
Appeal Decision

Inquiry opened on 21 May 2014

Site visit made on 11 June 2014

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 July 2014

Appeal Ref: APP/X2600/A/13/2197841

Land at Manor Farm, Loddon Road, Haddiscoe, Norwich, NR14 6PN.

- 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 Earsham Gravels Ltd (the Appellants) against the decision of Norfolk County Council (the Council).
- The application Ref. No: C/7/2011/7020, dated 5 October 2011, was refused by notice dated 19 February 2013.
- The development proposed is for the extraction, processing, bagging and sale of sand and gravel with a concrete batching plant within the plant void.

Decision

1. For the reasons given below, this appeal is dismissed.

Clarification

2. Following registration of the application, but before the Council took its decision, an amendment was made to the proposals to include the erection of solar panels within that part of the appeal site lying to the north of Loddon Road. Consideration of the solar panels formed a part of the Council's appraisal and it was accepted that no-one's interest would be materially prejudiced by the inclusion of these and that there would be sustainability advantages to the scheme as a whole. Having regard to the facts, I see no reason to disagree and have dealt with the appeal on the basis of the amendment.

Procedural matters

3. The scheme was the subject of Screening and Scoping Opinions issued by the Council in March 2008 in accordance with the provisions of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the EIA Regulations). Following submission of the application and Environmental Statement (ES) in October 2011, the Council requested further information in February 2012. This was supplied in May of that year.
4. When the appeal was lodged on 8 May 2013, the Secretary of State for Communities and Local Government (SoS) confirmed that, by virtue of Regulation 4(2)(b) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, the appeal scheme is development falling within the 2011 Regulations. On examination of the

changes to the application and the content of the revised ES, the SoS notified the Appellants that pursuant to Regulation 22, to comply with Schedule 4 of the 2011 Regulations, further information was required. This further update was submitted in April 2014. Following this, the SoS concluded that the ES met the requirements of the EIA Regulations. I see no reason to disagree, though I did seek clarification of some of the more detailed points, including technical aspects of noise, air quality and traffic in the ES. These matters are discussed later.

5. At the inquiry a signed s.106 Agreement between the main parties and the landowners was submitted. This covers the provision of a car park and picnic area, additional public access and landscape restoration and subsequent maintenance of the site, following completion of the mineral extraction. A set of draft conditions was discussed at the inquiry should the appeal be successful. Final alterations to these had regard to the content of the recently published Planning Practice Guidance (PPG), following cancellation of Circular 11/95, and were agreed after the closing of the inquiry and forwarded to the Inspectorate for my consideration.
6. Finally, two applications for partial awards of costs were made in writing by the Appellants against the actions of the Council and these are dealt with under separate cover.

Main Issues

7. From the evidence presented to the inquiry, the written representations both before the Council reached its decision and in response to the appeal advert, and a visit to the appeal site and surroundings, it follows that the main issues to be decided in this appeal are:
 - the weight to be given to the development plan policies;
 - the effect the proposals would have on the landscape qualities of the area; and
 - the implications for the setting of Listed Buildings in the area, with particular reference to the Grade I Listed St Mary's Church, Haddiscoe.
8. In addition to these three main issues, a number of other material considerations generated by third parties were aired at the inquiry. These pertain principally to the effects of noise, air quality and traffic from the proposed development.

Reasons

Introduction

9. The planning history of the appeal site and the process to adoption of the Norfolk Minerals and Waste Core Strategy (CS) and the subsequent Norfolk Minerals Site Specific Allocations Development Plan Document (DPD) have a significant bearing on the progress of the appeal site and the way this appeal must be considered.
10. In the early days, and following a 'call for sites consultation' in 2007 for inclusion in the emerging DPD, the appeal site was advanced as a potential mineral site. The site was included in the consultation process following publication in the 'Issues and Options' (February 2008) and twice again when

- 'Further Issues and Options' (October 2009) and 'Revised Further Issues and Options' (May 2011) were disclosed. When considered following the consultations in both 2009 and again in 2011 the appeal site failed the sieve protocol involved. In 2009, the site was deemed unacceptable for allocation, because of landscape, highway, amenity and groundwater impacts. In 2011, it was considered unsuitable for allocation on the basis of landscape impacts, noting that highway, amenity and groundwater impacts further decreased the site's acceptability.
11. At that stage it was open to the Appellants to promote the appeal site as an 'omission site' at the forthcoming DPD examination. However, this opportunity was not pursued and, although the site was unallocated, it was decided to proceed down the planning application and appeal route. The planning application was submitted on 5 October 2011 and when it was determined by the Council on 19 February 2013, the Officer recommendation was to approve the proposals conditionally.
 12. However, this recommendation was set against the background of no up-to-date development plan for allocated mineral sites and a shortfall in the landbank for sand and gravel, when assessed against the Regional Apportionment Figure for Norfolk. Largely for this reason, and allowing for the environmental mitigation proposed, Officers did not find the objections based on the reasons the site was excluded from the DPD, outweighed the need factor at that time.
 13. Since the decision date, however, the policy base has changed substantially at both National and local levels. First, at National level, the National Planning Policy Framework (the Framework) was published in March 2012. This was followed in October 2012 by the Guidance on the Managed Aggregate Supply System (MASS), subsequently superseded, and then in March 2014 by the PPG, which replaced the MASS and fleshed out the Framework policies.
 14. Crucially, the current documents strongly support a plan led system and move away from a landbank requirement based on Regional Apportionment, to the average of the previous 10-year's sales data, while having regard to any special and/or local circumstances. The PPG also looks for the production of Annual Monitoring Reports to provide early warning of possible disruption to the supply and to use this as a trigger for a review of the allocation of sites in the plan. The PPG confirms that any shortfall in the approved sites for sand and gravel should be addressed by an early review of the DPD, and not by automatically granting further permissions on an *ad hoc* or windfall basis.
 15. One further important development relevant to this appeal stems from a Court of Appeal Judgement in the case of *East Northamptonshire DC & Others v SSCLG & Barnwell Manor* (the Judgement). This Judgement reinforces the obligation evinced by s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (s.66), which requires the decision maker to "...have special regards to the desirability of preserving the building or its setting...". The Court held that considerable importance and weight should be given to the desirability of preserving the setting of Listed Buildings, when carrying out the balancing exercise, adding that this duty applies with particular force if harm would be caused to the setting of a Grade I Listed Building.

16. At local level, the policy framework has also moved on apace since 2011, with the adoption of the CS in September 2011 and, subsequently, the DPD in October 2013. These are now up-to-date documents that carry significant weight. Of note, only a matter of months ago the DPD Inspector concluded that the sites allocated in the DPD would make *"....appropriate provision ...for the steady and adequate supply of sand and gravelfrom the allocated sites. There would be adequate flexibility in this regard. An appropriate landbank would be maintained."*
17. As a consequence of these changes, the appeal proposal must now be considered against the policy framework that prevails today and, unfortunately for the Appellants, a much changed situation from that that led Officers to a favourable recommendation early in 2013.

Development Plan Policy

18. Having regard to s.38(6) of the Planning and Compulsory Purchase Act 2004, this appeal must be determined in accordance with provisions of the development plan (DP), unless other material considerations indicate otherwise. In this case, the relevant parts of the DP are up-to-date and the appeal site is not allocated as a mineral site to 2026. Thus, the DP attracts significant weight. In the light of this, the policy relied on by the Appellants is CS Policy CS2, which does not seek to define sub-markets in Norfolk, but says that as a general principle extraction sites should be well related to at least one of the main urban areas in Norfolk by either proximity or good access. Policy CS2 also states a preference for extensions rather than new sites.
19. The key implication drawn from Policy CS2 by the Appellants is that the Policy refers to sites other than those identified in the DPD. This is because the allocated sites would already have passed these 'tests' and so the criteria must refer to unallocated or windfall sites. This is so, of course, but as the PPG makes clear, suitable planning applications should only be granted approval in the context of a low landbank, with the main effort being devoted to an early review of the DPD. Importantly, Policy CS2 is the policy that informed the choice of sites approved in the DPD and is not intended as a generic, criteria based policy.
20. As noted above, the appeal site is not allocated in the recently adopted DPD. Neither is it an extension to an existing working site that would be in its favour and, crucially, at the time of the inquiry there was a landbank of approved sites in excess of 8-years, when calculated on average sales data. Although the appeal site would serve the towns of Great Yarmouth and Lowestoft, so would other sites and especially the approved site at Norton Subcourse, where extensions are applied for. It is also worth noting that the DPD Inspector's conclusions did not caution that the allocated sites would not serve Great Yarmouth and Lowestoft. Under these circumstances, there is no justification for an early review of the DPD or the release of any unallocated sites at this time.
21. This conclusion has also had regard to several other factors raised in support of the appeal scheme. It is accepted that the Government's economic strategy places considerable reliance on construction and this will increase the call on sand and gravel reserves. Even so, there is nothing tangible to say that the present allocation would not meet an increased demand until a review of the

DPD could be triggered and completed. Whereas it did take a long time for the present DPD to move through the processes to adoption, much of the groundwork has now been done and the time to undertake a review should be very much shorter. This is particularly so now the PPG places such import on annual monitoring and a DP led system. Having said this, there are significant reserves of sand and gravel in Norfolk and some closer to Great Yarmouth and Lowestoft. Thus, there could be no guarantee that the appeal site would emerge as an allocation in any future review.

22. Next, in the Appellants' case it is claimed that the Council has not conducted a Local Aggregates Assessment. However, although late in the day, the Council did produce an up-to-date Assessment in May 2014. It is also argued that winning the sand and gravel from the appeal site would be a one-off event, with no possibility of an extension to the site. Whereas this may be seen as an advantage in terms of local amenity and landscape impact, the 21-years duration has not sought to minimise the effects by winning the material in a shorter period, or managing better the more sensitive southern part of the site.
23. Finally, it is pointed out that the Appellants are a small family concern and failure to secure consent now could prejudice their future. It would be unfortunate if dismissal of this appeal did herald the demise of the Company, but the evidence is not objective enough to allow this factor to carry any great weight. There are applications in for a time extension to their existing site and, if granted, this would assist in them making alternative arrangements for the future.
24. As it became clear from the landscape and heritage evidence, by far the strongest objection was to the use of the land south of Loddon Road, and at the inquiry we looked at the alternative scenarios examined in the ES. The option of not using the southern tranche of land had been considered and there were several environmental objections to this approach. However, these were not objectively based and generally 'either or'. In other words, if you had to find another plant site the same intrusions would occur, but possibly to a different group of people. Moreover, this was, balanced against a situation where noise, dust, traffic and similar objections to the appeal scheme were not considered compelling and the loss of the resource (some 10% of the total) a disbenefit. Incidentally, the ES did not examine the implications of the alternatives in terms of landscape and heritage assets.
25. Summing up, first the appeal site is not allocated in the recently adopted DPD. Secondly, there is currently an adequate landbank and no objective reasons why additional unallocated sites need to be released at this stage. In a nutshell, it does not accord with the prevailing National and local mineral policies and in this instance there is no reason to depart from the Framework's core principle that development should be plan led.

The effect the proposals would have on the landscape qualities of the area

26. The appeal site is split into two parcels of land, one either side of the Loddon Road. That to the north, is well screened from Loddon Road and comprises low grade agricultural land, which attracts no landscape objection. Moreover, the restoration scheme would deliver diversity benefits in a location alongside the Broads. Even so, although the restoration scheme would be maintained by the

- Appellants for a lengthy period, ownership would revert to the land owner after this.
27. As such, along with the reinstatement of the existing bridleway the only continuing public benefit would be the provision of a car park, picnic area and additional permissive footpaths. There would be no guarantee that the diversity improvements and expected visual enhancement from public vantage points would remain in perpetuity. Unfortunately, it seems from the plans and the site inspection that, following restoration, the views from the reinstated bridleway to the Church at Haddiscoe would be materially impaired for an appreciable length, owing to the significant change in levels along its route.
 28. Incidentally, the argument advanced that being so close to the expansive Broads area the restoration benefits should attract less weight does have some credibility. Clearly the improvements in diversity and habitat must count as a plus. However, common sense says that being next to a highly prized and protected area and not being guaranteed for the future does temper the weight that can be afforded the benefits.
 29. Moving to the site to the south of Loddon Road, although this again comprises lower grade agricultural land, it attracts a strong landscape objection. This parcel of land, though much smaller than the area to the north, is shown on plans as part located within the Landscape Character Area Thurlton Tributary Farmland and Parkland.
 30. It also lies in a designated Core River Valley, as defined by survey in the 1990s. Consequently, it is safeguarded by virtue of CS Policy DM2, which looks for development to enhance the local landscape and/or diversity following restoration. There is some dispute about the accuracy of the designation shown on the plans, but as the Council points out, the Landspring Beck is indisputably a tributary river valley, exhibiting a landscape character in marked contrast to the adjacent arable land.
 31. The site visit showed that views into this, especially from Loddon Road itself would be affected to at least a moderate adverse extent for the 21-years of operation. In addition, the necessary screening and the introduction of a formal access from the plant area to Loddon Road would reduce the ambient rurality that currently exists for those living in and passing through the area.
 32. Taken together, I agree with the Council that the very long working life of the plant area and the introduction of the screening bunds would harm four key sensitivities of the Landscape Character Area and block extensive views into the Beck and its meadows and most of the trees. This would be especially so for the large numbers of car drivers and passengers as they move east along the Road toward the Village. The key sensitivities adversely affected would be the peaceful, rural farmland character; the distinctive tributary corridor of the Landspring Beck; the setting of the Church; and the character of Loddon Road.
 33. The restoration of this site should largely replicate the existing character though some of the present contours would change. There could arguably be some enhancement, with the planting of additional trees between the Beck and the appeal site, but this may itself have a downside with the loss of views through and across the Beck and the obfuscation of historic field boundaries.

34. Overall, therefore, I conclude that the harm to the rural character and to enjoyment of the Beck for 21-years offsets the potential for improvement in the longer term. As a consequence, even after restoration there would be no net enhancement or improvement, thereby running counter to CS Policy DM2. This is especially so as it is very clear that the landscape quality does not invite improvement. Its current appearance is exactly what is expected of this Landscape Character Area.
35. In summary on landscape character, the overall effect would be slightly beneficial following restoration, but this would be more than offset by the harm to the southern tranche of land during the 21-years of the workings. This is despite some potential longer term benefits to the much larger northern part of the site.

The implications for the setting of Listed Buildings in the area, with particular reference to the Grade 1 Listed St Mary's Church, Haddiscoe

36. As identified in the section on policy matters, the special regard that must be given to the desirability of preserving the setting of Listed Buildings is writ large in policy by virtue of s.66. Moreover, the Judgement emphasises the importance of the setting to Grade I Listed Buildings, a grade that is bestowed on only some 5.5% of the Listings. In this case, the structure that would be most affected by the appeal scheme would be the Grade I Listed, round towered St Mary's Church in Haddiscoe.
37. The particular setting highlighted by the Council and Objectors is the same land that features in the landscape section, namely that viewed by people walking or driving east along Loddon Road. From these views it is clear the Church is slightly elevated with the land falling away to the west along the valley of the Beck. This then gradually rises up to Loddon Road, with the fore and middle ground comprising rolling agricultural land between Loddon Road and the Church. There can be no doubt that this is a major and important feature in the Church's visual setting.
38. The Council also submits that today's views of the Church would be lost. Next, it is claimed that the setting of the Church, and especially the quiet ambience of the rural area, would be compromised by the introduction of industrial scale activity and noise intrusion. Finally, it argued that the context of the Church setting is complemented by the agricultural land itself. This is judged important as, in the past, the Church would have been the focal point of the village and it is claimed farm labourers working under 'God's watch' would have been motivated by His presence.
39. During the 21-years of the proposed mineral operations, 2-2.5 m grass-faced bunds with a 1 in 3 outer gradient would be constructed alongside Loddon Road, with a new hedge planted in front. These would be necessary to screen from view the plant and equipment used in screening, washing and adding further value to the recovered mineral. For some of the length in question, the bunds would be founded slightly lower than the road level and so the full height may not always be in evidence so long as the hedge was maintained at a reasonable height. This situation drew a difference in opinion during the inquiry, with the Appellants arguing that, whereas views of the foreground between the Road and the Church would be lost, the views of the Church would

remain largely as they are today. On the other hand, the Council contends that most of the body of the Church and the lower part of the tower would be lost to view.

40. For my part, the site visit did demonstrate that there would be a marked difference in the views gained by those walking and driving east along Loddon Road. Those walking would be looking from a more elevated position and so, whereas the view across the fields would be very much foreshortened, little of the body of the Church would be lost from view. From a driving eye-height of 1.05 m much more of the Church would be lost and, of course, the uniform line of the bunds in the immediate foreground, especially during the early years, would be a visual detractor. Most noticeable, would be the pronounced loss of views from the Road across the open agricultural land and forfeiture of the relationship between that land and the Church. This would prevail for some 21-years.
41. At the inquiry, there was broad agreement that there would be harm to the setting of the Church for the duration of the development and that this would be very long-term, but reversible. The only difference is whether the harm to the setting would be significant or not. In the Framework, the test is whether the development would lead to substantial harm. All parties, including English Heritage in its consultation response, agree that the harm would be less than substantial. Even so, the fact that the Church is a Grade I Listed Building means that greater weight should be afforded the level of harm. Following restoration, the parties acknowledge that the harm would be greatly reduced, but as the rolling rural landform could not be replicated exactly there would be a change in the setting.
42. With the benefit of a detailed site visit I judge the harm to the setting of the Church to be approaching if not moderate. The site inspection was helpful and, irrespective of whether the harm would constitute a compelling reason for refusal in its own right, there would be harm to the setting during all the seasons for 21-years and a minor adverse change following restoration. As a consequence, what can be concluded is that the setting of the Grade I Listed Church would not be preserved and this counts as a strong negative factor to be weighed in the balance. The fact that the harm would be largely reversible tempers the negative weight, but 21-years is a very long time.
43. Stopit also drew attention to the effect winning the mineral in the northern part of the site would have on the setting of the Grade II Listed Building at Whitehouse Farm. With the trees in full leaf at the time of the visit, it was extremely difficult to reach any firm conclusion. However, this is not something raised by any other responsible heritage agency. My assessment is that, even in winter, the tracery resulting from the recent planting alongside Thorpe Road has already blurred the aspects of the Farm from the bridleway across the appeal site. Consequently, I have not found this point crucial.

Other material considerations

44. The Appellants identify several benefits that would accrue from the proposals in addition to the habitat improvements noted above. Mineral resources can only be won from where they are and it would be relatively convenient to serve the towns of Great Yarmouth and Lowestoft. As for other benefits, they are very

much those that would be delivered by any mineral extraction site. It is a resource needed for building and construction is important to the Government's economic strategy. It would offset its energy demands with the use of the solar panels proposed. The operation would employ workers and it would ensure that a local family firm would be able to continue its business. While all these certainly count on the plus side, even taken cumulatively they do not constitute a factor of significant weight.

45. Moving to the main matters raised by local residents and the Stopit Association, these pertain to noise, dust and traffic. Although featuring in the Council's reasons for refusal, these objections have not been sustained. The situation is that there is a mineral resource and if that is to be won, there would inevitably be some impact. Noise and dust levels would increase as would the vehicles using Loddon Road. The ES covers these matters in some detail, but in answer to my questions there were some technical inconsistencies. In the first place, it was conceded that the noise levels predicted did not give a clear indication of the maximum noise levels that residents would endure or their likely duration. For example the $dBLA_{90}$ 1-hour background had been compared with $dBLA_{eq}$ 10-hour prediction for both temporary and operational activities.
46. As for the dust assessment, the windrose chosen was that from Wattisham Airfield. This is a very considerable distance from the appeal site and there was no validation check to demonstrate that this accurately reflects conditions at Haddiscoe. Looking at traffic matters, the increase in traffic noise appears to have been assessed using the Design Manual for Roads and Bridges methodology, which measures the noise increase over a longer day than the site would be working, thereby reducing the perceived impact. Again there was no attempt to predict maximum levels or to consider if a Single Event Level assessment would be more appropriate to gauge the impact. In the absence of this information and without a more robust assessment of the likely impacts from noise, dust and traffic, they should count a moderate negative effect. Although there would be additional forms of mitigation available it is not clear if these would themselves introduce additional negative landscape features.
47. In addition to these three main points, several Objectors raised concerns about property values and loss of view. On the first point, property values are not a material planning matter and, thus, can carry no weight. As for loss of view, the weight to be afforded this is a matter of fact and degree. In this case, residents living in one or two nearby properties would overlook the appeal site and experience a worse outlook, especially from first floor windows. Even so, in my judgement the changes would be relatively minor and at some distance and would not, therefore, be sufficient to constitute anything more than a very small negative factor. Again the effects would be long-term, but temporary.

Summary and conclusion

48. The starting point is that the appeal proposal would not accord with the development plan insofar as the appeal site is not allocated in the recently adopted DPD and there is an adequate landbank of approved sites going forward. No local or other factors argued in favour of allowing the appeal carry sufficient force to justify an approach other than monitoring the situation and moving to a review of the DPD should the present landbank decay.

49. Although the northerly parcel of land, containing by far the greater proportion of the mineral resource, creates very little visual harm during operations the same cannot be said of the much smaller area to the south. Here there would be something approaching a moderate adverse change to the landscape quality for the 21-years duration and significant harm to the setting of the Grade I Listed St Mary's Church, Haddiscoe. There are other potential negative factors arising from increased noise, dust and traffic. Against these, there are the few benefits of improved habitat and some economic advantages to weigh on the positive side of the equation.
50. In the planning balance, the positives taken cumulatively do not outweigh the very strong policy and landscape/heritage objections. The draft conditions and s.106 have been considered, but would not redress the compelling planning objections.

Overall conclusion

51. In the light of my conclusions, and having taken into account all other matters raised, this appeal fails.

JS Nixon

Inspector

APPEARANCES

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DOCUMENTS HANDED IN AT THE INQUIRY

- Document 1 Appellants opening
- Document 2 Council's opening
- Document 3 Stopit Association's opening
- Document 4 Draft Conditions
- Document 5 Signed s.106 Agreement
- Document 6 Planning Regulatory Committee Report 21 March 2014
- Document 7 Local Aggregate and Silica Sand Assessment – May 2014
- Document 8 Plan showing mineral safeguarding areas in Norfolk
- Document 9 Court of Appeal Judgement in the case of East Northamptonshire DC & Others v SSCLG & Barnwell Manor
- Document 10 Consultation responses
- Document 11 Timeline for new planning permissions for sand and gravel extraction 2004-14
- Document 12 Closing submissions on behalf of STOPIT Association
- Document 13 Council's closing submissions
- Document 14 Council's response to the applications for partial awards of costs