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## Appeal Decision

Hearing held and site visit made on 28 August 2014

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 6 October 2014**

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**Appeal Ref: APP/P4225/A/14/2218903**

**Land off Whittle Lane, Birch, Heywood OL10 2RB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr D Cronshaw against Rochdale Metropolitan Borough Council.
  - The application Ref 13/00237/FUL is dated 6 March 2013.
  - The development proposed is infilling of a redundant quarry to restore land for more beneficial agricultural use, including the construction of a new vehicular access to the site from Whittle Lane.
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### Decision

1. The appeal is allowed and planning permission is granted for infilling of a redundant quarry to restore land for more beneficial agricultural use, including the construction of a new vehicular access to the site from Whittle Lane, at Land off Whittle Lane, Birch, Heywood OL10 2RB, in accordance with the terms of the application Ref 13/00237/FUL, dated 6 March 2013, subject to the conditions set out in the schedule annexed to this decision.

### Procedural matters

2. Although the Council had issued a decision notice, it subsequently came to light that the application had not at the time been properly publicised in accordance with the Planning (Listed Buildings and Conservation Areas) Regulations 1990. Therefore the appeal was treated as being made against the Council's failure to issue a valid decision rather than against a refusal of planning permission. Full publicity was carried out for the appeal.
3. The appellant confirmed at the Hearing that the above description of development, as used by the Council and on the appeal form, represented a more accurate description than that on the application form and should be used in the decision on the appeal.
4. It was noted at the Hearing that an updated acoustic impact report that had been submitted with the appeal had not been placed on the appeal file. A short adjournment was required to allow the document to be read.
5. At the Hearing an application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.

## **Main Issues**

6. It was agreed at the Hearing that the main issues in the appeal are the effects of vehicular traffic generated by the proposal on the character and amenity of the village, and on the character and appearance of the conservation area.

## **Reasons**

7. The appeal site comprises some 1.6 hectares, immediately adjoining the small village of Birch. The eastern portion of the site is made up of a redundant sand quarry, with a generally level floor and steeply sloping sides. The remainder comprises a large field laid to grass. The field is bordered by a motorway service station to the west, and is separated from Whittle Lane to the south by a row of houses, one of which is occupied by the appellant. To the east of the site, the land slopes down to a public house and its car park, which face onto the main road through the village, Heywood Old Road. The former quarry lies within the Birch Village Conservation Area.
8. Permission is sought to infill the quarry with imported inert construction waste, in order to restore the land to close to its original levels. The sloping land of the field would be cut and filled to create a more level profile. The existing access to the quarry from Whittle Lane would be permanently closed and a new more direct access formed.
9. The site lies within the Green Belt. It is common ground between the main parties that, in accordance with national policy guidance set out in paragraph 90 of the NPPF<sup>1</sup>, the proposal would not constitute inappropriate development as it would involve engineering operations that would preserve the openness of the Green Belt and would not conflict with the purposes of including land within the Green Belt. There would also be no conflict with saved Policy G/D/2 of the Rochdale Borough Unitary Development Plan 2006 ('the UDP'), which remains consistent with the NPPF. I endorse that assessment.

## *Character and amenity*

10. The Council raises no objection to the principle of the proposed infilling and alteration of ground levels, to the operation of the site itself or to the formation of the new access. The Council also accepts that living conditions at properties adjacent to the site, in particular the houses on Whittle Lane and the public house, would be adequately protected from noise by the proposed acoustic fence and from dust by suitable suppression measures, the details of which could be secured by appropriate planning conditions. I have found no grounds to disagree with those conclusions.
11. The Council's concern, which is shared by a number of local residents, relates to the effect of the HGV traffic to and from the site. The proposal would involve raising the level of the quarry by some 6-8 metres, involving the importation of some 35,000 cubic metres of inert material. The planning application forecast a period of operations of 6 months, but the undisputed evidence to the Hearing was that a minimum period of 9 months was more likely, which could extend to 2 years or more, dependent on the availability of suitable material.
12. On that basis, assuming the shortest period of operation, the worst case estimate of the likely average number of HGV trips to the site would be some

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<sup>1</sup> National Planning Policy Framework

- 15-16 per day, resulting in some 30-32 movements. Were the period to extend to 1 or even 2 years, there would be a proportionate significant reduction in the average number of trips per day.
13. It was clear from my visits to the site that Heywood Old Road forms a busy traffic route. This is borne out by an official Department for Transport traffic count to the south of the village, which records an average 12-hour flow of over 12000 vehicles, including more than 250 HGVs. The existing character of the village is very much influenced by its use by through traffic.
  14. It can be seen that even in the worst predicted case the additional movements generated by the site would represent a tiny fraction of the overall amount of vehicular traffic. The percentage increase in HGV numbers would be greater, but would still be less than 13% in the worst case. These levels of increase would not significantly alter the overall effect of traffic on the character of the village.
  15. The Council raises specific concern about the effect of additional traffic at the junction of Whittle Lane with Heywood Old Road. This junction is heavily engineered, with very wide carriageways allowing ample space for vehicle queuing and turning. No objection has been raised on behalf of the local highway authority. There is no evidence to suggest that the Council's concern about congestion at this junction would be borne out, or that vehicles entering and leaving the site or potentially waiting on Whittle Lane would cause congestion or prove a nuisance to adjoining residents.
  16. Vehicles starting and stopping at the junction would generate some noise. But in the overall context of traffic noise the evidence indicates that the effect would not be significantly harmful. National guidance on road design referred to by the appellant suggests that a noise assessment should not be required if the increase in traffic volume would be less than 25%, which would be the case here.
  17. The perception of some residents that traffic volumes have increased significantly in recent years is not backed by survey evidence. Similarly, there is no hard evidence to confirm any harm to properties due to vibration caused by heavy traffic. Technical evidence referred to by the appellant suggests that on this issue, as on the issue of traffic noise, perceptions of harmful effect are difficult to substantiate. Therefore, while not seeking to challenge the genuine concerns raised by these residents, I find insufficient reason to conclude that any adverse effect of the development on residents, which would be confined to a relatively brief time period of up to two years, would be sufficient to outweigh the benefits of bringing a derelict site back to productive use.
  18. I conclude on this issue that the proposal would comply with the relevant sections of saved UDP Policy BE/2, which sets criteria for the design of new development.

#### *Conservation area*

19. The extent of the Birch Village Conservation Area is quite tightly drawn around the buildings that front onto Heywood Old Road and the two roads off it, together with immediately adjacent green spaces. The Council's Conservation Area Appraisal ('CAA') explains that the character of the area lies in the 'linear, road-oriented form of the townscape and the quality of the architecture along

its length'. Thus it can be seen that the main road, which must always have been a well-used local route, has been a primary determinant of the village's character. The type of traffic now passing through the village will be different from that at the time many of the houses were built, and its intensity may well have increased with the completion of the motorway network, but the character of the village as rather sporadic development strung along the road has remained constant. In this respect, the minor increase in traffic over a limited time period sought by the appeal proposal would not represent a change in character.

20. The CAA's analysis of townscape identifies only a slight contribution by the appeal site, the public house car park and the adjoining stretch of road. I agree with the appellant that the engineered design of the highway forms a highly urbanised feature that does not sit well with the village context, particularly the domestic buildings designed by the local architect, Edgar Wood. The use of the junction by the proposed extra traffic would not have a harmful effect.
21. The quarry itself is almost completely hidden from view by the surrounding landform and trees. It contributes little to the appearance of the conservation area. The site operations would not be easily visible and there would be no effect on the setting of the Edgar Wood Fountain, which is listed at Grade II.
22. The proposal would involve the loss of two mature trees for the altered site access, but without causing significant visual harm, and mitigated by considerable replacement planting. The largely self-set trees on the quarry slopes are not generally visible from outside the site, and their loss would not be harmful.
23. I conclude on this issue that the proposed development would be limited in its timescale and its impact on the character of the area, which would not be harmed. The proposal would comply with saved UDP Policy BE/17, which seeks new development that will preserve or enhance the character or appearance of conservation areas, and with the guidance of the NPPF.

#### *Other matters*

24. Concern originally raised by the Environment Agency and the owners of the public house about the risk of surface water run-off from the site appears now to be satisfactorily addressed by a revised design incorporating a dished detention area, which can be secured by a condition.
25. There is no evidence that the proposal would have any significant harmful impact on wildlife or habitats.

#### **Conditions**

26. A Statement of Common Ground agreed between the appellant and the Council lists a schedule of 26 conditions that could be applied in the event of the appeal being allowed. It was agreed at the Hearing that there was scope to amend, omit and/or amalgamate some of these.
27. In addition to the standard commencement time condition, a condition is required to restrict the overall period of operations to ensure that adverse impacts of development do not continue indefinitely. Confirmation of the approved plans is needed for the avoidance of doubt. In the interests of highway safety, conditions are needed to define the new access, early closure

of the existing access, and the prevention of mud and dirt being deposited on the road.

28. A set of conditions to protect the living conditions of local residents is necessary, covering the suppression of dust, the hours of work, the provision of acoustic fencing, and the prevention of burning of waste on the site. Conditions to prevent pollution include those to ensure that only inert waste is deposited, and that hazardous substances are properly stored. For the same reason and to prevent flooding, a scheme of surface water drainage is to be approved and implemented, including the proposed water detention area near the site entrance.
29. In order to avoid adverse impact on the natural environment, conditions are justified to require an up-to-date survey and set of protective measures for badgers, and a scheme of measures to deal with Japanese Knotweed. The need to ensure the environmental quality of the restoration scheme requires a set of conditions on the method of working and the final form of development. In order to preserve the quality of the local physical environment, conditions are needed to ensure the final removal of plant and machinery and the landscaping of the site.

### **Conclusion**

30. Subject to the above conditions, I am satisfied that the proposed development would have acceptable impacts on the character and amenity of the village and would preserve the character and appearance of the conservation area, and would comply with development plan and national policy.
31. Having taken careful account of all submissions made, both in writing and at the Hearing, I conclude that the appeal should be allowed and planning permission granted.

*Brendan Lyons*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

David Erskine	Civitas Planning Limited
Robert Hindhaugh	Bob Hindhaugh Associates Ltd
Geoffrey Corker	GK Environmental
Steven Jardine	Jardine Consultancy Services Ltd
Douglas Cronshaw	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Butler	Planning Officer
Councillor Alan Godson	Member, Middleton Planning Committee

### INTERESTED PERSON:

Gary Loudon	Chair, Birch Residential Conservation Group
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## **DOCUMENTS**

1. GK Environmental: Assessment of the Acoustic Impact
2. Council's letter of notification of the Hearing
3. Comments on planning application by Mrs Susan Evans on behalf of Colliers International
4. Conservation Area Map

## **ANNEX**

### **APP/P4225/A/14/2218903**

### **Land off Whittle Lane, Birch, Heywood OL10 2RB**

#### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The permitted period of time for the infilling operation shall be limited to 24 months from the date of commencement. Written notice of the date of commencement shall be given to the local planning authority within seven days of such commencement.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos. B/3346/01, 02, 03, 04, 05 Rev B, 06 Rev B, 11 Rev A, 20 Rev A.
- 4) No development shall take place until visibility splays of 2.4 metres by 60 metres have been provided at the junction of Whittle Lane with the new site access. The area of land between the visibility splay line and the highway boundary shall thereafter be kept clear of all obstructions in excess of 1 metre in height.
- 5) Immediately after the approved new access to the site has been created and brought into use, the existing access to the site from Whittle Lane shall be permanently and effectively stopped up and access to the site shall be gained thereafter solely from the new access from Whittle Lane. The existing access to the site shall be kerbed and the footway reinstated in accordance with a detailed scheme that shall first be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented within six months of the commencement of development on site.
- 6) No development shall take place until a scheme to prevent mud/dust being carried onto the public highway and for any necessary sweeping of the highway has been submitted to and approved in writing by the local planning authority. The scheme shall include the location and design of a suitable (wet process) wheel cleaning facility and incorporate measures to be taken should the wheel cleaning facility fail or become non-operational for a continuous period of more than 12 hours. The scheme shall also include measures for the sweeping of Whittle Lane and Heywood Old Road should the wheel cleaning operations prove to be ineffective in practice. The approved scheme shall be implemented on commencement of work and shall be maintained for the duration of all operations on the site.
- 7) No development shall take place until a scheme and programme of measures for the suppression of dust have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The approved measures shall be implemented on commencement of work and shall be maintained for the duration of all operations on the site.

- 8) No operations pursuant to this permission shall take place outside 08.00 hours to 17.00 hours on Mondays to Fridays, or at any time on Saturdays, Sundays or Bank Holidays.
- 9) Before any haul vehicles visit the site or any infilling works or other land re-grading operations begin in the quarry area of the site, the proposed Phase 1 (2.4 metres high) close boarded acoustic fence shall be erected along the boundary of the site as shown on approved drawing No.11 Rev A. The fence shall remain in position until all infilling operations and subsequent spreading of topsoil across the revised landform have been undertaken. The fence shall be removed within three months of completion of those operations.
- 10) Before any land re-grading or earth stripping/stockpiling works take place within the area of the site to the north of Nos. 1, 1A and 3 Whittle Lane and to the west of the quarry area, the proposed Phase 2 (2.4 metres high) close boarded acoustic fence shall be erected along the boundary of the site as shown on approved drawing No.11 Rev A. The fence shall remain in position until all land re-grading or earth stripping and subsequent spreading of topsoil across that part of the site have been undertaken. The fence shall be removed within one month of completion of those operations.
- 11) No waste materials shall be burned within the site.
- 12) Only inert, non-hazardous construction waste shall be brought onto the site and infilled as part of the quarry restoration. No importation of waste material shall take place until a contrary (putrescible) materials management plan has been submitted to and approved in writing by the local planning authority. The plan shall outline:
  - a. How incoming loads will be inspected for any contrary (putrescible) materials;
  - b. Where, how and for how long any such contrary (putrescible) materials will be stored on the site;
  - c. Where any contrary (putrescible) materials will be taken after leaving the site.

The approved contrary (putrescible) materials management plan shall be adhered to throughout the duration of the development.
- 13) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the volume of the tank plus 10%. If there is more than one tank, the volume of the bunded compound shall be at least equivalent to the volume of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow outlets should be detailed to discharge downwards into the bund.
- 14) No development shall take place until a surface water drainage scheme for the site based on sustainable drainage principles and incorporating

the measures shown in the submitted Flood Risk Assessments and on approved drawing No.20 has been submitted to and approved in writing by the local planning authority. The scheme shall secure the total surface water run-off from the site at a maximum rate of 5 litres per second per hectare and shall include:

- a. Details of volumetric run-off control in accordance with CIRIA SUDS Manual C697 with the rate set at  $Q_{bar}$  if no infiltration is provided;
- b. Details of exceedence event up to 1 in 100 years plus climate change allowance;
- c. Results of infiltration tests and details of proposed levels for the proposed dished surface water collection area in the south-eastern corner of the site as shown on approved drawings No.05 Rev B and No.20 Rev A.

The approved scheme shall be implemented from commencement of work and shall be maintained for the duration of all operations on the site.

- 15) No development shall take place, including any site preparation works, until:

- a. an up-to-date badger survey has been carried out immediately prior to the commencement of development by an appropriately qualified licensed ecologist and a report of the survey has been submitted to the local planning authority;
- b. a scheme for the protection of any badgers found on the site (including exclusion and artificial sett construction, habitat enhancement and a proposed programme of monitoring to be carried out by an appropriately qualified expert for the duration of the development) has been submitted to and approved in writing by the local planning authority.

The approved measures shall be implemented on commencement of work and shall be maintained for the duration of all operations on the site.

- 16) No development shall take place until a scheme of works, which shall include a detailed method statement, for the control and disposal of the invasive plant species Japanese Knotweed within the site has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The approved scheme of works shall be implemented in full throughout the course of the development.
- 17) The infilling operations shall be carried out in phases worked from east to west in accordance with approved drawing No.05 Rev B –Existing and Proposed Sections and as described in the submitted Development Plan by Francis Bradshaw Partnership. The approved plan shall be adhered to for the duration of all operations on site.
- 18) Topsoil, subsoil and overburden mounds shall not be traversed by machinery except for the express purpose of stocking or removing such materials for final spreading.
- 19) Soils shall only be handled in dry weather conditions and when the soils are in a dry and friable condition.

- 20) No topsoil, subsoil, overburden or material to be used in final restoration shall be removed from the site.
- 21) The final 0.45 metre of overburden, subsoil and topsoil shall be re-spread in the proper sequence to achieve the levels shown on the approved drawing No.05 Rev B –Existing and Proposed Sections. Any large solid objects likely to interfere with subsequent ground cultivation shall be removed. On completion of the re-spreading of the overburden and subsoil, which should be carried out only during dry weather conditions, the surface shall be cultivated so that any compacted layers are effectively broken up. The topsoil shall then be re-spread evenly over the restoration area, again only in dry weather conditions and only when the soil is in a dry and friable condition. The topsoil shall then be cultivated to a suitable tilth to provide a seed bed.
- 22) All plant, machinery, hard standings and haul roads, other than those required for the purposes of restoration, shall be removed from the site within 3 months of the cessation of landfill operations.
- 23) Notwithstanding the details submitted in the Landscape Statement and 5 Year Management Plan and shown on approved drawing No.20 Rev A – Proposed Landscaping Plan, no development shall take place until a detailed scheme for the landscaping of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the type, species, siting, planting distances and the programme of planting of trees and shrubs. The scheme of planting as approved shall be carried out during the first planting season after the development is substantially completed and the areas planted shall be retained as landscaped areas thereafter. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.