

Planning & Regulation Committee Monday, 8 January 2018

ADDENDA

PN8 - Two applications related to M&M Skips at Worton Farm.

1. MW.0091/17 - Section 73 application for non-compliance with conditions 1 and 4 of permission no: 09/00585/CM (MW.0108/09) for waste recycling and transfer facility, to allow re-shaping of site bunding to enable additional car parking provision.

The applicant has submitted further landscaping details which has satisfied the concerns of the County's Environmental Strategy Officer. The conditions relating to landscaping and the location of bird boxes are no longer necessary.

The applicant has provided the County Council with a legal opinion from a solicitor setting out a number of points relating to permitted development rights. Some of the points relate to issues not relevant to this application, but it includes the opinion that the proposed condition relating to the removal of permitted development rights is unnecessary unlawful and inappropriate.

For clarity the condition would not and is not intended to have any bearing on development that has been carried out on the site prior to this permission if it were to be issued. The applicant has claimed that development on the site has been carried out under permitted development rights, however, the Council has received no application pursuant to section 191 of the T & CP Act 1990 as amended with regard to a certificate of lawfulness and if the applicant or any other party wishes a formal decision from the County Council as to whether the development carried out is permitted development or not then they would need to make such an application.

The development that has taken place on the site is not something which should be repeated in future taking up space on the site which is contributing to pushing out other development from the site. The inappropriate development is by definition harmful to the Green Belt (NPPF Paragraph 87). It is therefore necessary and entirely reasonable to control continued development under permitted development rights at the site.

The application is a section 73 application covering the whole development permitted under the relevant permission, and it is not confined only to the single change proposed in the application. The committee report therefore refers to conditions "including" those in the recommendation, thus allowing the conditions from the earlier application to be brought forward and reviewed.

The condition had not been attached to earlier permissions but circumstances have changed since then. We have evidence that the claimed exercise of permitted development rights has led to development having been carried out which would otherwise have been inappropriate and so by definition harmful in the Green Belt and for which very special circumstances would have to have been shown if an application had been required, which would have been the effect of a condition withdrawing permitted development rights. The effect of the development whether lawfully permitted or not has been to cause harm to the Green Belt through inappropriateness but also in combination with other works at the site to have served to limit the applicant's ability to carry out their recycling function on the site. The proposed condition is therefore considered necessary to ensure that further potential harm to the Green Belt through inappropriate development is controlled through the consideration of applications for specific planning permission.

Having been advised by the County Council's legal team I am therefore of the opinion that the condition would be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and should be attached to the permission if granted.

In relation to the amendment of the site plan as set out in paragraph 32 of the report, the applicant has helpfully provided a larger scale plan of the car park that negates those concerns and the amendment is no longer necessary.

The recommendation therefore remains for approval of the permission but to include the following conditions:

- Detailed Compliance
- Development to be carried out within 3 years.
- Drainage details to be approved.
- Further conditions to follow from the review of the conditions on permission MW.0108/09.

2. MW.0090/17 - Use of land for storage of empty skips.

The applicant has asserted that the site is a waste operation within the meaning of Regulation 2 of The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 and so falls for determination as a county matter.

I accept that this site is a waste management facility in the context of this application and so should be considered against development plan waste policies.

Points from the applicant's further information that is relevant to the Very Special Circumstance Argument (Officer comments in italics)

The site is a local employer; it employs 70 people: 29 of which are waste and plant operatives and banksmen, 24 are drivers and 17 are office/administrative staff including telesales staff.

There would be no change to the existing permanent permission for the waste facility. It is up to the applicant how they use the site, but it appears that there are administrative staff, at least some of which eg telesales, could be located off the site in offices at Eynsham, or the Worton office developments for example. There is no evidence presented that amounts to very special circumstances.

Skips are part of the equipment necessary for the management of waste.

If as stated the skips are necessary, locating the skips on the permanent site should be prioritised over other uses within the existing permanent site.

The land is no longer needed for a different waste use.

This is according to the applicant's needs, but it could come forward as a site nomination through the Local Plan process from another party.

The need to ensure that an important strategic waste recycling facility is maintained.

The existing permanent waste recycling facility would be maintained, and development essential to it should logically be carried out there as it was prior to the temporary permission being granted. The grant of a temporary permission for whatever reason is not a justification for a subsequent grant of permanent planning permission for inappropriate development which is by definition harmful in the Green Belt.

The business has expanded.

The business expanding is to be encouraged, but in itself it does not justify permanent inappropriate development which is by definition harmful in the Green Belt.

A reserve of empty skips is needed to meet the additional requirement. This is to store the skips when not needed by clients, but also to hold skips needed for use on the site.

Without the permanent expansion onto the empty skip storage area there would continue to be recycling on the site as there had been prior to the temporary extension into the empty skip storage area. As stated earlier skip storage should be prioritised on the existing permanent site.

The application site is only required for the storage of M&M's own skips and containers.

Permission runs with the land and it could pass to another operator.

Without the availability of their skips there would be no waste recycling taking place at the site.

I refer to earlier comments relating to skip storage on the permanent site. If the empty skip storage is essential to the viability of the business then it is not understood why the applicant firstly applied for a temporary planning permission in 2012 on the basis that the application site may be required for some other waste development which would then have required to displace the empty skip storage to another location, either within the permitted area of the waste management site or elsewhere, nor why the applicant did not consider the situation sufficiently pressing from the point of view business risk to leave it until within three months of the date of expiry of the temporary planning permission to seek to make the development permanent through the current application.

Co-location of (different) waste facilities is beneficial because of the synergy that provides and the environmental benefits it brings by reducing traffic volumes, enabling economies of scale, and minimising operational and transport costs. In this case it is not a different waste facility that is to be co-located but an essential part of the existing skip waste recycling business.

Yes we agree this is not co-location of different waste sites, but again refer to earlier comments in relation to skip storage on the permanent site.

The application is therefore for a waste operation essential to the site.

The skips could be stored within the existing permanent site as they had been prior to the temporary permission, but the operator has chosen to carry out other development and other activities on the existing permanent site and move the skips off the site. If the waste operation is essential to the site it could be located there in preference to other ancillary uses. It has instead been moved to a location with temporary permission.

There was a need to regularise the storing of skips outside the permitted site and this could not be done on the mineral processing plant site because there are minerals still to be worked there.

There was not a need to regularise the storing of skips outside the permitted site. There was a need to ensure that the unauthorised development did not continue. The applicant sought temporary consent on the site that the skips are currently located and that was approved.

Picking up skips from the machinery and vehicles operating and manoeuvring in the waste processing areas, has considerable benefits in terms of site safety.

There has been no evidence provided to support the contention that the development is required for health and safety reasons e.g. health and safety risk assessment report.

If the skip storage area is not approved this will have significantly adverse financial and operational consequences for the business and jeopardise the ongoing viability of this very important strategic waste recycling site - as well as valuable employment generator (employing 70 local people).

The financial and operational consequences must have been clear to the applicant when the application for temporary consent was permitted. Their existing permanent permission is unchanged. No evidence has been submitted to support this contention.

The M&M site is the only major skip waste recycling facility close to and serving the Oxford area, and it is vital that it is retained, as part of a sustainable waste planning strategy for Oxfordshire.

Other operators, who have facilities outside the Green Belt, also serve Oxford. The existing permanent facility would not be affected and as with any business those operations that are essential should be prioritised.

Paragraph 21 of the NPPF has now introduced the requirement for planning to place significant weight on the need to support economic growth.

The NPPF does set that out but within the context of other paragraphs of the framework which is discussed below.

Further Officer Comments:

Paragraph 11 of the NPPF states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the NPPF confirms that the Development Plan is the starting point for decision making. This means that where planning applications accord with the development plan they should be approved without delay.

In this case the proposed development is inappropriate development in the Green Belt and is contrary to the development plan unless Very Special Circumstances can be demonstrated.

In paragraph 79 of the NPPF, the government states that it attaches great importance to Green Belts, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It further states that the essential characteristics of Green Belts are their openness and their permanence.

Paragraph 87 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Very special circumstances are a high bar to be overcome before allowing inappropriate development which is by definition harmful to the Green Belt, as set in the NPPF. Where contentions are made in support of the application such as that the business would become unviable without the grant of permanent planning permission for empty skip storage at this Green Belt location, this should be supported by clear evidence if it is to be accepted as a Very Special Circumstance supporting the grant of planning permission for inappropriate development e.g. a costed business risk assessment.

We now have an up to date Core Strategy for waste which states that proposals for inappropriate development in the Green Belt, will not be permitted except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The applicant's further Very Special Circumstances are set out in this addenda, as are the officer responses. I remain of the view that Very Special Circumstances have not been demonstrated to support the application.

Policy W5 of the OMWCS sets out the priorities for locating waste management facilities. The consideration against this policy is set out in paragraph 43 of the report although it is accepted that the site is on land that has been previously restored as opposed to land which remains to be restored under the requirements of a mineral permission. Nonetheless the application site is not understood to be land which is or was occupied by a permanent structure and any associated fixed surface infrastructure and so as part of a restored mineral working remains a greenfield site. The development is therefore not in accordance with that policy and should be refused for that reason.

My recommendation remains that the application should be refused but with the additional ground that the development would be contrary to policy W5 of the OMWCS.

It is RECOMMENDED that:

(a) planning permission for application no. MW.0091/17 be approved subject to conditions to be determined by the Director of Planning and Place to include the following:

- i. Detailed Compliance**
- ii. Development to be carried out within 3 years.**
- iii. Drainage details of the car park area to be approved.**
- iv. Permitted development rights to be removed.**

(b) planning permission for application no MW.0090/17 be refused:

- i. It would be inappropriate development in the Oxford Green Belt and no very special circumstances to justify making an exception have been demonstrated. The application would therefore be contrary to policy C12 of the Oxfordshire Minerals and Waste Core Strategy, policy ESD 14 of the Cherwell Local Plan 2031 and National Planning Policy Framework paragraphs 87, 88 and 90.**
- ii. It would be contrary to the priorities for locating waste facilities as set out in policy W5 of the Oxfordshire Minerals and Waste Core Strategy.**