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## Appeal Decision

Inquiry Held on 14-15 and 17 February 2023

Site visit made on 16 February 2023

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> April 2023

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Appeal Ref: APP/F4410/W/22/3310101

Former Blaxton Quarry, Mosham Road, Doncaster, DN9 3EJ

- 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 outline planning permission.
  - The appeal is made by Mr T Waddington of Ernest V Waddington Ltd against the City of Doncaster Council.
  - The application Ref 22/00250/OUTM, is dated 2 February 2022.
  - The development proposed is described as "*outline planning permission including means of access for B1 B2 E:g employment uses - 31,846 square metres for up to 52 units, and parking*".
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### Decision

1. The appeal is allowed and planning permission is granted for B2, B8, and E:g employment uses - 31,846 square metres for up to 52 units and parking at Former Blaxton Quarry, Mosham Road, Doncaster, DN9 3EJ in accordance with the terms of the application, Ref 22/00250/OUTM, dated 2 February 2022, subject to the conditions set out in the attached schedule.

### Applications for Costs

2. Applications for costs were made by both Mr T Waddington of Ernest V Waddington Ltd against the City of Doncaster Council, and by the City of Doncaster Council against Mr T Waddington of Ernest V Waddington Ltd. These applications are the subject of separate Decisions.

### Procedural Matters

3. The application is in outline. In this regard, the means of access falls to be considered at this stage, whereas layout, scale, appearance, and landscaping are reserved for future consideration. Whilst layout is not fixed at this stage, a drawing showing an indicative layout has been submitted and I have had regard to this in determining the appeal.
4. **The application form states that the proposal is for "B1 B2 E:g employment uses"**. However, this appears to be a typographical error as there is no longer a B1 use class. Moreover, both the appeal form and the statements of common ground refer to the proposal as being for B2, B8 and E:g uses. The Council also consulted on the proposal on that basis. Accordingly, I have referred to those uses in my formal decision, above.

## Background and Main Issues

5. In this case, both the Council and appellant agree that the appeal should be allowed. However, there is a dispute between the parties regarding whether the proposal should provide compensatory provision for the loss of the existing priority habitat at the site, and 10% biodiversity net gain. In this regard, a s106 agreement has been submitted that would secure these as obligations, subject to a **'blue pencil' clause**. This clause states that these obligations shall only apply and be enforceable if I were to find that they meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations 2010. **It is the appellant's position that these obligations do not meet the Regulation 122 tests.**
6. In that context, the main issue is whether compensatory habitat and 10% biodiversity net gain are necessary in order to make the proposal acceptable in planning terms, having regard to:
  - (a) Whether the proposal would be contrary to the development plan without it;
  - (b) The effect of providing these obligations on the viability of the proposal; and
  - (c) If the proposal is contrary to the development plan without compensatory habitat and 10% biodiversity net gain, whether there are material considerations that indicate that the proposal should be determined other than in accordance with it.

## Reasons

### *Whether contrary to the development plan*

7. The majority of the appeal site consists of Open Mosaic Habitat on Previously Developed Land, which is a priority habitat under s41 of the NERC Act 2006. It is common ground that the appeal proposal would result in significant harm to this existing priority habitat.
8. Policy 30 of the Doncaster Local Plan (2021) sets out **the Council's approach to biodiversity and geodiversity**. Part B of this policy states that proposals which harm a priority habitat will only be supported where certain criteria are met. In this regard, 5 criteria are listed under part B, and these are subject to differing interpretations by the Council and appellant respectively.
9. The 5 criteria listed under part B are set out in a numbered list. These criteria are separated by semi-colons, **with the word 'and' inserted** after the last semi-colon at the end of criterion 4, and with a full stop at the end of criterion 5. This is a common method of punctuating bullet points where the list as a whole is intended to form a complete sentence. At no point is the **word 'or'** used to imply that part B of the policy can be satisfied if only one or more of the criteria are met. **Conversely, the use of the word 'and' after the last semi-colon indicates that each of the 5 criteria should be met** (insofar as they are relevant) in order for a proposal to be considered acceptable. I further note that this method of punctuating bullet points/numbered lists is used throughout **the National Planning Policy Framework ('the Framework')** in situations where all of the listed criteria are intended to apply.

10. **The appellant's interpretation** of Policy 30 is that it is supportive of proposals that accord with criteria 4 and 5 of Part B only. However, part A of the policy clearly states that "*all proposals shall be considered in light of the mitigation hierarchy in accordance with National Policy*" (my emphasis). In this regard, I do not accept that the words "*shall*" or "*in light of*" imply that this is discretionary, and "*shall*" typically means that something certainly will or must happen. Moreover, under the **appellant's interpretation Policy 30 would be at odds** with paragraph 180 a) of the Framework, which states that "*if significant harm to biodiversity resulting from a development cannot be avoided ... , adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*". In my view, such an interpretation would be directly contrary to national policy rather than providing an explanation of how it is to be applied locally.
11. The Doncaster Local Plan (2021) has only recently been adopted. In this regard, **the examining Inspector's Report clearly states that** it was necessary to modify Policy 30 in order to ensure consistency with national policy. Accordingly, it seems highly unlikely that the examining Inspector shared the **appellant's interpretation of** the final version of Policy 30, which would be at odds with national policy.
12. In light of the above, I conclude that the proposal must comply with part A and criteria 1-5 of part B (insofar as they are relevant) in order to accord with Policy 30. With regard to the mitigation hierarchy, it is agreed that the harm to the existing priority habitat cannot be avoided or entirely mitigated onsite. Accordingly, compensatory provision is necessary, and is capable of being secured via the submitted s106 agreement.
13. Separately, it has been put to me that even if the proposal were contrary to Policy 30, then it would still be in accordance with the development plan when considered as a whole. In this regard, the appeal site is allocated for employment purposes in the Doncaster Local Plan (2021), being listed at Table E7. Moreover, Policy 2 sets out that at least 481 hectares of employment land are to be delivered over the plan period to 2035. The explanatory text to this policy further states that the Plan aspires to achieve a 1% job growth rate and that sufficient land is allocated to meet this target. The proposal would also make appropriate provision for access by sustainable modes of transport, as required by Policy 13. These policies clearly lend support to the principle of developing the site for employment purposes. The proposal would also be capable of complying with Policies 46, 54, 55, and 56 in relation to design, energy efficiency, pollution, remediation, and drainage.
14. Notwithstanding this, Policy 30 is a strategic policy in the Local Plan that is explicitly linked to requirements in national policy. There is also no fundamental tension between it and the other Local Plan policies highlighted above, and they are not pulling in different directions in this case. In this regard, each of these policies is capable of being met were the proposal to secure compensatory habitat and a 10% biodiversity net gain. Accordingly, I consider that without these contributions the proposal would not accord with the development plan when considered as a whole.
15. For the above reasons, I conclude that compensatory habitat and 10% biodiversity net gain are necessary for the proposal to accord with the development plan. In the absence of this provision, the development would be

contrary to Policy 30 of the Doncaster Local Plan (2021), and guidance set out in the Biodiversity Net Gain Supplementary Planning Document (2022).

16. Separately, my attention has also been drawn to the emerging Auckley Neighbourhood Plan. This has recently been examined, although the **Examiner's final report had not been published** at the time of the Inquiry. Whilst the Neighbourhood Plan has not yet been made, there is nothing in it at this stage that would give support to the proposal not providing compensatory habitat and 10% biodiversity net gain.

### *Viability*

17. The appellant has submitted an Independent Viability Appraisal Report (Mercer & Co, 30 November 2022) in support of the appeal. This concludes that the proposal has a negative viability of -£6,539,342. Accordingly, it is asserted that public funding will be necessary to bring the site forward. In this regard, there is significant uncertainty as to whether any such funding would cover the cost of compensatory habitat and a 10% biodiversity net gain, which the appellant estimates would cost in the region of £750,000.
18. A number of assumptions underpinning the **appellant's** Viability Appraisal are disputed. **In this regard, the Council's view is that** the scheme has a positive viability of £7,640,823, which represents a difference of around £14.2 million between the parties. Around half of this difference is accounted for by the assumed yield, with the appellant using a figure of 6% and the Council advocating for 5%. At the Inquiry, the appellant stated that economic uncertainty and rising interest rates have led to higher yields compared to 6-12 months ago. Moreover, it was asserted that higher interest rates are likely to persist into the future. However, the long-term direction of interest rates and the wider economy are highly uncertain at this stage. This uncertainty is magnified in this case by the development timescales for the proposal, which the appellant states is likely to be built out over around 10 years. In this regard, the yields that will apply at the time different phases come forward are very difficult to predict accurately at this stage.
19. Another significant element in the difference between the parties relates to build costs. In this regard, a number of assumptions have been made in relation to the size and type of the units proposed, and the uses they are likely to be put to. This includes assumptions about external infrastructure costs, external wall to floor ratios, etc, and the economies of scale that could be generated by a development of this size. However, layout and scale are not fixed at this stage and the application would allow for both a multi-phase scheme of small-to-medium sized units, or a single phase of 1 or more large units, amongst other scenarios. In this regard, a single phase of development would be likely to achieve significantly higher savings through economies of scale. Moreover, 1 or more larger units would be likely to have lower build costs than a series of small-to-medium sized units. Many of the cost assumptions that were debated at the Inquiry are therefore highly speculative at this stage and will become clearer once detailed proposals come forward.
20. The appellant has also assumed that around 57% of the site could be used for open storage purposes in order to calculate the Benchmark Land Value. However, for the reasons set out below, the precise area that could be used for these purposes without planning permission is highly uncertain. Moreover, any necessary fencing, lighting or gating on the part or parts of the site where open

storage was considered lawful may require planning permission, which would trigger Policy 30 of the Local Plan. **Accordingly, I consider the appellant's** assumed Benchmark Land Value to be based on flawed assumptions, regardless of whether a 30% premium uplift is applied.

21. Taken together, these factors account for the vast majority of the difference between the parties. Accordingly, it is very difficult to reach a precise view regarding viability at this stage given the uncertainties that apply. However, the cost of providing compensatory habitat and a 10% biodiversity net gain (£750,000) is small in the context of a Net Development Value of between £36,612,959 (the appellant) and £44,160,856 (the Council). This equates to around 2% of the Net Development Value, which is significantly below other costs that are assumed for the scheme. On balance, and based on the available evidence, I consider that a contribution of this size is unlikely to compromise the viability of the proposal. Moreover, if when detailed proposals are formulated a different or more certain viability picture emerges then it would be open to the appellant to seek to develop the scheme without the biodiversity contribution at a later stage.
22. For the above reasons, I conclude that the effect of providing compensatory habitat and 10% biodiversity net gain are unlikely to undermine the viability of the proposal.

#### *Other material considerations*

23. The proposal would involve the re-use of a previously developed site that is allocated for employment purposes in the Local Plan. It would also remediate the site and would improve its appearance when viewed from Mosham Road. The proposal would also be in a relatively accessible location, would deliver off-site highway improvements, and would be constructed to high energy efficiency standards. I attach significant weight to these benefits.
24. The development would also deliver around 31,846 square metres of employment uses in up to 52 units. The appellant states that it has the potential to generate 766 new jobs and accommodate up to 52 new businesses together with 361 person years of employment construction during that phase. In addition, the proposal would generate £351.3 million GVA in net present value terms over the 10 year period following completion. This would make a significant contribution to the local economy and to the economic objectives of the Local Plan, in what is acknowledged to be a relatively deprived area. Accordingly, I also attach significant weight to these benefits.
25. In addition, it is asserted that the proposal would provide a mix of small and **medium sized units that would help to diversify the City's** stock of employment premises. In this regard, it was highlighted that take up in recent years has been dominated by larger B8 storage and distribution uses. My attention was also drawn to a consultation response from the head of service for Business Doncaster, who stated that the City "*has a shortage of available stock of the size and quality of units proposed*". However, the appeal proposal is in outline at this stage and layout and scale are reserved matters. It is therefore unclear precisely what form the eventual development will take and the submitted layout plan is indicative only. Moreover, the permission would allow for a large single B8 use. Given these uncertainties, I attach only limited weight to this consideration at this stage.

26. My attention has also been drawn to the recent closure of Doncaster Sheffield Airport and the associated job losses to the local area, which are significant. However, the future of the airport is unclear at this stage, and the Council's evidence states that it is considering a compulsory purchase so that it remains an operational airport. Alternatively, if the airport use were to permanently cease, then the Council state it would be developed for employment uses. Moreover, it is unclear to what extent airport job losses would be mitigated by the appeal proposal, given the appellant states it is likely to be developed out over a 10 year period. In these circumstances, I consider that the closure of the airport carries only limited weight in favour of the appeal proposal.
27. The appeal site benefits from a Certificate of Lawful Use for *"use of quarry and use of land for storage of oils, plant, vehicles, equipment, scrap metals and timber: vehicle repairs, repair of heavy goods vehicles, plant and equipment; retail sales of bitumen, gravel, and minerals not extracted from the site; processing of sand, gravel, clay, tarmac and bricks"*. This was granted on appeal in September 2007 (Ref APP/F4410/X/06/2030860), and it restricts particular uses to specific areas of the site. However, the plan accompanying that Certificate has since been lost and no party has been able to locate it. Moreover, ponds and buildings that are referred to in that Certificate are no longer present. Accordingly, it is unclear precisely which of these uses was considered to be lawful on which parts of the site.
28. The potential to resume an open storage use under the Certificate of Lawful Use was discussed at the Inquiry. Whilst it is unclear on which part of the site this use was considered lawful, it is also unclear whether such a use could resume without other works that would require planning permission. In this regard, large sections of the site are mounded or do not comprise hardstanding and any regrading works would be likely to require planning permission. Similarly, any necessary fencing, lighting or gating on the part or parts of the site where open storage was considered lawful may also require planning permission. In combination, these uncertainties call into question the likelihood that an open storage use could resume on the site without planning permission, thus avoiding the need to comply with Policy 30. I further note that the Certificate states that *"the primary use of the whole site is for the winning and working of minerals, including ancillary uses"*, which suggests open storage uses existed on a minority of the site. I therefore attach only limited weight to this as a fallback position. In any case, and as set out above, I do not consider that the provision of compensatory habitat and 10% biodiversity net gain would make the scheme unviable such that any fallback option would be likely to be pursued.
29. The appellant states that the existing Open Mosaic Habitat is likely to deteriorate over the next 10-20 years as it is slowly colonised by taller species such as birch. In this regard, it is contended that such species would be likely to shade out many of the early successional species that comprise the Open Mosaic Habitat. However, the Council's ecology witness considered that this was speculative and that the site could also change into an Acid Grassland, which is of at least equal value to an Open Mosaic Habitat. In this regard, the extent and scope of any future changes are uncertain at this stage and would in any case take many years to materialise. Accordingly, I attach only limited weight to this consideration.

30. **I return to the matters raised in this section in my 'Planning Balance and Conclusion', below.**

Other Matter

*Planning obligation*

31. A signed and dated s106 agreement has been submitted that relates to biodiversity net gain, a submitted Framework Travel Plan, and local training and employment. With regard to the provisions relating to local training and employment, these are necessary in order to accord with Local Plan Policy 3 C). Compliance with the submitted Framework Travel Plan for the development is also necessary in order to encourage sustainable travel to and from the site. In addition, and given my findings above, I consider that the contribution in relation to compensatory habitat and biodiversity net gain is necessary in order to comply with Local Plan Policy 30 and paragraph 180 of the Framework. Moreover, I am satisfied that each of these contributions are directly related to the development and are fairly and reasonably related in scale and kind to it.

Conditions

32. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. The standard time limit condition for submission of reserved matters is adjusted to 7 years due to both the scale of the development and the prospect that it will come forward in multiple phases. Conditions requiring the proposal to accord with the approved plans insofar as they relate to access and specifying the details to be provided at reserved matters stage, are necessary in the interests of certainty and to ensure a satisfactory development.
33. A condition requiring the submission of a timetable for the implementation of the proposed access and offsite highway works is necessary so that these works are in place to serve the development. A further condition requiring the submission and approval of a Landscape and Ecological Management and Monitoring Plan is necessary to ensure that the proposed onsite habitats are appropriately managed and monitored. A condition requiring the submission of a tree protection plan and an arboricultural method statement is also necessary to protect retained trees during the construction process. Further conditions relating to contamination, a drainage strategy, and groundwater, are necessary to ensure that the site is appropriately remediated, drained, and that the risk of polluting controlled waters is minimised. Another condition requiring the submission and approval of a Construction Method Statement is necessary in the interests of highway safety and neighbouring residential amenity during the construction phase. Conditions requiring the submission and approval of schemes relating to renewable energy supply and **a BREEAM 'Very Good' rating** are necessary to accord with Policy 46 of the Doncaster Local Plan (2021). A condition relating to development within 10 metres of the water main is also necessary to protect the public water supply. These conditions are pre-commencement in nature as they will either inform the construction process or relate to works below ground level. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to these conditions in writing.
34. A condition requiring the submission and approval of Construction Environmental Management Plan(s) is necessary in order to protect wildlife

during the construction process. Further conditions relating to cycle parking and waste management are necessary to ensure that such facilities and arrangements are in place to serve the proposed development. Other conditions relating to drainage management and maintenance, and air quality, are necessary to ensure that the approved drainage systems are maintained and impacts on air quality mitigated. Conditions relating to development within 20 metres of the railway line, and vibro-compaction machinery, are also necessary **given the site's proximity** to the railway line and the need to protect this during the construction phase.

35. Conditions relating to piling and unanticipated contamination are necessary to ensure that there is no unacceptable risk to groundwater and to remediate any additional contamination discovered during the construction phase. A further condition relating to the piped discharge of surface water is necessary to ensure that surface water is not discharged prior to the installation of the proposed drainage systems. Finally, conditions relating to industrial noise and activity are necessary to protect the living conditions of neighbouring residential occupiers.
36. Other conditions suggested by the Council relating to a phasing plan, finished floor levels, internal roads and footways, and development within 10 metres of a watercourse are unnecessary as they relate to layout and appearance, which are reserved matters. A suggested condition relating to electronic vehicle charging points is also unnecessary as this is subject to Part S of the Building Regulations, which took effect on 15 June 2022. A further suggested condition relating to audible movement warning systems is unnecessary as the submitted Environmental Noise Impact Assessment (ADT, 22 October 2021) found that this source of noise would have no observed adverse effect.

#### Planning Balance and Conclusion

37. In the absence of compensatory habitat and a 10% biodiversity net gain, the proposal would result in significant ecological harm. It would be contrary to the development plan in this regard. Moreover, I have found that this provision would be unlikely to render the development unviable.
38. In these circumstances, the benefits arising from the proposal, even when taken together, would not outweigh the failure to comply with the development plan. In any case, and given my findings in relation to viability, these benefits would be likely to arise from a policy compliant scheme in any event.
39. I therefore conclude that compensatory habitat and a 10% biodiversity net gain are necessary in order for the proposal to be acceptable in planning terms. Accordingly, I consider that the appeal should be allowed on that basis.

*Thomas Hatfield*

INSPECTOR



## SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any phase of development takes place and the development shall be carried out as approved.
- 2) Application(s) for approval of the reserved matters shall be made to the Local Planning Authority not later than 7 years from the date of this permission.
- 3) Each phase of the development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters for that phase.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to access:  
45592/001 Rev A (Site Location Plan)  
ADC2791-DR-001 Rev P1 (Proposed Site Access Junction)  
ADC2791-DR-002 Rev P2 (Proposed Mosham Road/Gatehouse Lane Junction Mitigation)  
ADCX2791-DR-003 Rev P1 (Access Junction Layout & Gatehouse Lane Junction Mitigation Proposals)

### *Pre-commencement conditions*

- 5) No development shall take place until a timetable has been submitted to and approved in writing by the Local Planning Authority for the implementation of the following works:
  - i) The provision of the vehicular access into the site as shown on drawing Ref ADC2791-DR-001 Rev P1; and
  - ii) The provision of on and off site improvements to the Mosham Road/Gate House Lane junction, as shown on drawing Ref ADC2791-DR-002 Rev P2.

The works shall be carried out in accordance with the approved timetable.
- 6) No development shall take place until a Landscape and Ecological Management and Monitoring Plan for proposed onsite habitats has been submitted to and approved in writing by the Local Planning Authority. The Monitoring Plan shall detail the following:
  - i) The baseline biodiversity assessment against which the biodiversity unit value will be monitored as detailed in the Biodiversity Impact Assessment (Weddle Landscape Design, December 2022);
  - ii) The biodiversity unit targets;
  - iii) A detailed adaptive management plan setting out how onsite habitats will be created or enhanced (together with timescales for their creation or enhancement) and setting out the proposed ongoing management for a minimum of 30 years;
  - iv) The details of when the target condition will be achieved and how it shall be maintained;
  - v) A detailed monitoring plan that will be used to inform any potential changes to the ongoing management and assess the progress towards achieving the target condition. This shall outline the surveys that will be used to inform condition monitoring reports. Monitoring

reports will be provided to the Local Planning Authority before the end of years 1,2,5,10,15, 20, 25 and 30 of the monitoring period;

- vi) The roles, responsibilities and professional competencies of the people involved in implementing and monitoring the biodiversity net gain delivery; and
- vii) Details of how the ecological enhancement opportunities identified in the Ecological Impact Assessment (Weddle Landscape Design, August 2022) shall be secured on the site.

The approved Ecological Management and Monitoring Plan shall thereafter be implemented in full accordance with its terms. Any subsequent changes to management as a result of findings from the monitoring reports shall be agreed in writing with the Local Planning Authority.

- 7) No development shall take place until a drainage strategy for the site has been submitted to and approved by the Local Planning Authority. The approved strategy shall thereafter be implemented as part of each phase of the development. Foul and surface water drainage systems shall be implemented prior to the first occupation of each building.
- 8) No phase of the development subject to an approved reserved matters application shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.

**[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]**

- 9) No phase of the development subject to an approved reserved matters application commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - **Code of Practice and the Environment Agency's Model Procedures** for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.

- 10) No phase of the development subject to an approved reserved matters application shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the relevant phase of development is occupied.
- 11) No phase of the development subject to an approved reserved matters application shall commence until an Environmental Management Plan ('EMP') based on a full groundwater risk assessment has been submitted to and approved in writing by the Local Planning Authority. The EMP shall include:
- i) identification of potential sources of groundwater pollution, potential pathways for the movement of contaminants, identification of receptors, and appropriate mitigation measures;
  - ii) details of construction methods including the depths of excavations for foundations;
  - iii) details of the construction and maintenance of any soakaways or other means of draining surface water via infiltration and ponds including the means of ensuring that in the event of leakage from any battery storage area pollutants will not discharge into ground;
  - iv) temporary surface water controls to ensure that no surface water generated during construction of the development are discharged to ground; and
  - v) details of any liquid storage tanks and necessary mitigation measures.

The development shall thereafter be implemented in accordance with the approved EMP.

- 12) No phase of the development subject to an approved reserved matters application shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) the identification of delivery routes that avoid the use of Gate House Lane level crossing;
  - iii) the identification of a construction access point and a swept path analysis for the largest construction vehicle to enter the site;
  - iv) loading and unloading of plant and materials;

- v) storage of plant and materials used in constructing the development;
- vi) wheel washing facilities;
- vii) measures to control the emission of dust and dirt during construction;
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 13) No phase of the development subject to an approved reserved matters application shall commence until a scheme (including an implementation timetable) to secure at least 10% of its energy supply from renewable sources, or equivalent carbon emission reductions, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the implementation timetable and shall thereafter be retained.
- 14) No phase of the development subject to an approved reserved matters application shall commence until a scheme to secure a BREEAM 'Very Good' rating has been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of each building within that phase, a post-construction review demonstrating that this rating has been achieved shall be submitted to and approved in writing by the Local Planning Authority.
- 15) All surface water run-off from the site, except roof water, shall be discharged via a suitable oil/petrol/grit interceptor. No phase of the development subject to an approved reserved matters application shall commence until details of how this shall be achieved for that phase have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of that phase of development.
- 16) No development within 10 metres of the water main along the southern edge of Mosham Road shall take place until details of measures to protect it during the construction process have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be adhered to throughout the construction process.

*Prior to the submission of each reserved matters application*

- 17) On or before the submission of each subsequent reserved matters application(s) a Construction Environmental Management Plan ('CEMP') relating to biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall cover badgers, bats, birds, amphibians, other terrestrial mammals and reptiles, and shall include:
  - i) A risk assessment of construction activities in relation to wildlife and habitats informed by the Ecological Impact Assessment (Weddle Landscape Design, August 2022) and updated protected species surveys where necessary;
  - ii) Details of all reasonable avoidance measures to be employed on the site;

- iii) A lighting plan detailing the specification, location and orientation of the proposed external lighting to avoid disturbance or adverse effects on light-sensitive species, including bats;
- iv) An invasive species management plan relating to Japanese knotweed and New Zealand pygmyweed;
- v) The use of protective fencing and wildlife safety measures clearly marked on site plans; and
- vi) Plans for a record to be kept by an Ecological Clerk of Works of operations and monitoring activities carried out under the CEMP. This record shall be made available to the Local Planning Authority on request both during and after the construction period.

The development shall thereafter be implemented in accordance with the approved CEMP.

*Pre-occupation conditions*

- 18) Prior to the first occupation of any building, details of secure cycle parking facilities for that building shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be installed and made available for use prior to the first occupation of the building and shall thereafter be retained for that purpose.
- 19) Prior to the first occupation of any building, a Drainage Management and Maintenance Plan for that building and its curtilage shall be submitted to and approved in writing by the Local Planning Authority. The drainage system for foul and surface water shall be managed and maintained for the lifetime of the development in accordance with the approved Drainage Management and Maintenance Plan.
- 20) Prior to the first occupation of any building, an Air Quality Mitigation Plan for that phase of development shall be submitted to and approved in writing by the Local Planning Authority. This shall calculate damage costs and demonstrate how they have been utilised to offset vehicle emissions during the lifetime of the development. The approved plan shall thereafter be implemented prior to the first occupation of that building.
- 21) Prior to the first occupation of any building, a Waste Management Plan for that building shall be submitted to and approved in writing by the Local Planning Authority. Waste and recycling bins shall thereafter be stored and made available for collection in accordance with the approved plan.

*Other conditions*

- 22) No development shall take place within 20 metres of the railway boundary fence until a Construction Methodology Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall include:
  - i) Details of the construction methodology, including earthworks, foundations and excavations, use of crane, plant and machinery, drainage and boundary treatments for development within 20 metres of the railway boundary fence;
  - ii) Details of scaffolding (including protective netting) to be installed within 20 metres of the railway boundary fence; and
  - iii) Details of any temporary construction compound within 20 metres of the railway boundary fence.

- The development shall thereafter be carried out in accordance with the approved Construction Methodology Statement.
- 23) Prior to the use of vibro-compaction machinery in any phase of the development, details of this machinery and a method statement shall be submitted to and approved in writing by the Local Planning Authority. These works shall thereafter be carried out in accordance with the approved method statement.
  - 24) Prior to the use of piling or any other foundation designs using penetrative methods on any part of the site, details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that there would be no resultant unacceptable risk to groundwater. The development shall thereafter be carried out in accordance with the approved details.
  - 25) Any contamination that is found during the course of construction of the development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.
  - 26) No piped discharge of surface water from the development shall take place prior to the completion of the approved surface water drainage works.
  - 27) No outdoor industrial activity, apart from loading and unloading, shall be undertaken.
  - 28) No indoor industrial activity shall be undertaken whilst external doors are open, apart from when they are open for access or loading/unloading purposes.
  - 29) The rating level of sound emitted from industrial activities at the site shall not exceed background sound levels at any time. All measurements shall be made in accordance with British Standard BS 4142: Methods for rating and assessing industrial and commercial sound.

## APPEARANCES

### FOR THE APPELLANT:

Richard Kimblin KC, No 5 Chambers

instructed by JVH Town planning  
Consultants Ltd

He called:

Janet Hodson BA (Hons), Dip. TP. MRTPI  
Paul Mercer BSc MRICS  
Nick Wales BSc MRICS  
Neil Northrop BA DipLD CMLI MArborA

JVH Town planning Consultants Ltd  
Mercer & Co  
Knight Frank  
Weddle Landscape Design

### FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson, Kings Chambers of Counsel

instructed by City of Doncaster  
Council

He called:

Alyn Nicholls BA (Hons) MRTPI  
Ramsay Evans BA (Hons) MRICS

Alyn Nicholls  
Turner Morum LLP Chartered  
Surveyors  
City of Doncaster Council

Dr Helen Markland BA MRes PHD CIEEM

## INQUIRY DOCUMENTS

- ID1 **Appellant's list of appearances**
- ID2 Series of emails between the Council and the appellant
- ID3 **Appellant's opening statement**
- ID4 **Council's opening statement**
- ID5 LOGIC: South Yorkshire & North East Derbyshire 2022 Review (Knight Frank), January 2023
- ID6 Expanded table to Appendix H1 of Paul **Mercer's Proof**
- ID7 Email from Chris Dungworth dated 1 March 2022
- ID8 Pertemps Investments Limited v Secretary of State for Communities and Local Government
- ID9 **Appellant's costs application**
- ID10 **Council's costs application**
- ID11 **Council's costs application response**
- ID12 **Council's closing submissions**
- ID13 **Appellant's closing submissions**
- ID14 **Appellant's costs application response**





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## Costs Decisions

Inquiry Held on 14-15 and 17 February 2023

Site visit made on 16 February 2023

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> April 2023

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Costs application in relation to Appeal Ref: APP/F4410/W/22/3310101  
Former Blaxton Quarry, Mosham Road, Doncaster, DN9 3EJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr T Waddington of Ernest V Waddington Ltd for a full award of costs against the City of Doncaster Council.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for B2, B8, and E: g employment uses - 31,846 square metres for up to 52 units and parking.
- 

### Decision

1. The application for an award of costs is refused.

### Reasons

2. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council has acted unreasonably in that it failed to provide substantive reasons to justify delaying its determination, and that better communication would have enabled the appeal to be avoided altogether. Moreover, the appellant submits that the Council misapplied Policy 30 of the Doncaster Local Plan (2021) and failed to apply a planning balance exercise. **The appellant's view is therefore that the Council has prevented or delayed development which should clearly have been permitted.**
4. The appellant contends that the appeal could have been avoided had the Council granted permission subject to a requirement for a legal agreement to supply compensatory habitat in the City. However, the Council's **position** was that a full Ecological Impact Assessment was required as well as evidence of compliance with the mitigation hierarchy, as is set out in its email to the appellant dated 25 July 2022. It also stated that a Preliminary Ecological Appraisal ('PEA') was "**very unconventional**" in a case such as this. In this regard, the Council's position is supported by the 'Guidelines for Preliminary Ecological Appraisal' (CIEEM, Dec 2017) which state that: "*under normal circumstances it is not appropriate to submit a PEAR<sup>1</sup> in support of a planning*

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<sup>1</sup> The guidance refers to a Preliminary Ecological Appraisal Report or 'PEAR', which is used to present the results of the Preliminary Ecological Appraisal.

*application because the scope of a PEAR is unlikely to fully meet planning authority requirements in respect of biodiversity policy and implications for protected species".* Whilst I note that earlier exchanges discussed potential alternative approaches, those took place before the later advice from the **Council's ecologist and the adoption of the Biodiversity Net Gain SPD** in September 2022. This latter document is clear that **"in most cases, an EclA will be required"**. In my view, the Council did not act unreasonably such that better communication would have enabled the appeal to be avoided altogether.

5. For the reasons set out in my Decision I do not consider that the Council misapplied Policy 30 of the Local Plan. Whilst it is asserted that no planning balance exercise was carried out, the **Council's position at application stage was** never formally set out in an Officer Report before the appeal was lodged. However, the Council did set out its view on such a planning balance exercise in an email to the appellant dated 1 July 2022. It subsequently addressed the proposed benefits of the scheme in its appeal submissions and at the Inquiry, including the weight to be attached to them. Accordingly, I do not consider that the Council acted unreasonably in this regard.
6. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Thomas Hatfield*

INSPECTOR



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## Costs Decisions

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- 

### Decision

1. The application for an award of costs is refused.

### Reasons

2. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council submits that the appellant has acted unreasonably in a number of respects. In this regard, it is contended that **the appellant's** interpretation of Policy 30 of the Doncaster Local Plan (2021) is unreasonable, that viability and ecological information were submitted late, and that there was a lack of co-operation in signing a s106 agreement. The Council also state that the appellant did not pay for its viability evidence to be appraised, and that earlier engagement on this matter could have shortened the Inquiry. Finally, it is submitted that unnecessary costs were incurred in dealing with the appeal via an Inquiry when the matters raised by the appellant could have been dealt with by way of a hearing.
4. With regard to the interpretation of Policy 30, the appellant has set out a detailed justification for its approach and substantiated this at the Inquiry. It has provided clear and detailed reasoning in support of its position in this regard. Whilst I came to a different view, the appellant did not act unreasonably in pursuing a different interpretation of this policy.
5. Regarding the purported lack of co-operation in relation to the s106 agreement, I note that this was ultimately agreed before the close of the Inquiry. Moreover, the appellant is not required to sign a s106 agreement, and it was open to the appellant to submit a unilateral undertaking instead, which

was the route it initially pursued. Whilst it is asserted that earlier agreement of the s106 would have allowed the separate resubmission application to be approved, that application is not within my remit. In any event, that would not have addressed **the appellant's primary case** (that the biodiversity offsetting contribution is unnecessary) and so would not have avoided the appeal.

6. In terms of the submission of late evidence in relation to both viability and ecology, I accepted these partly on the basis that there was sufficient time for the Council to respond before the Inquiry opened. The submission of late evidence during the appeal process is allowed for under certain circumstances and it was not unreasonable for the appellant to submit this information in support of its secondary case. Moreover, the ecological information appended **to Mr Northrop's proof of evidence** helped to narrow the areas of dispute and saved Inquiry time.
7. Turning to the late viability information, this was submitted only a short time after the **submission of the appellant's statement of case, and** well in advance of the opening of the Inquiry. Whilst Local Plan Policy 66 states that viability submissions should be appraised at the **applicant's expense**, in this case a formal appraisal including negotiation / discussion on the various assumptions did not occur. Moreover, even if it had, then it would not have prevented further viability information being submitted with the appeal which the Council would have had to address. In my view, no extra expense for preparatory work was incurred by virtue of this evidence being submitted late.
8. The decision as to which procedure the appeal follows is ultimately determined by the Planning Inspectorate. In this case, both main parties were informed that the appeal would follow the inquiry process in order to cover both viability issues and the difference of approach in the reading of the development plan. It was considered that these would be better dealt with by cross-examination. In my view, an Inquiry was necessary to cover these matters and no unnecessary or wasted expense has therefore been incurred.
9. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Thomas Hatfield*

INSPECTOR