is demonstrated that safe physical access from the public highway can be achieved.
80. Again though, I do not find conflict with LP Policy 19h., given its limited relevance to this main issue.

Living conditions

81. The Council identifies the nearest residential property to be around 250m to the south of the site, on the opposite side of the A14. Whilst the operational area of the business has spread further south towards that property and the village of Ellington, given the separation and the intervening A14 dual carriage way, it is unlikely that material harm through noise and disturbance would arise from on-site activities associated with the operation of the business.
82. It is likely that any potential harm arises from off-site HGV movements. In that regard there are significant benefits from the site's proximity to the A14. Vehicles heading east are able to enter the A14 via the slip road immediately adjacent to the southern boundary of the site. Similarly, vehicles arriving from the west are able to exit on to the slip road and drive a short distance to the site, without passing any residential property.
83. However, to go west, vehicles need to cross the bridge over the A14 and then turn right onto Thrapston Road, thereby passing residential properties before

entering the slip road. The properties most affected are likely to be those positioned closest to the road, in and around the junction to the High Street.

84. Similarly, vehicles arriving from the east will need to exit the slip road and drive along the opposite end of Thrapston Road, passing by residential properties on both sides before turning to cross over the A14.
85. There is therefore potential harm arising to the living conditions of the occupiers of properties along Thrapston Road in particular, through noise and disturbance, especially if those movements take place at unsociable times of the day. In the absence of information on the number and the timing of those vehicular movements, it is not possible to quantify the degree of harm or the scope for mitigation, such as diverting westbound vehicles via the next junction, a short distance to the east.
86. I am nonetheless mindful that such effects may also arise from the fallback use of the site, which includes significant storage and distribution. However, without sufficient information, I am unable to properly consider how the business would operate within the scope of the 2006 permission, compared to the current operation.
87. I note the reference from an interested party to a noise assessment, but I have not been provided with a copy of that document and there is no reference to it in the Council's report.
88. Although there is also potential for light pollution arising from the development, I am satisfied that could be satisfactorily resolved by way of a condition, as per the 2006 permission.
89. Nevertheless, it is not demonstrated that the mixed use of the site does not result in unacceptable harm to the living conditions of occupants of properties in Ellington, contrary to LP Policy LP 14 and NP Policy GENP 5. Those policies state, amongst other things, that the expansion of an existing business outside built-up areas will only be supported where it can be demonstrated that the use will not have a detrimental impact on the amenity of nearby properties.
90. Again, however, I do not find conflict with LP Policy 19h., given its limited relevance to this main issue.

Flood risk

91. The southern part of the appeal site is within Flood Zone 3, which has a high probability of flooding. The remainder of the land is either Flood Zone 2 (medium probability) or Flood Zone 1 (low probability).
92. As the development clearly does not include the more vulnerable uses within Class E, such as medical/health services and nurseries, I am satisfied that the Environment Agency's concerns in that regard could be resolved by way of condition.
93. Nevertheless, the supporting Flood Risk Assessment (FRA) highlights that parts of the site are at risk of flooding from Ellington Brook to depths of between 0.1m and 0.7m during the 1% annual probability event, and from surface water flooding to depths up to 0.3m. Indeed, the FRA acknowledges

that the site was flooded as recently as December 2020. The NP also includes pictures showing the extent of that event.

94. Whilst the FRA concludes that no mitigation measures are necessary, that is on the basis that the proposal does not relate to any new development or any intensification of existing uses, which is not the case. Indeed, much of the site within Flood Zone 3 has been covered by hardstanding, including parts of the area shown as wetland in the 2006 permission. The Council is therefore rightly concerned that insufficient information has been submitted to demonstrate the use of sustainable drainage systems, and that flood risk has not been exacerbated.
95. In the absence of such information, I cannot conclude that the development adequately addresses flood risk and does not conflict with LP Policies LP 5, LP 15 and NP Policy GENP 13. Those policies state, amongst other things, that a proposal will only be supported where surface water has been considered from the outset as an integral part of the design process and that the proposal incorporates sustainable drainage systems.
96. Again, I do not find conflict on this main issue with LP Policy 19h., or NP GENP 5.

Biodiversity

97. LP Policy LP30 requires proposals to demonstrate that all potential adverse impacts on biodiversity have been investigated, to ensure no net loss and to provide net gain where possible. NP Policy GENP 10 states that all new development shall protect biodiversity and the natural environment and provide a biodiversity net gain and establish, enhance or extend ecological corridors and the connectivity between them.
98. However, despite that policy context, no ecological information has been provided in support of the appeal. Again, I understand that the appellant considers that no new development has taken place, but the operational area of the business has extended into an area marked as a wetland in the 2006 permission. The Council has also highlighted that according to the Natural England's Great Crested Newt Risk Zone, the site is within an amber risk area, and that Cambridgeshire and Peterborough Environmental Records Centre hold records for otters within the stream that runs through the site, and for badgers within the road verge adjacent to the A14.
99. I am also mindful that lighting has been introduced into the expanded operational area and staff car park. The positioning, duration, type of light source and level of lighting are all factors that can affect wildlife.
100. Whilst I appreciate the concerns regarding the clearance of woodland from the temporary planning permission land, that, for the reasons explained, was not the baseline situation for the purposes of this appeal. Nevertheless, new development has also taken place on that land, including the creation of a hardstanding and erection of buildings.
101. It has not therefore been demonstrated that the development has not resulted in harm to protected species or wildlife and does not result in a net loss in biodiversity, contrary to LP Policy LP 30 and NP Policy GENP 10.

102. Again, I do not find conflict on this main issue with LP Policy 19h., or NP Policy GENP 5.

103. No arboricultural information has been provided in relation to the effects on any trees, particularly those in the southern part of the site, which can be seen in the aerial photographs. It is not therefore demonstrated that the development does not result in an adverse impact on trees. That is contrary to LP Policies LP19h and LP31 and NP Policy GENP 5, which state, amongst other things and in addition to the above, that a proposal will be required to demonstrate that the potential for adverse impacts on trees and hedgerows has been investigated.

Other Matters

104. I understand the appellant's frustration if during an 18-month determination period the Council did not request the required information to address the deficiencies identified. Nevertheless, little additional information has been provided at appeal to address those concerns. I appreciate that may be because the appellant considers that no new development has taken place beyond that already approved. However, that is plainly not the case and the information provided is not sufficient to address the issues arising from the expanded business operations.

105. Indeed, based on that before me I am unable to satisfactorily understand the effects of the mixed-use development and the scope for mitigation. It is not therefore shown that the harms identified can be acceptably addressed by way of condition.

106. Paragraph 85 of the Framework states that planning decisions should help create the conditions in which businesses can invest, expand and adapt and that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

107. In that regard, I note from the application form that Buffaload employs 96 full time equivalent jobs. I also appreciate the likely very positive contribution of the business to the supply chain during the COVID-19 pandemic. However, in overall terms there is also limited evidence of the social and economic benefits of the operation, so I am unable to properly assess such effects, which may well be significant.

108. I further note reference by the Parish Council to activities at other sites, but those are not matters for this appeal.

Conclusion

109. For the reasons given above, and having considered all other matters raised, I conclude that the development is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Richard S Jones

INSPECTOR