



Appeal Decisions

Site visit made on 5 August 2025

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2026

Appeal A Ref: APP/X2600/C/22/3310971

Land at Salhouse Road, Rackheath NR13 6LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Gamble Plant (Norfolk) Limited against an enforcement notice issued by Norfolk County Council.
- The notice was issued on 4 October 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from "Land used for sui generis use for the storage of top-soil, sub-soil, recycled construction materials, brick rubble, old fencing and green waste" to "Land used for sui generis use for recycling of Construction and Demolition Waste, the use comprising the deposit, storage, processing and transfer of the waste".
- The requirements of the notice are to:
 - a. Cease the import of waste concrete to the Land.
 - b. Cease the import of mixed Construction and Demolition Waste to the Land.
 - c. Cease the processing and recycling of waste concrete and mixed Construction and Demolition Waste on the Land.
 - d. Remove all waste concrete from the Land.
 - e. Remove all stocks of mixed Construction and Demolition Waste on the Land.
 - f. Cease the storage of waste concrete on the Land.
 - g. Cease the storage of mixed Construction and Demolition Waste on the Land.
 - h. Cease the storage of plant used solely for the processing of waste of the Land.
 - i. Remove all buildings and storage units from the Land.
 - j. Remove all screening bunds from the Land.
 - k. Remove the palisade fence from the boundary between the Land and Salhouse Road.
 - l. Cease the use of the Land for the recycling of Construction and Demolition Waste, comprising the deposit, storage, processing and transfer of the waste.
- The periods for compliance with the requirements are: Requirements a, b and c 30 days, requirements d, e, f, g and h 60 days and requirements i, j, k and l 180 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). The appeal brought on ground (a) was withdrawn by the appellants on 16 December 2022.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal B Ref: APP/X2600/W/22/3297911

Land south of Salhouse Road, Rackheath, Norwich, Norfolk NR13 6LD

- 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 Gamble Plant (Norfolk) Limited against the decision of Norfolk County Council dated 12 November 2021.
- The application, dated 14 August 2020, has reference FUL/2020/0064.
- The development proposed is Retrospective Application for a change of use to a Sui Generis use for the storage of top-soil, sub-soil, recycled construction materials, brick rubble, old fencing, green waste and concrete, and construction and demolition waste processing/recycling, the siting of mobile processing plant, offices, associated infrastructure and the construction of amenity bunds and landscaping.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. A significant period of time has elapsed since the issue of the enforcement notice in October 2022 and the submission of the two appeals. The Norfolk Minerals and Waste Local Plan 2023 to 2028 was adopted in May 2025 and the Greater Norwich Local Plan was adopted in 2024. National policy also has been revised, including the National Planning Policy Framework, published in December 2024. The appellant and Norfolk County Council (NCC) were invited to update their respective cases, in so far as there may have been any relevant changes in fact or in policy.
2. The appellant's supplemental statement of case included a new noise assessment dated 23 May 2025. In view of earlier representations by an interested party, which raised concerns about noise, they were given the opportunity to make further representations. The appellant then responded with final comments in October 2025. My Decisions take full account of all representations on the appeals, including those made since July 2025. NCC confirmed the adoption of both plans reinforced its decision to refuse planning permission and the enforcement notice was not withdrawn. The two appeals remain to be determined.
3. The appellant made an application for an award of costs against NCC in relation to Appeal A and Appeal B. The application is the subject of separate Decisions.

The Land and the LDC

4. The two appeals relate to the same area of land (0.6 hectares) on the south side of Salhouse Road, between Sprowston and Rackheath.
5. In tracing the planning history of the land the appellant referred to use by Norfolk County Council Highways Operations from late 2000 to 2012 when, at least between 2004 and 2011, some processing took place. The land was sold in 2012 to a landscaping and fencing business, a licensed waste carrier.
6. A certificate of lawfulness of existing use or development was issued by Broadland District Council (the LDC) and is of particular significance in the planning history. The LDC certified that on 20 July 2016 the lawful use of the land was 'sui generis use for the storage of top soil, sub-soil, recycled construction materials, brick rubble, old fencing and green waste'.
7. Section 191(6) of the 1990 Act¹ provides that "the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed." On that basis, the use described in the LDC was protected from enforcement action on the date of the application and will remain so unless and until there is a material change in circumstances.
8. The interpretive principles that apply to planning permissions apply to LDCs. Where the scope of an LDC is clear and unambiguous on its face, extrinsic evidence is irrelevant. A local planning authority cannot import limitations into the LDC, nor can the scope of the development found to be lawful be expanded. Planning Practice Guidance emphasises the importance of precision in the terms of any certificate so there is no doubt about what was lawful on a particular date as any subsequent change may be assessed against it.

¹ All references to the 1990 Act are to the Town and Country Planning Act 1990 (as amended) unless otherwise stated.

9. The terms of the LDC are the benchmark to assess the materiality of any subsequent change in the character or intensity of the certified use and to conclude on whether a subsequent use on the site would amount to development under section 55 or be permitted under a development order.

10. NCC submitted that Broadland DC wanted to strictly control the materials that could be stored and therefore restricted the use to a sui generis use for the storage of a short list of materials, even though the applicant asked for a B8 storage use. NCC also acknowledged that the LDC allows the importation and storage of a variety of waste materials and recycled construction materials. The appellant demonstrated that the stated list could include a range of materials and considered the LDC confirmed the site has an existing waste management use.

11. A lot of information was submitted about the use of the land by NCC as highway authority and much less about the use by the subsequent owner/occupier landscaping business. The description of the use found to be lawful is specific in listing the materials stored over the relevant period, which reflected the items identified in the documents stated on the certificate. The use is described as sui generis, not a Class B8 storage and distribution use. The content of the LDC, such as the list of materials stored, cannot be amended through this appeal. No reference is made to the processing of waste materials and on that basis there is no ambiguity in the phrase “recycled construction materials”. The word ‘recycled’, when read with the word ‘storage’ has the meaning that the materials have undergone processing, in the sense that the act of treating and /or changing has been carried out off-site². The range of materials is potentially wide. No development authorised by a planning permission has been carried out since the LDC was issued.

12. The LDC is not a planning permission, although pursuant to section 191(7), a certificate in respect of any use has that effect for the purposes of section 36(2)(a) of the Environmental Protection Act 1990 in relation to waste licensing.

APPEAL A

13. The appellant made extensive submissions challenging the expediency of the enforcement action taken by NCC. Case law has confirmed that expediency is not a matter for consideration in an appeal under section 174 of the 1990 Act and therefore I will not be coming to any conclusion on the matter as part of my Decision.

14. In the legal grounds of appeal the onus is on the appellant to prove their case on the balance of probability. To succeed, the appellant has to show the alleged new use has not taken place (ground (b)) or if it has, that the use does not amount to a breach of planning control (ground (c)).

Appeal on ground (b)

15. Section 174(2) of the 1990 Act sets out the grounds on which an appeal against an enforcement notice may be brought. In respect of any breach of planning control which may be constituted by the matters stated in the notice, ground (b) is that those matters have not occurred.

² Recycling is defined in Article 3 (17) of the EU retained law Waste Framework Directive (2008/98/EC) as “...any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.”

16. The issue here is whether as a matter of fact the land was used for recycling of construction and demolition waste, the use comprising the deposit, storage, processing and transfer of the waste.

17. The grounds of appeal confirmed that the appellant company rented the site from April 2017 and bought the freehold in 2018. Construction and demolition waste was imported. Occasional processing began in 2019 and became daily (workdays only) from January 2020 to late 2021. The processing plant was removed from the site on 7 January 2022 and processing was restricted to 28 days per year from January 2022. More particularly, the appellant confirmed following NCC's email dated 9 February 2022, the operator kept within the 28 day limit³ and that crushing took place on 21 days in 2022⁴.

18. In response to a Planning Contravention Notice (PCN) dated 16 December 2021, the appellant stated the current mobile crusher was first brought onto the site in March 2020. Between 14 December 2020 and 13 December 2021 the two items of plant on site were a mobile, self-propelled, jaw crusher and a 360° excavator. The appellant confirmed over this period processing of materials did take place and the site was generally open, although not necessarily processing material, on most weekdays. Throughout that period crushing activities averaged just below 3 hours per normal working day (i.e. Monday to Friday) across the year.

19. Representations from an interested party included a timeline of events from 24 February 2020 to 31 December 2021 that recorded daily processing and crushing of concrete exceeding the 28 day limit. One entry for 3 February 2021 to 4 November 2021 stated "Gambles continue to process and crush concrete from site daily (Mon-Fri)." Processing continued five days a week through to the end of the year with a short Christmas break. The record for the period 1 January 2022 to 31 December 2022 is that the appellant continued to process and crush concrete under the 28 days permitted rights.

20. The evidence, including that of the appellant, demonstrates the use of the land for recycling of construction and demolition waste took place as a matter of fact. It is sufficient for the alleged use to have occurred, the wording of the statute does not require the alleged use to have taken place on the day the notice was issued. Consequently, the description of the alleged breach does not require correction to reflect current practice of processing of the waste up to 28 days per year. Furthermore, to do so would cause injustice to NCC.

21. To conclude, the use of the land for recycling of construction and demolition waste as described in the notice took place as a matter of fact. The appeal on ground (b) fails. Whether a material change of use of the land occurred is a matter for the appeal on ground (c).

22. In the submissions made in 2025 the appellant uses the term construction, demolition and excavation waste (CD&E) when referring to materials imported to the site⁵. No case was made by either party that this term should be used in the description of the allegation and so the matter is not considered further.

³ Appellant's Final Comments March 2023 paragraph 53

⁴ Appellant's Final Comments on third party representations paragraph 52

⁵ Norfolk Waste Local Plan Glossary: CD&E waste can be in the form of certain types of: Construction wastes (e.g. surplus supplies of materials specifically required for a single project as well as waste originating from site preparation), Demolition wastes (e.g. used material resulting from demolition activities); or Excavation wastes (e.g. usually consisting of soils and stones which cannot be used beneficially, such as from tunnelling operations, the soil component may not be inert).

Appeal on ground (c)

23. The issue for consideration is whether the use of the land for a sui generis use for recycling of construction and demolition waste constitutes a breach of planning control, having particular regard to permitted development rights for temporary uses of land and whether a material change of use occurred.

24. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). Article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 to the Order. In Schedule 2, Part 4 concerns temporary buildings and uses. Class B, temporary use of land, permits “The use of any land for any purpose for not more than 28 days in total in any calendar year and the provision on the land of any moveable structure for the purposes of the permitted use.” Development is not permitted in the circumstances described in B.1, none of which apply to the use on the Salhouse Road site.

25. The effect of Class B is to allow up to 28 changes of use on each of the days permitted per year rather than granting a single planning permission afresh each calendar year. Land has to revert to its normal use after each occasion of temporary use and all structures associated with the temporary use must be removed. The permission granted through the Order only extends to a temporary use of land and it does not cover an unauthorised change of use which is intended to be permanent from the start. The onus is on the appellant to produce evidence to show the use was temporary. In determining whether a proposed use would be temporary or permanent, important factors to consider are duration and the reversion of the land to its normal use.

26. There is no statutory definition of ‘material change of use’. The development is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual circumstances of a case⁶. The planning unit is a means of determining the most appropriate physical area against which to assess the materiality of change.

27. The planning unit is the area of land occupied by the appellant and is the rectangular area of land identified on the plan attached to the enforcement notice. The lawful primary use of that land was derived from the LDC and which is repeated in the description of the alleged breach.

28. The early history of the land is not certain, with the appellant disputing an agricultural use. On an aerial photo dated 1999 the land had well-worn tracks and was distinct from the adjoining fields in agricultural use to the west and south. Moving on, by 2004 the local highway authority was using the land for materials’ storage in connection with highway works, vacating the land around July 2011. The land was sold to a landscape gardener for use as a compound in association with their business. Photographs show that in 2011 the site was at least in part covered in hardcore and some bunding was in place. In August 2016 vegetation had re-established over much of the land. In November 2017 the northern half of the site was covered in hardcore and extensive stockpiles of materials were visible. The series of aerial images of the land 1999 to 2022 show a very significant change in the extent of land covered and the

⁶ Planning Practice Guidance: When is permission required? Paragraph: 011 Reference ID: 13-011-20140306

amount of materials stored when in the appellant's ownership compared to the period before.

29. The appellant placed much emphasis on the period of use by NCC highways but that period alone is not the comparator. The references to the dumping, storage and distribution of waste in the submitted documents related to proposals for residential development of the site. They have little relevance and weight as the language might have been exaggerated and inaccurate to promote the benefits of a residential use. The description of the lawful use in the LDC is the benchmark. The focus should be comparing the alleged primary use with the use found to be lawful on 20 July 2016.

30. The enforcement notice describes the alleged unauthorised development as a material change of use of the land to a sui generis use for recycling of construction and demolition waste. The notice further states the recycling use comprises the deposit, storage, processing and transfer of the waste. The new primary use is described as a single 'sui generis' use where several activities take place. Construction and demolition waste is brought to the site, deposited and stored there, processing is carried out and materials transferred to vehicles to be removed from the land. An important component of the use is the processing of materials, requiring the use of a mobile crushing and processing plant. This element distinguishes the alleged new use from the previous certified lawful use, primarily for the storage of various types of soils and building materials.

31. The appellant explained the vast majority of waste received at their Rackheath site comes from housing development projects. The waste materials received on site were sorted by an operative using a 21t excavator into heaps of different types of materials. Four heaps were identified, where the bulk comprised asphalt, concrete, bricks and soil, as shown on photographs of the site including one dated 15 March 2021. The sorting stage assisted processing into different types of recycled aggregates.

32. Since the occupation of the land in 2017, the appellant's evidence accepted occasional processing took place from 2019 and that processing was carried out daily January 2020 to late 2021, a period of about 2 years. Subsequently processing is said to have been restricted to 28 days per year following an email from NCC dated 9 February 2022. The reasoning on the ground (b) appeal has set out evidence on the use over this period from the appellant and in third party representations, which is very relevant to the ground (c) appeal.

33. Furthermore, the appellant applied for an environmental permit for an A15 material recycling treatment facility on 17 May 2018. A permit was issued by the Environment Agency on 5 October 2018 (EPR/FB3101FE). In summary, the permitted activities included recycling/reclamation and the storage of waste pending treatment. The maximum quantity of waste accepted at the site for treatment was limited to no more than 75,000 tonnes per year. The permitted activity was described as sorting, separation, screening, crushing and blending of waste for recovery as a soil, soil substitute or aggregate. Photographs taken by an officer of NCC show large stockpiles of waste on site on 23 October 2018. Aerial images dated July and August 2019 show a hardcore surface and stockpiles extended across the whole site. The appellant confirmed to the Committee a breaker was put on the site in mid 2020 but was subsequently removed.

34. NCC submitted information from the Waste Data Interrogator to show imports and exports of waste from the site. In 2020 input amounted to 16,157.53 tonnes. All was

construction and demolition waste except for 704t categorised as naturally occurring minerals. The output 31.44 tonnes was categorised as ferrous metal waste and scrap and mixed metal wastes. In 2021 a total of 20,446 tonnes were received, with 292.25 tonnes of naturally occurring minerals removed⁷.

35. The appellant disputed this data demonstrated 99% of the material on site was processed. The appellant's explanation was that some materials were reused and recycled without any need for processing. Clean soils, clean aggregate and some more basic materials can be removed from the site as materials that need not meet any technical specification⁸. In addition, other materials were occasionally removed from the site for processing elsewhere to ensure space was available to accept materials from local customers. No specific data was produced to confirm the point made, although the Environment Agency when referring to waste returns data for April to June 2023 acknowledged returns do not account for materials removed as non-waste. Nevertheless, the appellant accepted since Gamble has operated the site, the largest annual throughput was in 2020/21 when it handled approximately 32,000 tonnes pa of materials. In 2022 throughput reduced to approximately 15,000t and in 2022-25 throughput has been less than 5000t per annum⁹. The probability is a high proportion of waste imported to the site was processed in 2020 and 2021.

36. The Council served a Planning Contravention Notice on 16 December 2021, the start of 'the enforcement phase'. In the following year, photographs dated 27 January 2022, submitted by the appellant, are said to show stockpiles of soils, rubble, construction and demolition waste generally below 4m high. An excavator was on site to manage the stockpiles but no processing plant. A pile of manure had been deposited by a farmer for spreading on the adjacent field to the west. As a direct result of an email from NCC dated 9 February 2022, the appellant stated operations on site were changed. Processing was restricted to 28 days per year and Gamble ensured its plant was always removed from the site immediately processing was completed. An excavator, mobile water and fuel bowzers were used on-site in relation to the waste stored, while a mobile processing plant was based off the site and brought onto the land occasionally. Since Appeal B was made in early 2022 the site continued to operate as a storage facility for construction, demolition and excavation waste and on a limited number of occasions per year (not exceeding 28 days per annum) processed material stored on the site. There was no material difference to the materials stated in the LDC.

37. Operations were adjusted in response to dialogue with the Environment Agency during 2022 to reduce the environmental impact. Changes were made to operational activity so that plant was sited towards the southern end of the site and stockpiles were used to act as a sound barrier. Operational hours were reduced to weekdays only 0700-1630 hours and broken into 3 x 2.5 hr periods. Dust suppression equipment was used and noise management upgraded. The installation of mains water and electricity in 2020 had removed the need for generators and dust suppression measures. Ground level was reduced where the crusher was located so that the plant was lowered compared to the bunds¹⁰.

38. NCC do not dispute that since January 2022 the use of the site for processing was within the limit of 28 days in a calendar year. They argue that latterly materials were stockpiled solely for the purpose of the processing operation that was carried out in a

⁷ NCC's statement of case paragraph 13.8 Appendix 20

⁸ Appellant's Final Comments paragraph 129

⁹ Paragraph 76 response to the 3rd parties updated comments

¹⁰ Appellant's Final Comments March 2023 paragraph 65

short, concentrated time. NCC photographs dated 16 August 2022, shortly before the notice was issued in October 2022, show piles of mixed construction and demolition waste. NCC's evidence also included a site visit report by the officers of the Environment Agency on 14 September 2022¹¹. The report described 3 x 360 degree excavators and 1 mobile crusher in operation. A second crusher (also mobile plant) had broken down that morning. Crushing had taken place the previous day. It was understood that since 7 January 2022, whenever waste treatment took place 2 mobile crushers were on site and crushing took place over 2 to 3 consecutive days. The activity taking place at the time of the visit was described as excavators moving the waste, loading the crusher and the crusher crushing the mixed demolition and construction waste. Noise was heard some 85 metres away.

Conclusions

39. The LDC description of the lawful use is the main point of reference. The lawful use did not include the processing of materials whether as a primary or ancillary use.

40. The acquisition of the land by the appellant led to a significant increase in the amount of materials stored on the land. The overall level of activity increased and appellant's operation included the processing of waste materials from 2019. The use required an environmental permit. A different type of plant was brought onto the site in the form of a mobile crusher. The noise environment changed, especially during periods when the crusher was in operation. Dust was more likely to be significant. The number and pattern of vehicle movements would have changed as a result of the increased amounts of waste transported to and from the site for storage, processing and removal over 2020 and 2021. Over this period the appellant described a daily (Monday to Friday) processing operation, consistent with a level and type of activity recorded by neighbours and data on annual throughput. The intrusive impacts on amenity were a marked contrast to the position pre-2017.

41. As a matter of fact and degree, the evidence for 2020/2021 shows a significant difference in the character of the activities from what had gone on previously. The waste processing was not in the form of the occasional introduction of a temporary use. Development in the form of a material change of use took place. The material change of use that took place around January 2020 exceeded the 28 day time limit and was not authorised by Class B Part 4 of Schedule 2 to the Order.

42. The appellant's evidence is clear that early in 2022 the operation on site was scaled back as a result of NCC's enforcement investigation and in particular the daily processing activity ceased. At that point in time the unauthorised use ceased and the pattern of operations changed again. Subsequently, processing was confined to the 28 day time period. There is no evidence to the contrary.

43. The reversion back to short periods of processing activity does not alter the fact a breach of planning control as described in the notice occurred, probably at the beginning of 2020. The material change of use was not permitted development. The appeal on ground (c) fails.

Appeal on ground (f)

44. The issue is whether the requirements are excessive to achieve the purpose of the notice.

¹¹ Council's statement of case Appendix 19

45. The purpose of the notice is to remedy the breach of planning control and to restore the land to the condition it was before the breach took place. By reason of the wording of section 173(3) and 173(4) it is not open to the appellant to argue the notice should have a different purpose, such as to remedy injury to amenity or that provisions on under-enforcement should be included. The ground (c) appeal was not successful and the requirements must be considered against that conclusion. The requirements also should be considered separately from Appeal B, remembering that in the event planning permission is granted the provisions within section 180 would come into effect, where a planning permission would override the notice so far as that is inconsistent with the planning permission.

46. The requirements are directed at individual elements of the sui generis use, distinguishing waste concrete from mixed construction and demolition waste and identifying distinct components and stages, related to the importation of materials, processing and recycling, removal of waste materials and cessation of storage. The same result would be achieved by requiring the sui generis use described in the breach of planning control (recycling of Construction and Demolition Waste, comprising the deposit, storage, processing and transfer of the waste), to cease and the removal of all Construction and Demolition Waste materials.

47. Case law has established a principle that where works are carried out to facilitate or are integral to a material change of use the enforcement notice may require the removal of those works in order to remedy the breach and restore the land. This principle is relevant to requirements (i), (j) and (k).

48. The appellant initially argued that the buildings and storage units in step (i) should be allowed to remain until Appeal B had been decided as they were consistent with the existing use of the site. In later submissions, the appellant relied on the view of an officer at Broadland DC that the portacabin was in use as an associated temporary structure and was also considered permitted development.

49. The reference to the development in Appeal B indicates the units were intended to be permanent to serve the waste recycling use. The photographic evidence of the appellant and the Council indicate the units probably were not present in October 2018 or August 2019 but were on site in March 2021. My conclusion is the units in step (i) were introduced to facilitate the material change of use and to require their removal is not excessive.

50. The erection of the palisade fence and the formation of bund(s) are not identified as acts of operational development within the allegation, NCC regarding them as facilitating works. The appellant accepted the palisade fence was a new structure needing planning permission but maintained the fence was permitted development, relying on advice from Broadland DC. In the alternative, the fence was erected more than four years before the notice was issued. The appellant also stated the bunding was formed before the company acquired the land and was immune from enforcement action.

51. The matter of the fence was not pursued through the ground (c) appeal, nor were the fence and bund the subject of a ground (d) appeal. I will therefore consider their required removal through ground (f), on whether they amount to excessive requirements.

52. When the appellant first occupied the site photographs show the boundary along the site frontage was marked by a post and rail fence. Subsequently the timber fence

was replaced by a 1.8m high palisade fence, with splayed returns and gates at the vehicle access point. A plan with details of the fence was submitted with the Appeal B application and the image of the frontage shows a narrow verge between the fence and the highway. I conclude the fence is adjacent to the highway, is more than 1m in height and is not permitted development under Class A, Part 2 to Schedule 2 of the Order.

53. The appellant's evidence on when the fence was erected consists of an invoice dated 4 October 2018 for works completed to the end of September. The works were described as the erection of palisade fencing and gates to match. NCC's evidence is in the form of photographs showing the site frontage without the palisade fencing and gates in place. The photos are given the date of 23 October 2018 (taken from the file name) but the date is not displayed on the images. The evidence is contradictory and inconclusive on whether the fence was substantially completed by 4 October 2018, four years before the issue date of the notice. The onus of proof has not been discharged by the appellant.

54. The photographic evidence of NCC¹² indicates a low bund was formed along at least part of the western boundary by July 2011, which then appeared to become covered in vegetation and to remain in place through to at least 2022. A bund did not appear to exist along the southern boundary in October 2018.

55. The appellant submitted the perimeter bund had been in place since at least 2011. However, the appellant's series of aerial and street view photographs 1999 to 2022 are not very clear throughout the period on the extent and position of the bund(s), especially without annotations. The extent of the operational area on and near the eastern boundary appears to have shifted over time involving a loss of vegetation. The 2016 image shows a bund along the eastern boundary but that position is not reflected in November 2017. A vegetated bund on the western boundary also stands out on that 2017 image, a feature that is evident on a street view image of 2021. The aerial image suggests a bund along the southern boundary in 2022, which possibly had been in place since 2019.

56. Another source of evidence is a site plan submitted to Broadland DC in February 2013. The plan indicated an existing 1.5m soil and hardcore bund with foliage on top along the side and rear boundaries. The information is not consistent with the aerial images and has little weight. The most useful and reliable source of information is the Ecological Assessment November 2020, which included a habitat survey undertaken in October 2020. The report recorded a recently created earth bund along the western and southern edges of the site, where some common grasses and ruderal vegetation had become established. Along the eastern boundary were a number of mature and semi-mature trees.

57. The requirement is to remove all screening bunds from the land. The bunds are not indicated on a plan and unlike the requirement for the palisade fence the position of the bunds to be removed is not identified precisely. The probability is the bund along the western boundary pre-dated the material change of use and the earlier use of the land by the appellant. The timing of the formation of bunds elsewhere around the site is uncertain and the screening purpose is equally applicable to a storage use as well as a processing use. My conclusion is requirement 'j' is not specific, is excessive and should be deleted.

¹² Appendices to statement of case

58. In summary, the requirements will be made more concise and omit repetition. Requirements a, c, d and f specific to the import, processing, storage and removal of waste concrete should be deleted, together with requirements c and g on individual elements of the sui generis use, and the excessive requirement j to remove the bunds. To this extent the appeal on ground (f) succeeds.

Appeal on ground (g)

59. The issue is whether the compliance periods are reasonable.

60. The appellant accepted the period of 30 days to cease the import of waste concrete and of mixed construction and demolition waste (requirements (a) and (b)). Substantially longer periods were put forward for the remaining requirements, ranging from 286 days to 485 days, to allow for the processing of existing materials on site, to take account of operational and economic reasons and to maintain safety and security.

61. The National Planning Policy Framework confirms effective enforcement is important to maintain public confidence in the planning system. Within this policy context the length of the compliance period should take into account what the recipient of the notice will have to do in practice to carry out the remedial steps and consequently how much time is reasonable for that purpose. The amenity of local residents near the site is an important consideration too. In summary, the period(s) should be as short as can reasonably be allowed and a compliance period should not normally exceed one year.

62. Evidence submitted for Appeal B indicated the amount of waste material stored on the site was reduced after 2022, partly in response to achieve compliance with the requirements of the environmental permit on management of operations on site. The appeal site visit indicated this remains the position. Therefore, even if existing waste on site is processed before removal, the period suggested by the appellant (9 to 10 months) would be excessive. Following the proposed variation to the requirements the perimeter bunds would not have to be removed, substantially reducing the amount of material required to be removed from the site and the extent of the remedial work. However, on appeal a compliance period cannot be made more onerous than stated on the notice. In that respect the 180 days for ceasing the unauthorised use (requirement l) is a decisive consideration.

63. My conclusion is the varied requirements should be subject to two compliance periods, 30 days to cease the import of any further mixed construction and demolition waste and a single period of 180 days for the cessation of the unauthorised sui generis use and the removal of stocks of materials, plant, buildings and storage units and palisade fence that facilitated the unauthorised use. To that extent the appeal on ground (g) succeeds.

Overall Conclusion

64. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with variations to the requirements and compliance periods.

APPEAL B

The Proposal

65. The description of the development on the planning application form is “Proposed operation of a mobile processing plant, amenity bund, associated office and

administration facilities.” The description of the development on the decision notice is “Retrospective Application for a change of use to a Sui Generis use for the storage of top-soil, sub-soil, recycled construction materials, brick rubble, old fencing, green waste and concrete, and construction and demolition waste processing/recycling, the siting of mobile processing plant, offices, associated infrastructure and the construction of amenity bunds and landscaping.” This description also is stated on the appeal form even though the appellant agreed before the application was determined that the words ‘old fencing, green waste and’ be deleted.

66. I will determine the appeal on the basis of the description on the appeal form, having had regard to the discussions at the time of the validation of the application, correspondence on the withdrawal of the ground (a) appeal and other related matters. The description should read ‘material change of use’ in view of the meaning of development in section 55 of the 1990 Act.

67. The inclusion of the word ‘retrospective’ in the description confirms planning permission is sought under section 73A of the 1990 Act for development already carried out. According to the NCC, the plant had been operating on the site and some of the bunds and security fencing had been erected. The application form (dated 14 August 2020) indicated Yes to the question has the work or change of use started, giving 1 January 2020 as the date when the work or change of use started. This information is consistent with the conclusion in the ground (c) appeal.

68. The proposed site layout for determination (plan LD132-RH-003c) shows a stock yard on the area on the front half of the site, with the portacabin office buildings in the north east corner. The mobile crushing and processing plant would be sited on the southern area of the site, near to a stockpile of incoming inert waste to the east. Bunds of 2m and 3.5m partly enclose the land on the western side and rear boundaries.

69. After NCC’s decision on the application, a typical operational layout plan based on the LDC use was submitted with the appeal documents. This plan shows two mobile processing and crushing plants on the front area of the site and a stockpile on the rear part of the site up to 8m high with 12m high a possibility (plan LD132-RH-007). The fallback position and the LDC are considered in the next section. Moreover, the ability to achieve this intensity of use through permitted development rights and within the limitations imposed through the permitting regime has not been demonstrated.

70. The appellant has explained the company’s main waste management facility is based in Fakenham. The Salhouse Road site is operated as a satellite base because most construction, demolition and excavation waste is generated close to Norwich. The Planning Statement (July 2020)¹³ set out the reason for the application. Permitted development rights allow for 28-day temporary use of the site for crushing and screening of this material. The applicant wished to make permanent the crushing and screening of waste material to avoid large build ups of waste materials between annual processing periods and to enable effective site management. The intention at that time was the proposed processing operations would operate as a stand-alone permission and would sit alongside the LDC i.e. the new permission would not replace the LDC.

71. The throughput of material would be restricted to 50,000 tonnes per year and a planning condition is proposed with this limitation. This amount is significantly less than the maximum quantity of waste, 75,000 tonnes per year, allowed under the environmental permit. It is significantly more than the throughput figures given for 2020

¹³ The Planning Statement (July 2020) paragraph 3.10

to 2025 and considered in the ground (c) appeal. Provision to carry out waste processing and recycling Monday to Friday throughout the year would be a substantial change from a maximum of 28 days.

The LDC

72. The appellant submitted in the statement of case dated February 2022 that the use certified as lawful by the LDC represents the baseline scenario if permission is not granted. This position has been maintained.

73. The determination of the planning application in November 2021 pre-dated the issue of the enforcement notice in October 2022. The planning application was made retrospectively for the development, namely a material change of use. Furthermore, the appellant's evidence for the ground (c) appeal accepted daily processing took place from January 2020 to late 2021 and I have concluded that a material change in the use of the land took place.

74. Case law has established that accrued planning rights (whether they be those with the benefit of planning permission or otherwise lawful as defined in section 191(2) of the 1990 Act) can be lost when a new planning unit is formed or a new chapter in the planning history is opened. In this case as a matter of fact and degree the change was of such a character that the planning status following the change was inconsistent with the preservation of the prior existing use. Therefore on the established timeline the lawful use rights described by the LDC were lost and the use of the land could not revert back to the former LDC sui generis use without planning permission.

75. Some months later the enforcement notice was issued. The land identified by the notice is the same area of land that is the subject of the planning application/appeal and is the same planning unit. Section 57(4) of the 1990 Act provides "Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out."

76. The purpose of section 57(4) is to create an exception to the requirement set out in section 57(1) that planning permission is required for the carrying out of any development of land. Absent section 57(4) express planning permission would be required for a material change of use from an unlawful use, which was the subject of an enforcement notice, back to the lawful use which had been extinguished by the material change of use which is enforced against. So, section 57(4) is a practical provision which allows land in respect of which an enforcement notice has been issued to revert to the preceding lawful use without the need to go through the process of obtaining express planning permission. There is an important qualification in that the ability to revert to the use immediately preceding the use enforced against only applies where the preceding use was itself lawful.

77. Applied to the facts and history of the case, the LDC described the lawful use of the land on 20 July 2016. The appellant's use of the land commenced in 2017 and was used for the importing of construction and demolition waste, continuing into 2018. In 2019 occasional processing and recycling of waste took place under the 28 day permitted development right. The daily processing of waste in 2020, described in the appellant's evidence, resulted in a material change of use. The lawful use rights of the LDC were lost. In early 2022 the reversion back to the 'LDC' use for importing and storage use for waste materials required planning permission – the rights under section

57(4) did not apply at that time. The subsequent processing and recycling use relying on permitted development rights was not lawful. Article 3(5) of the Order states the permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing use, that use is unlawful.

78. The appellant in relying on section 57(4)¹⁴ did not allow for the materially different use of the land in 2020 and the cessation of the recycling use before the notice was issued. When considering the land benefitted from a permanent permission for an existing waste management use (with reference to section 191(7) of the 1990 Act) the appellant did not take sufficient account of the limitations of the LDC and that lawful use rights may be lost. The ‘fallback’ described by the appellant has very little weight as a consideration.

79. The central issue in the appeal remains the planning merits of the submitted scheme and whether the use is in accordance with the development plan.

The Development Plan

80. The Norfolk Minerals and Waste Local Plan 2025 (the NMWLP) is now the key document. Policy WP1 states sufficient capacity currently exists to meet the growth forecast in waste arisings and no specific sites are allocated for waste management facilities. Waste management proposals are still expected to come forward. Policy WP2 provides a spatial strategy and Policy WP3 identifies suitable types of land for the location of non-hazardous waste management facilities. Policy WP4 reaffirms proposals for recycling or transfer of inert construction, demolition and excavation waste will only be acceptable on the types of land identified within Policy WP3. Policy WP16 requires high quality design. The supporting text recognises layout and design can help to reduce potential adverse impacts. Proposals meeting the spatial and land suitability requirements must also comply with the development management criteria in Policy MW1.

81. Applying these policies to the proposal, the site is within five miles of the Norwich urban area, is accessible via appropriate transport infrastructure and is previously developed land. The Policy MW1 development management criteria in dispute are local amenity and health, quality of design and effect on the appearance, quality and character of the landscape, countryside and visual environment.

82. The NMWLP policies identified above are the most important for determining the appeal because they are specific to a waste management facility. The Greater Norwich Local Plan adopted in 2024 (the GNLP) identifies a strategy for growth and the sites to deliver the strategy. The GNLP acknowledges that it does not cover minerals and waste issues. NCC has drawn attention to Policy 2, in respect of avoiding risks of unacceptable air or noise pollution and Policy 3 regarding the enhancement of the natural environment. The appellant considers the GNLP relevant because it defines the future sources of construction, demolition and excavation waste through the site allocations. One of the strategic allocations STR.10, an area of some 66ha, is to the north of Salhouse Road, east of Sprowston, where 1,000 to 1,200 homes are expected to be accommodated.

83. The purpose of the North East Growth Triangle Area Action Plan adopted July 2016 (the AAP) is to enable and coordinate sustainable strategic scale development to the north east of Norwich. The Vision is that by 2034 the Growth Triangle will have

¹⁴ Appellant’s Supplemental Statement of Case paragraphs 103 to 107.

developed into a special, distinct and exciting place through the delivery of new homes, employment opportunities, services, facilities and key infrastructure across a number of coordinated development sites based around walkable neighbourhoods and local centres. The appeal site is within a landscape buffer, part of the landscape setting to the future built edge of the city.

84. The Rackheath Neighbourhood Plan 2017 (the RNP) does not impose any additional policy requirements. The RNP is under review. The independent examination has finished and the examiner submitted their report to Broadland District Council. The examiner concluded that, subject to a series of recommended modifications set out in the report, the revised Neighbourhood Plan meets all the necessary legal requirements and should proceed to be made by the District Council, without needing to progress to a referendum. The appellant has questioned aspects of the process and the review of local heritage assets, matters that are not for my consideration. For the purposes of Appeal B, the RNP remains the relevant development plan document. The RNP does not include South Lodge (East) and South Lodge (West) or Rackheath Park in the list of Local Heritage Assets identified by Policy ENV5.

Main Issues

85. The reason for refusal was based on adverse environmental impact and did not include any reference to adequacy of capacity of existing waste management facilities. Having considered the updated statements and the new development plan policies, including those policies for assessing proposed new waste management facilities, I do not intend to examine the need for the facility.

86. The main issues are the effects of the development on the character and appearance of the surrounding area and on the amenity and living conditions of the occupiers of nearby properties, taking account of the role of planning conditions in mitigating any adverse effects.

Character and appearance

87. The site is located on the edge of Norwich, outside the main built-up area. The farmland to the east, south and west and the area of mature woodland to the north of Salhouse Road are reminders of the countryside location. In recent years a significant amount of growth and new development has taken place, notably through the new housing south of Salhouse Road to the west of the site, the construction of the dual carriageway Northern Distributor Road (A1270) to the east and the new housing on the outskirts of Rackheath. Much more residential development is planned for the area. Nevertheless, the site remains within a swathe of countryside to the west of the A1270, dominated by farmland, parkland and mature woodland. The waste management processing use would be out of keeping with the existing land use character of the surrounding area, the landscape buffer identified in the AAP and the developing residential communities. The harm would be localised by reason of the scale of the facility.

88. The land surrounding the site is gently undulating. When travelling along Salhouse Road, views of the site are mainly local and most apparent at short distance. Bunds and more especially stockpiles are also seen as uncharacteristic features in the landscape when viewed from the south near Thorpe End. The appellant's landscape assessment refers to distant views of the southern soil storage bund and mobile excavator from a bridleway, which indicates the unexpected visibility of the operation.

89. The proposal is to strengthen the bunds around the processing area and the stock yard and to seed the bunds with a low maintenance grass seed mix. The introduction of tree planting is proposed at key points on the bund to interrupt views from nearby residential properties. A hedge is proposed along the base of the bund along the western and southern boundaries to provide a strong visual barrier and to assist in dust control.

90. The proposals for earthworks and planting are in outline and diagrammatic form and would require to be worked up in detail based on accurate survey information. Care and maintenance would be especially important in view of the adjacent operational activity. The proposed plant mix for the hedgerow is primarily of deciduous species which would be beneficial to enhance biodiversity but would reduce the visual effectiveness during the winter months. The proposed seed mix for the bunds does not reflect the ecological enhancement proposals. Even if the planting became established, the visible activity, including the movement of plant on the stockpiles would intrude into local views. The site frontage, incorporating a realigned access and with little screening through boundary treatment, would allow views into the yard, drawing attention to the waste operations. The harm to the appearance of the visual environment would not be successfully mitigated by the proposed landscape scheme.

91. In conclusion, the development would not comply with criterion (h) of Policy MW1 that protects the appearance, quality and character of the landscape, countryside and visual environment from unacceptable impact, especially taking into account the Vision for the area described in the AAP.

Amenity and living conditions

92. The Framework states in paragraph 201 the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. A permit to operate waste operations was issued to the appellant on 5 October 2018 under the Environmental Permitting (England and Wales) Regulations 2016. The permit was subject to conditions on matters related to management, operations, emissions and monitoring.

93. The national planning policies for waste and the Planning Practice Guidance identify the proximity of the site to sensitive receptors as one of the considerations in assessing the suitability of the location and the environmental and amenity effects.

94. The nearest residential properties are South Lodge and South View, approximately 80m to the north west. The adjacent holiday cottages, Poolside Lodges, are closer to the site, the nearest being around 20m north west of the site entrance. The detached property Billig is located in Pigs Park some 300m to the north. As noted above, residential development has expanded in the surrounding area and additional housing at scale is provided for in the GNLP.

Noise

95. The appellant's technical evidence consists primarily of a noise impact assessment dated September 2021 (the 2021 NIA), which superseded the assessment dated June 2020. In December 2022 the appellant's noise consultant submitted a response to NCC's statement of case. More recently in March 2025 a noise assessment was done in response to requests by the Environment Agency (EA) in

connection with regulation of the operation through the environmental permit. This suggests the earlier noise impact assessments and mitigation submitted to the EA were not adequate.

96. The proposed hours of operation have been reviewed. Initially, 24 hour operation for all but the processing function was proposed. The appellant now has accepted a Monday to Friday 0730 to 1630 hours restriction for all operations, a matter that would be controlled through a planning condition.

97. The 2021 NIA reported that a noise survey was carried out in June 2020, during Covid. The representative background L_{A90} noise levels at the properties on Salhouse Road were found to be 42 dBA. Updated noise data was provided in December 2022 when the background noise level (L_{90}) at South Lodge and Poolside Cottages on Salhouse Road was 45 dBA. The local noise environment was said to be dominated by local traffic along Salhouse Road and occasional construction noise did not significantly contribute to measured background noise levels. The lower the background noise, the greater the likelihood that a significant noise impact from the development would be assessed.

98. An accepted methodology was followed and the assessment found the noise impact “Unacceptable Adverse” at the two nearest noise sensitive receptors, circumstances where development should be prevented. The predicted noise exposure at two further noise sensitive receptors was considered to be “Significant Observed Adverse”, where the guidance indicates avoid development. As part of the assessment noise measurements were carried out on plant when in operation. The noise from the crusher was found to dominate noise from the excavator and was described as continuous, non-tonal and characteristic.

99. The proposed mitigation measures in the 2021 NIA centred on the construction of a 3.5m solid noise bund within the site to effectively create a dedicated crushing area and the siting of plant and orientation of the hopper. The assessment concluded with the proposed mitigation, the development would meet the environmental noise criteria in national planning policy.

100. The March 2025 noise assessment reflected the existing noise environment post Covid restrictions on movement and the completion of nearby residential development. The background noise levels showed variation depending on location, day and time period and typically ranged from 45dB to 54dB. During operational activity, results at the nearest noise sensitive receptors indicated an adverse impact depending on the context. The siting of the crusher made a significant difference to the impact.

101. In the noise management plan 2025, proposals included control on operating hours, siting of the crusher in the identified two locations, the retention of the existing earth bunds, the installation of a new acoustic fence or bund within the site related to the position of the crusher, and controls on use of vehicle/equipment alarms. The appellant has also explained proposals to place the crusher in a shallow bunded pit on the western side of the site and the related changes to the stocks near to the pit. The noise management plan required amendment before final approval by the EA.

102. The accuracy of the noise data submitted by third parties prior to determination of the planning application is questionable and should be considered cautiously because of the deficiencies identified in recording and presentation. However, the investigations by the EA into subsequent noise complaints and the associated Compliance

Assessment Reports are helpful sources of evidence and indicate local concerns about noise from site operations were justifiable.

103. A Compliance Assessment Report dated 20 July 2023 related to a noise management plan (version 3) submitted to the Environment Agency. The plan was informed by the 2021 NIA and was required as a result of a category 3 non-compliance against a permit condition for causing noise pollution beyond the site boundary and not implementing appropriate measures to prevent or where not practically possible to minimise noise. Version 3 was not approved by the EA because it did not define appropriate measures put in place by the operator to mitigate noise, nor did it demonstrate crushing activities would not have an adverse effect on sensitive receptors.

104. Investigations by the EA in August and September 2023 established a number of points. There was not a noticeable difference in the noise level from the crusher when different types and sizes of waste materials were being crushed. The crusher emitted a continuous humming noise and distinct noises emitted by various site activities were identified. On the August visit noise from plant and vehicle movements including tipping was heard in two residential gardens, whilst in the garden nearer the crusher a constant humming noise and other noise from plant and vehicle movements was clear even with passing traffic on Salhouse Road. Noise from materials being loaded into the feed hopper were intermittent and at one point a squealing noise was heard.

105. The appellant has highlighted the subjective nature of the assessments, compared to the empirical assessments carried out to a recognised standard. However, the reports were by experienced officers and better convey the day to day experiences of residents. The range and types of noise is well described and suggest a more thorough assessment than undertaken in the original noise impact assessment. Interestingly the EA's conclusion on the root cause of the minor non-compliance was management of the site, particularly related to the large amount of waste stockpiled and the consequent effects on the siting of the crusher.

106. Investigations in May and October 2024 again resulted in the EA finding noise from activities on the site were at levels likely to cause pollution outside the site and failures in on-site management, such as measures to mitigate noise from the crusher were not in place. The final item in the documentation is a formal request dated 8 January 2025 from the EA for a noise impact assessment and a noise management plan.

Conclusions

107. The small separation distance between the site and the nearest sensitive receptors is an important factor in assessing the acceptability of the waste management facility. The operation of the waste processing and recycling facility would have an unacceptable noise impact on the nearest residential properties unless appropriate mitigation is undertaken. Experience has shown the initial proposals were not adequate to prevent disturbance and loss of amenity.

108. The acceptability of the land use is informed by the mitigation scheme and the ability of the waste planning authority to monitor and enforce its provisions. The control of processes through the environmental permitting regime is complementary.

109. Proposals for mitigation have developed over the last three or four years and a scheme for planning purposes has not been finally resolved. The design of the site

layout is integral to such a scheme. As it stands, the proposals in the mitigation plan are not fully consistent with the current site layout plan, especially in respect of the additional internal acoustic fence or bund and the siting of the crusher. To leave these important and fundamental matters to planning condition(s) is not appropriate or acceptable, bearing in mind the recent history on-site.

110. The scheme does not demonstrate compliance with criterion (a) of Policy MW1 that is concerned with ensuring no unacceptable impact on local amenity and health.

Air quality and dust

111. In terms of existing baseline conditions, the site is not within an air quality management area and no air quality action plan applies. There is no evidence of air quality in the surrounding area being close to, or exceeding, relevant Limit Values.

112. The technical evidence demonstrated the development would not cause a breach of any air quality limits. With reference to tests in the Planning Practice Guidance, the development with mitigation in place would not lead to an unacceptable risk from air pollution, prevent sustained compliance with limit values or national objectives for pollutants or fail to comply with the requirements of the Habitats Regulations or other environmental policies and duties regarding Air Quality Management Areas and Clean Air Zones.

113. The main concern of the statutory consultee¹⁵ was an increase in dust deposition for the nearest residential receptors, which is a reasonable conclusion. Guidance recognises that human response to dust deposition and soiling will vary and probably would be affected by various factors including location and site specific sensitivities. In this instance, homes and holiday cottages, located in a traditionally semi-rural area are within close proximity to the site, and are likely to be highly sensitive receptors. Examples of mitigation identified by Planning Practice Guidance include maintaining adequate separation distances between sources of air pollution and receptors, using green infrastructure as a barrier and controlling dust and emissions from the source.

114. Standard conditions are generally applied to crushing activities through an environmental permit. The dust mitigation plan sets out additional mitigation measures following recognised good practice techniques and which are related to materials processing and handling, stockpiles and recording. The appellant accepted that the dust management plan could form part of a planning condition should amenity be a concern. A purpose of the proposed hedgerow planting at the base of the western and southern boundary bunds is to provide an additional layer of dust control.

115. From the planning point of view of enforcing measures in the dust mitigation plan, amendments to the wording of requirements and inclusion of definitions would assist. Even with the best endeavours, effectiveness of the controls relies heavily on weather recording and site management. The probability is dust would affect the nearest residential properties occasionally, leading to a small loss of amenity.

116. Objectors, with reference to an appeal decision regarding a sand and gravel quarry¹⁶, considered proximity and operational intensity to be critical factors in assessing environmental harm and thought the omission of a PM_{2.5} assessment was an important oversight. The appeal decision was in respect of a scheme to extract 1.75 million tonnes of sand and gravel in an area where air quality was already a significant

¹⁵ Appendix 2 to NCC's statement of case

¹⁶ Appeal decision ref APP/M1900/W/17/3178839 dated 4 April 2019

concern. In view of the substantial differences in scale, operational activities and locational factors, the depth of analysis required for the two proposals is unlikely to be the same and notably the sand and gravel scheme was subject to environmental assessment. For similar reasons, conclusions on air quality and fear of risks to health in that decision do not set a precedent. Planning Practice Guidance on Air Quality confirms assessments need to be proportionate to the nature and scale of development proposed and the potential impacts (taking into account existing air quality conditions) and therefore are likely to be locationally specific.

117. In conclusion, subject to full compliance with an approved dust mitigation plan and mitigation measures, the development would not have an unacceptable impact on local amenity and health by reason of the effects on air quality, including dust. Subject to securing an amended dust mitigation plan, the proposal does not conflict with criterion (a) of Policy MW1 of the NMWLP and Policy 2(7) of the GNLP.

Vibration

118. In general terms, the transmission path between a source of vibration and a sensitive receptor is either through the ground or through the air. No empirical evidence of the measured impact from vibration was provided with the planning application but the appellant's expectation was any vibration effect from the crusher and screen would be due to an airborne pathway. This view was supported when as part of the 2025 noise assessment the perceptibility of vibration produced by the crusher was evaluated. No ground borne vibration was perceived at any of the tested distances from the crusher.

119. In February 2023 the EA investigated a report of a concrete crusher operating on the site and vibrations being witnessed inside a property as a result. No vibrations were substantiated, although crushing operations had ceased and the plant was being removed from the site. No actions were required and no breach of the permit recorded. A Compliance Risk Assessment report dated 20 July 2023 noted a vibration risk assessment had been submitted on 27 February 2023. Later that year further complaints about vibration were investigated by the EA. No clear correlation was found between the intermittent vibrations/rattling objects observed and the activities taking place on site. The source had been eliminated by the time of a follow up visit. The overall outcome was inconclusive.

120. Noise mitigation measures such as a noise bund or barrier to contain the crusher probably would be effective in providing a solid barrier in the airborne pathway between the source and sensitive receptors. Other potential local sources of vibration, such as HGV movements on Salhouse Road unrelated to the appeal site, exist.

121. In conclusion, instances of vibration in homes were observed but a direct correlation with on-site activities was not established. Vibration probably would not have an unacceptable impact on local amenity and health subject to the provision of mitigation. To that extent there would be compliance with Policy MW1, criterion (a). The environmental permit would be the primary means of control and regulation.

Other Considerations

122. Waste hierarchy. The NMWLP recognises that the recycling of construction, demolition and excavation waste makes a significant contribution to meeting the demand for aggregates and reduce pressure on land-won and marine dredged sources of aggregate. Therefore recycling of these wastes provides a sustainable source of

aggregates. Within that context the proposal would promote the sustainable management of waste in accordance with the principles of the waste hierarchy.

123. Access. Having considered the Access Report and the 'no objection' consultation responses from the highway authority I am satisfied the proposed improvements would bring the site access to an appropriate standard. Criterion (c) of WP16 would be met. A high proportion of HGV traffic generated by the operation was expected to use the A1270 Broadland Northway, a short distance to the east. However, the Planning Statement expected slightly more than half the traffic would use that route, given the anticipated market area. At a worst case, throughput of 75,000t per annum would result in 3 movements per hour. I conclude no safety or capacity issues are likely and criterion (g) of Policy MW1 is met. Any amenity loss would be primarily for the residential properties nearest the site access.

124. Heritage. The Framework provides that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

125. No designated heritage assets have been identified near to the site. No heritage-based objection was included in the reason for refusal. South Lodges are not locally listed. NCC considered the impacts on South Lodge and South View as non-designated heritage assets and concluded the less than substantial harm to their significance was offset by the opportunity to secure landscape mitigation. My conclusion is that any heritage significance of South Lodges relates to Rackheath Hall and Rackheath Park and that the main issues adequately cover the effects of the development on these properties. There is no conflict with criterion (e) of Policy WP16.

126. Site facilities. The proposed site office and welfare facility would be small portacabin units, positioned in the north east corner of the site. The units would be functional but would not display the high design qualities expected in permanent development. The site layout plan has no details of the layout and treatment of the parking area adjacent, and overall little thought appears to have been given to this area of the site. Requirements of Policy WP16 on the quality of design have not been addressed or met.

127. Other development management criteria. No objections have been raised in respect of the quality of waterbodies and groundwater, the capacity of drainage systems or flood risk. The ecological assessment adequately considered the presence of statutory and non-statutory nature conservation designations in the surrounding area and no adverse effects were identified. No public rights of way pass near the site.

128. The Hockering Waste site was first granted permission in 2013. An extension was approved in 2017 allowing a throughput of 111,000t per year. The site is located in the countryside, to the north west of Norwich and a good distance away from the urban area. The plan and photographs provided by the appellant indicate the waste facility is not in a comparable location to the appeal site. No useful comparisons may be drawn about the relative appropriateness and acceptability of a waste site in the rural area.

Conditions

129. The assessment of the main issues confirms that securing appropriate mitigation through planning conditions is essential to the acceptability of the development. The

details of conditions put forward by NCC and the appellant are a fundamental issue. A permanent, not a temporary permission, is sought.

130. The Framework states planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests). Planning Practice Guidance confirms the importance of ensuring that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Case law has established the principle that, subject to considering and applying to the extent considered appropriate national policy guidance on the use of conditions, an inspector in determining an appeal does not have an obligation in the absence of any reference to an appropriate condition to cast about for conditions not suggested by the parties.

131. NCC proposed a set of planning conditions in November 2022¹⁷. In their response document in December 2022 the appellant had little to add, other than to say they would be willing to consider conditions to address (i) specific noise limits, (ii) restricting the hours for crushing and screening to 0730-1000, 1030-1300, 1330-1600 hours as set out in the EMS¹⁸, and (iii) the dust mitigation plan being part of a planning condition. NCC did not update the list of conditions in their submissions in August 2025. The appellant in their supplemental statement of case August 2025 proposed that the approved noise management plan (which was awaiting final approval of minor amendments by the Environment Agency) be submitted to the local planning authority.

132. The initial set of conditions will be considered within the described legal and policy background. As an overall observation, the conditions require substantial amendments to the detail of the wording and fail to take into account evidence and proposed amendments that have come forward through the appeal process. The retrospective nature of the application has not been taken into account sufficiently in setting timescales for compliance. There is no consideration or justification of the matters which should be controlled through planning conditions and which matters would be more appropriately left to the environmental permit. In summary, they do not meet the six tests, primarily in respect of precision, enforceability and reasonableness.

133. Condition 1 illustrates these observations in more detail. Condition 1 requires the development to be carried out in accordance with the application form and the plans and supporting documents submitted with the application, which are listed in the condition. This broad approach is not tailored to tackle specific problems. The key parts of the listed documents are the recommended mitigation measures, which should form separate, precisely worded conditions where still applicable. On certain topics, such as noise, the base study has been amended and updated with a new noise impact assessment, which was not finalised. The appellant has not identified or clarified the mitigation measures proposed now. It is not clear which, if any aspects of the air quality assessment should be controlled through condition. I have commented on the dust mitigation plan above. The site layout plan may require review and significant amendment to be consistent with the more recent proposals for siting the crusher, noise barrier and bunds within the site. That is for the appellant to clarify. In turn this would affect other matters, such as the landscape scheme (also covered by condition 13). The proposed hours of operation cited in the Planning Statement, 24 hours for all but the processing operation, were amended to those set out in condition 7. It is

¹⁷ Appendix 1 to the Statement of Case

¹⁸ EMS is understood to refer to the Environmental Management System document related to the environmental permit

uncertain what other aspects of the Planning Statement NCC wishes to control through condition. In summary, Condition 1 is not precise, enforceable or reasonable and the wording as a whole requires substantial amendment.

134. Condition 2 restricts the amount of waste that may be brought to the site to 50,000 tonnes to maintain highway safety and protect amenity. In addition, the type of waste is restricted to the categories of waste detailed in the Environmental Permit. In so doing, there is no consideration as to (i) the consistency of the wastes in the permit and the wastes identified in the description of development that would be granted permission, (ii) the ability to handle this amount of waste within the constraints imposed by approved mitigation schemes, and (iii) the reasonableness and necessity of duplicating a control exerted through the permit.

135. Conditions 3, 4 and 5 aim to secure a safe means of access through improvements to the existing access and maintenance of suitable visibility splays. They reflect conditions requested by the highway authority. Control on the timing of implementation needs further thought to ensure the conditions are enforceable. The access report contains a plan of the realigned site access and visibility splays, which if acceptable to the highway authority, could be listed as an approved plan¹⁹. The plan showing the parking and turning areas referred to in condition 6 is not identified, resulting in a lack of precision.

136. Conditions 8 and 9, vehicle reversing alarms and silencing of plant, may not be necessary if they duplicate controls exerted through the environmental permit. Condition 10 on external lighting is not precise and a requirement for details of external lighting to be submitted and approved may be more appropriate. Condition 11, to control the height of stockpiles, does not define the base level, making future enforcement problematic. The biodiversity enhancement referred to in condition 14 does not appear to be fully consistent with the planting required through condition 13. As a result, the conditions do not meet the tests of being reasonable and enforceable.

Conclusions

137. The quality and acceptability of the development and land use depend to a large extent on the use of conditions to mitigate the adverse effects that have been identified. Mitigation is fundamental to the scheme.

138. The original schemes supporting the application and appeal have been amended significantly in response to experience of operational activity, investigations by the EA and the development in the surrounding area. A comprehensive and up to date package of measures and amended site layout have not been submitted. A significant level uncertainty remains over the acceptability of the development.

139. The set of planning conditions for consideration does not comply with the six policy tests. Extensive amendments are necessary. For me to attempt to do so would cause injustice to the appellant and NCC.

Planning Balance and Conclusion

140. The waste management facility is located on a type of land acceptable within the terms of Policies WP2, WP3 and WP4 and would promote the sustainable management of waste in accordance with the principles of the waste hierarchy. To be

¹⁹ Site Access Appraisal Appendix E Plan ref PRJ01-TTE-00-ZZ-DR-S-0001

acceptable the proposal also must comply with the development management criteria set out in Policy MW1.

141. The development would lead to unacceptable impacts on landscape character and the local visual environment and on health and amenity, primarily through noise impact. Mitigation of an appropriate high standard has not been secured through the submission of schemes for the site layout, landscaping and control of noise. The proposed set of planning conditions require substantial amendment and do not enable the development to proceed. The requirements of Policy MW1 have not been met. The appellant has not demonstrated the submitted scheme would secure the high quality design expected for waste management development, leading to a failure to comply with Policy WP16.

142. The material change of use and proposals for consideration in this appeal are not in accordance with the development plan. The existence of a fallback as described by the appellant would make no difference to this conclusion. There are no other considerations of sufficient weight to overcome the direction of the development plan.

143. For the reasons given above the development is unacceptable and the appeal should be dismissed.

DECISIONS

APPEAL A Ref. APP/X2600/C/22/3310971

144. It is directed that the enforcement notice is varied by the deletion of all requirements 'a' to 'i' inclusive in paragraph 5 and their substitution with the following requirements.

- a. Cease the import of mixed Construction and Demolition Waste to the Land.
- b. Cease the use of the Land for the recycling of Construction and Demolition Waste, comprising the deposit, storage, processing and transfer of the waste.
- c. Remove all stocks of mixed Construction and Demolition Waste on the Land.
- d. Cease the storage of plant used solely for the processing of waste on the Land.
- e. Remove all buildings and storage units from the Land.
- f. Remove the palisade fence from the boundary between the Land and Salhouse Road.

145. It is directed that the enforcement notice is varied in paragraph 6 by the deletion of the requirements and associated compliance periods and the substitution of these times for compliance: Requirement (a) 30 days; Requirements (b), (c), (d), (e) and (f) 180 days.

146. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

APPEAL B Ref. APP/X2600/W/22/3297911

147. The appeal is dismissed.

Diane Lewis , Inspector