



Appeal Decision

Site visit made on 28 February 2025

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 27 March 2025

Appeal Ref: APP/U3100/W/24/3355446

Stonepitt Barn, Kingston Road, Frilford, Abingdon, OX13 5HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Sam Belcher (S.C.B (Oxford) Ltd) against the decision of Oxfordshire County Council.
 - The Application Reference is MW.0065/23.
 - The development proposed is described as 'Part retrospective change of use of land to extend the existing operation, comprising the crushing of concrete granted permission under county council reference MW.0048/17 and horticultural topsoil recycling granted planning permission under district reference P13/V0724/FUL. The erection of a 2m high retaining wall on the western boundary, and the erection of an acoustic barrier (comprising a bund and acoustic fence) up to 6.5m high along the southern boundary of the site and between 4.5 to 6.5-metre high along part of the eastern and northern boundaries of the site. Retrospective change of use of part of building for ancillary storage and maintenance of equipment in connection with the existing concrete crushing and topsoil recycling operations.'
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Decision

1. The appeal is dismissed

Application for Costs

2. An application for costs was made by Mr Sam Belcher (S.C.B (Oxford) Ltd) against Oxfordshire County Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application description is taken from the County Council's Decision Notice which was amended from the Application Form through correspondence¹ during the application stage. I shall make my decision on this basis.
4. I note discussion in the appeal documents with regards to whether a nearby building used as a holiday let (referred to as The Woodshed) adjacent the appeal site is lawful. It is not for me under a Section 78 appeal to determine the current correct and legal use of the existing building on the neighbouring site. I have therefore made my decision on this basis of the existing conditions. To that end it is open to the

¹ Email correspondence between Appellant and Council 12/12/2022

Local Planning Authority to pursue enforcement action, or for the neighbour to apply for a determination under sections 191/192 of the Town and Country Planning Act if they believe the lawful use is different. My determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal. For the avoidance of doubt, as I have no evidence in front of me that the building is in lawful use, I have factored this into the weight applied to this use as part of harm (if any) which would be caused to the living conditions of this building.

5. As per the above with regards to this appeal not having the purpose of considering the correct and legal use of development, there are also questions as to whether the original planning consent on the site has been implemented given that it has not been constructed or used in accordance with the approved plans with the area of land. Whilst it would appear that the difference from approval to what was undertaken in terms of land area would appear to be materially different, this would be a matter for the courts to decide, and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
6. The Council's Decision Notice contains two reasons for refusal, one around the principle of whether the site is suitable and sustainable, and the other which is around the effects (if any) around living conditions. As the policies are inherently linked together in that the impact towards living conditions is involved in the assessment around the principle, for the benefit of doubt I shall deal with both matters together.

Background and Main issues

7. A smaller area which is part of the appeal site gained planning consent in 2017² for *'Change of use to crush concrete on the site in connection with the permitted use of the site for horticultural topsoil recycling under planning permission ref. P13/V0724/FUL and the erection of a six-metre high acoustic barrier (comprising a bund and acoustic fence) along the southern boundary of the site and a four to six-metre high acoustic barrier (comprising a bund and acoustic fence) along part of the eastern boundary of the site.'*
8. The previous consent has not been constructed or operated within its approved confines in accordance with the approved plans, with the current site being approximately 19 metres longer than approved and having an acoustic bund erected to the southern boundary of the unauthorised extension of the land. The original area subject to the grant of planning 0.55Ha (5,460Sqm), with the greater appeal site including this land, the unauthorised extension 0.1ha and an area of undeveloped field to the east of the site 0.6ha. The existing site is not restricted by planning permissions in terms of permitted output, however there is an Environment Permit that permits waste throughput of 75,000 tonnes per annum, where the current operations according to the appeal documents are around two-thirds of this.
9. Taking the above into account the main issues are whether the appeal site is the most suitable and sustainable location for the development when considered against the Development Plan policies and any other material considerations, with particular

² Oxfordshire Council Ref: MW.0048/17

regard to the living conditions of Hamfield Barn, Stonepitt House and the Woodshed, with regards to noise, dust and appearance.

Reasons

Site Description

10. The appeal site lies to the south of the A415 Kingston Road in a location relatively remote from surrounding settlements. The access road from Kingston Road provides access to agricultural operations such as two grain stores, and chicken houses for 4000 chickens to the north and north east of the site. To the east of the site is a further area of land for chickens along with an agricultural workers dwelling to look after 8000 chickens. These sites lie immediate to the north and eastern boundaries of the appeal site where land is utilised for topsoil recycling, concrete crushing with a barn for B2 light industrial use. Whilst there does not appear to be restrictions on where the stockpiles can be erected, on my site visit stockpiles were erected to the southern portion of the site.
11. Notwithstanding that the appeal site benefits from a permitted use as a waste recycling facility, it appears at odds with the character of its rural surroundings. There is limited natural screening of the stockpiles, with engineering solutions implemented such as high boundary fences and earth bunds which seek to restrict views/noise.
12. The main residential uses in close proximity include the agricultural workers dwelling (Stonepitt House) located 140 metres to the east of the appeal site, a residential dwelling which is located 165m to the south-west, and Dry Leys cottage approximately 510 metres to the east. Surrounding the site are relatively flat agricultural fields, along with elements of hedging and vegetation located along some of the field boundaries.
13. I appreciate that the conditions I experienced on my site visit was only a snapshot of the site at this particular time as stockpile levels can change from day to day as well as seasonal changes to vegetation and the landscape and noise levels depending on what machines are being used. I have also considered the evidence submitted by main parties and submissions from interested parties and, in light of this, I am satisfied that what I saw represents typical conditions.

National and Local Policy Considerations

14. For decisions around minerals and waste facilities, the Oxfordshire Minerals and Waste Local Plan Part 1 – Core Strategy (MWLP) Policy W5 which along with the need to assess policies C1-C8 around impacts, contains principles to consider around the siting of waste facilities where priority is given to sites already in waste management/industrial use, previously developed, mineral working sites, agricultural buildings and their curtilages amongst others. The policy also provides that any proposals on land in greenfield locations could be suitable if they are the most suitable or sustainable option. MWLP Policy M8 contains considerations around the safeguarding of mineral resources where development should not hinder or prevent future working of minerals. Policies C1-C8 contain principles around assessing impacts of the development such as sustainable development (C1), Climate Change (C2), Flooding (C3), and living conditions (C5), such as noise, dust, vibration, air quality, odour and visual intrusion amongst others; and C6 around the need to take into account best and most versatile agricultural land.

15. Whilst not utilised in the reason for refusal, the Appellant seeks that the Vale of White Horse Local Plan Part 2 (LP) Policy 12 is relevant which contains principles around rural diversification where the re-use, conversion or adaption of suitable existing buildings where they assist with the rural economy. I also note the National Planning Policy Framework at Paragraphs 88 and 89 seeks the sustainable growth and expansion of all types of business in rural areas and that planning policies and decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent or beyond existing settlements.

Principle of the development in question

16. Having read the appeal documents, the appeal appears to be being approached by two different ways with the Appellant treating the application as an extension to the existing operations where the principal of the use has been established; whereas the Council is seeking to assess the principal again given the larger land area that is now proposed. MWLP Policy W4 in assessing locations seeks that sites in more remote rural areas that facilities are small and in keeping with their surroundings. Having considered the surroundings in accordance with MWLP Policy W4, the proposed site could not be considered small-scale. The application that was approved could be considered a small operation which whilst not very analogous to agricultural operations, was considered at the time to be an appropriate small industrial activity for the particular size of operation. The greater land area proposed in this appeal together with how it would be appreciated within its particular surroundings does result in materially different changes to land area, to the point that MWLP Policy W5 seeks to assess whether there are other more suitable and sustainable sites to cater for the use with the accompanying text seeking that Policies C1-C8 are also taken into consideration.
17. In justification for the proposal the Appellant's Statement of Case (SoC) mentions that the existing site has 'proved quite tight;' however would also appear to take into account the unauthorised extension in this assessment of the land size not being large enough whereby the permitted site area would mean that the operations would logically be even more of a squeeze to accommodate the operations than currently. I note that there are also comments regarding the output of current operations are not expected to increase as a result of the extended site, however there is no mechanism to prevent this, for example if a new owner buys the site and seeks to increase output to 75,000 tonnes. As such the considerations around not increasing the output of the site are of limited weight to the appropriateness of this application.
18. The Appellant has not submitted any form of assessment that seeks to identify other more suitable or sustainable sites surrounding such as industrial sites, brownfield sites or waste sites, amongst others where a site of the proposed size would be more suitable. I can appreciate that given its surroundings, the principle of a waste site in this instance might exist for a small site, however the proposal is not proposed to continue as a small site given the intended land area which would be over double the size that it is currently which would not be in keeping with its surroundings. As such, due to the lack of information regarding whether there are any available alternative sites, the principle of the enlarged scheme has not been established.

Mineral Safeguarding Area considerations

19. MWLP Policy M8 seeks that new uses don't sterilise land for the safeguarding of minerals whereby the appeal site is within a location for the safeguarding of minerals. It is noted that the County Council have a healthy land supply in terms of minerals extraction and that there are no plans or existing consents in place within the locality that are awaiting extraction. I somewhat also agree with the Appellant that the proposal would not completely sterilise mineral reserves as the proposed use would be open and capable allowing mineral extraction in the future if needed. Although, there would be a level of hindrance caused not only by the physical nature of the use, but any impacts caused by the leaching of materials/contamination of soil. However this would not be the same type of sterilisation or hindrance caused for example by the construction of a housing development.
20. There has been no further detail or justification put forward by the Appellant that would demonstrate that there are other sites available that are more preferable to the appeal site. Whilst I appreciate that it might be more convenient to extend the existing site, the assessment is made on the whole life of use and needs to consider future owners who may have different needs and demands than the current proposed occupiers. That said, to allow a large waste facility on an ad-hoc basis without adequate justification would undermine the Council's strategy for minerals and waste to achieve sustainable patterns of development. As such, due to the lack of justification, the scheme would not be fully compliant with MWLP Policy M8.

Best and most versatile agricultural land considerations

21. In considering the impact towards best and most versatile land, the assessment includes the new proposed greenfield land to the east, as well as the unauthorised extension to the south. MWLP Policy C6 seeks that new development needs to consider the presence of any best and most versatile (BMV) agricultural land where development needs to evidence that lower quality land cannot be utilised and that there are plans for the soil quality of land to be restored. BMV land is categorised from 1 to 3a with 1 being of excellent quality and 3a being good quality.
22. As there has not been any evidence submitted in order to demonstrate that there are no alternative sites that could take the development, this also has similar ramifications for agricultural land. Whilst I appreciate that the granting of the previous permission did not require reinstatement of the land or quality of the land should the use cease, this does not automatically mean that the site is not important. The Policy C6 requires that any loss of BMV land is justified and this has not been the case in this application. Taking this into account, the operations have not convincingly justified the loss of BMV agricultural land and would not be compliant with MWLP Policy C5.

Living Conditions

23. Beginning with noise, the Appellant has submitted a noise assessment³ that is made in accordance with guidance given in BS 5228 and also assesses the impact of the plant noise using the guidance given in BS 4142: 2014+A1:2019. However it is noted that the appeal documents contain evidence that excavators operate above stockpiles with no limits on stockpile heights or the ability of excavators to work on

³ WBM Acoustic Consultants, Dated 25 April 2024

top of the stockpiles, which lessens the acoustic performance of the bund and associated fencing. These elements have not been considered within the acoustic report.

24. Noise and disturbance are subjective issues to assess, as each neighbour will have different thresholds over what might harm their living conditions. In this particular scenario, the additional noise generated would predominantly arise from the concrete crusher and on site operation of machinery. The noise generated would not be constant and would vary between different machines involved with the use operating at different times as well as vehicle movements from HGVs.
25. I can appreciate comments in the Appellant's SoC and final comments which revolve around the existing permission not having conditions limiting stockpile heights, or excavators not being on top of the stockpiles. Whilst it might mean that the Council at the time of the original permission may not have thought such conditions were necessary, this might have been linked to the area of land in question. The existing permission did not consider the extended site and the actual operations which are now more obvious in that the use has been operating as opposed to making judgements upon how a use would function during the original consent.
26. I do however agree that if a consent was appropriate for the appeal that it would be necessary to limit the heights of stockpiles and the machinery operating on them in order to operate within appropriate noise levels that would not cause detrimental harm to surrounding occupiers. I can also appreciate the Council's concerns with regards to the enforceability of conditions, however such conditions limiting the height of stockpiles and machinery operating upon them is certainly a possibility that would meet the tests of conditions. However, it is also the case that the Appellant has not specified how such conditions could be managed so as to not make the monitoring of such as onerous as the Council suggest.
27. Similar considerations to the above are also had with regards to visual amenity in that currently the stockpiles are visible together with the machinery operating on top of the stockpiles. These certainly could be limited by condition which would allow the bunding to dominate. I also acknowledge the native planting in place of the conifer screen and the gain in biodiversity which would allow some environmental benefits to the scheme.
28. Another concern from the Council with regards to the proposed scheme relates to dust, or the lack of willingness by the Appellant to demonstrate that there is a management plan to control any dust. The reasoning for not having a dust management plan is detailed by the Appellant as there was no requirement on the original application, so that it is not required on this much larger site. I am not persuaded by this argument given that the site subject to this appeal is over double the size and Policy C5 is specific in that proposals shall demonstrate that they do not have adverse impact as a result of dust. Whilst I believe that dust could be mitigated by the use of a dust management plan, this has not been demonstrated with any evidence accompanying the appeal.

Planning Balance

29. In applying MWLP Policies C1-C8, there are some policies which are compliant with the scheme, such as Policy C2 where the recycling of waste assists in adherence to climate change, and components of Policy C5 for the economic benefits in employment of workers, the local economy and the assistance given to meet

demands in terms of waste management for the surrounding population. There are also benefits that come from the improvements to biodiversity which is an environmental benefit.

30. Despite these benefits, the impacts of the proposed development are significant when taking into account the minerals and waste strategy for the area. The lack of justification with relation to alternative sites, the hindrance of sand and the loss of agricultural land, together with limited justification to mitigate impacts around living conditions cumulatively have not demonstrated that the site is the most suitable or sustainable location for the extended area that is proposed. Consequently, the appeal location has not demonstrated that it has an overriding economic or environmental benefit in this countryside location.
31. Therefore, taking these findings as a whole, I conclude that the location for the proposed development would not be made in accordance with the minerals and waste strategy, and whilst there are benefits of the scheme in terms of its environmental and economic credentials, these benefits do not outweigh the harms caused to the social and environmental dimensions. The proposed scheme would therefore be contrary to MWLP Policies W5, M8, C1, C5, and C6 as described previously.

Other Matters

32. I refer to previous references around LP Policy 12 around farm diversification. I am not convinced that the proposed development is farm diversification and is certainly not ancillary to the current agricultural operations of the site. The extensive site that would be constructed would go beyond the intentions of this policy and would therefore not be relevant to the consideration of this scheme.
33. I note comments from interested parties over the Appellant's behaviour in terms of undertaking unauthorised development and that based on this that they may not undertake the proposed development in accordance with proposed plans. The previous behaviour of the Appellant is not a planning matter and for the avoidance of doubt has not been considered as part of this determination.

Conclusion

34. For the reasons given above, the appeal is dismissed.

J Somers

INSPECTOR