
Appeal Decision

Site visit made on 7 August 2018

by Katie Peerless DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2018

Appeal Ref: APP/X2600/W/17/3187973

SPC Atlas Works, Norwich Road, Weston Longville, Norwich, Norfolk NR9 5SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Serruys Property Company Limited against the decision of Norfolk County Council.
 - The application Ref C/5/2015/5007, dated 22 March 2016 was refused by notice dated 3 May 2017.
 - The development proposed is change of use from B8: Warehousing to a Sui Generis use for waste processing and the production of Refuse Derived Fuel (RDF) with an annual throughput of 150,000 tonnes; installation of office, 2 x weighbridges, fuel store and photovoltaic panels.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use to a Sui Generis use for waste processing and the production of Refuse Derived Fuel (RDF) with an annual throughput of 150,000 tonnes; installation of office, 2 x weighbridges, fuel store and photovoltaic panels at SPC Atlas Works, Norwich Road, Weston Longville, Norwich, Norfolk NR9 5SL in accordance with the terms of the application, Ref C/5/2015/5007, dated 22 March 2016, as amended by the Wiser Environment Drainage Strategy dated May 2018 and attachments and subject to the conditions attached as Annex A to this Decision.

Application for costs

2. An application for costs was made by Serruys Property Company Ltd against Norfolk County Council. This application is the subject of a separate Decision.

Main Issues

3. I consider the main issues in this case are the impact of the proposed development on:
 - (i) the ground water and surface water environment, including the river Wensum SAC, and whether any possible adverse impacts can be satisfactorily mitigated through the proposed drainage schemes and
 - (ii) the setting of the Scheduled Ancient Monument of the Tumulus in the Warren.

Site and surroundings

4. The appeal site covers 2.1 hectares and is part of a wider industrial complex of 8.7 hectares, a significant portion of which is also owned by the appellant company. It is presently vacant but contains a number of linked warehouse type buildings, with an area of about 5700 sqm that the Council states has an established B2/B8 use. The majority of the site outside the building is covered with hardstanding and access is taken from the main A1067 Norwich Road to the south.
5. To the north of the complex is Marriot's Way, a public footpath that runs east to west through wooded surroundings that contain a tumulus, which is a Bronze Age barrow and Scheduled Ancient Monument (SAM). The SAM lies on private land outside the ownership of the appellants and has been partitioned off so that there is no public access to it, although it can be seen through the surrounding mesh fence.
6. To the east of the barrow is a linked system of basins and ponds that presently form part of the drainage system serving the appeal site and these, in turn, are hydrologically connected to the river Wensum which lies to the north of the site boundary, some 200m away at its closest point. The river lies within a designated European Special Area of Conservation (SAC) and is part of a Site of Special Scientific Interest (SSSI).

Planning history

7. There has been a subsequent planning application for essentially the same scheme as that previously refused and now considered in this appeal. That application had not, at the time of writing, been determined but was a re-submission of the appeal scheme with additional documentation that has also been included for my consideration in relation to this appeal.
8. Since the appeal was lodged, an independent Habitats Regulation Assessment (HRA), dated July 2018 has been submitted, for the reasons discussed in subsequent paragraphs, and further consultation has also taken place over the proposed drainage measures. These have been updated through the submission of a report included with the HRA, referred to as the Wiser Environment Drainage Strategy dated May 2018 (WEDS).

Procedural matter

9. The County Council, when screening the application, originally determined that no Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017 needed to be carried out in respect of the site, because any adverse impacts on the SAC could be made acceptable through mitigation measures. However, the judgement of *People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)* has since ruled that that mitigation measures should be assessed within the framework of an AA and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of a proposed development on a European site at the screening stage.
10. The appellants have responded to this and submitted the HRA referred to above, which considers the impacts of the proposal. This concludes that, in the absence of mitigation, the development has the potential to have a likely significant effect on the River Wensum SAC if polluted water from the site were to reach the catchment of the river.

11. Consequently, an AA needs to be carried out to consider the impacts when mitigation measures are imposed. The HRA report contains the information needed to carry out such an AA and analyses the impacts of the drainage systems that it is proposed to utilise on the site. With the drainage measures in place, the conclusion is drawn that there would be no adverse effect on the integrity of the River Wensum SAC or any other European site, either from the proposed development alone or in combination with any other projects or planned activities. The document has been considered by all the relevant statutory consultees and the Council has subsequently informed the Planning Inspectorate that it is minded to adopt these conclusions. I have taken this AA into account when reaching my conclusions.

Reasons

Drainage system

12. The proposals for the Refuse Derived Fuel (RDF) production facility include the refurbishment of the existing building complex and a modification to the existing site entrance from the A1067. The facility would accept waste, brought onto the site in covered lorries, which would be unloaded inside the building, where it would be sorted and processed, with the doors closed. The RDF would be baled and stored inside and only inert soils and aggregates and metals contained in skips would be stored or treated outside.
13. In normal circumstances, the material imported into the building and the RDF bales would have no contact with external water sources and the only possibility of pollution would come from vehicles using the external yard, through treatment of ice in the winter months, a flood or water used during a fire emergency. In order to mitigate against these pollution sources, the WEDS provides for the installation of 2 sealed systems which would deal separately with water from the roof of the building and the run off from the yard. The roof water would be taken to the existing natural SuDS system provided by the drainage basins to the north that are presently serving the site.
14. Water collected from the run-off from the yard would be taken to 2 new interceptors where it would be treated before also being discharged into the attenuation basins. It has been confirmed in the HRA that the basins have sufficient capacity to contain water from a 1 in 100 year flood event and an additional 40% to allow for climate change.
15. The Environment Agency (EA), in a letter dated 13 July 2018, has confirmed that it is satisfied with the approach detailed in the WEDS and that it no longer sees the need for the details of the drainage scheme to be submitted for approval before the development is commenced, should planning permission be granted. It is also the case that the appellants would have to apply for a permit from the EA to operate the facility and this would provide additional safeguards to the surrounding environment in addition to those provided by the implementation of the drainage proposals.
16. Natural England has confirmed in an email dated 12 March 2018, that it defers to the EA's expertise in respect of this application and the Lead Local Flood Authority (LLFA) of Norfolk County Council has agreed, in a letter dated 18 July 2018, that concerns over flooding from the drainage network in a 3.33% rainfall event and the need to secure a management and maintenance plan covering all aspects of the drainage infrastructure for the lifetime of the development could be addressed by conditions. The LLFA has therefore withdrawn its previous objections to the proposal.

17. I note that a report, by prepared by GWP Consultants LLP to support third party objections to the scheme, criticises the methodology of the water management proposals and the lack of a hydrological or hydrogeological risk assessment. Policy DM3 of the Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals and Waste Development Plan Policies Document 2010 - 2026 (NMDWF) requires such a survey '*where applicable*' to demonstrate that there would be no adverse impact '*to the satisfaction of the County Planning Authority as advised by the EA*' and notes that this includes mineral extraction proposals in Groundwater Protection Zones 2 and 3. Waste development, is mentioned only as being not permitted in Groundwater Protection Zone 1, which does not apply here.
18. A hydrogeological risk assessment was not called for by the Council or the EA in respect of either of the applications or this appeal, even after the matter was raised in the GWP Report prior to the Planning Committee taking its decision to refuse the first application in May 2017 and the reasons for refusal including the claim that more information on the drainage scheme details was required. In addition, the GWP Report was submitted prior to the assessment of the latest proposals carried out by the EA, NE and LLFA and I find no reason to disagree with the expert view of these 3 bodies, all of whom have public safety and the protection of the natural environment at the heart of their objectives.
19. This matter is, however, addressed in the Council's Response to Third Party Representations received by the Planning Inspectorate in June 2018. In this document the Council states that it appeared that the EA had taken on board the comments from the GWP Report and that there was no fundamental disagreement over the matters raised by the EA. Nevertheless, it is now the case that the EA has, after previously raising objections to the proposal, revised its opinion to the extent that it does not even require any further information through the submission of a scheme for approval. I therefore have no reason to believe that the EA did not take the points made in the GWP Report into consideration when reaching its conclusion on the suitability of the WEDS strategy.
20. The site has been in a previous industrial use and the proposal would make use of existing buildings with only small additions such as the weighbridges and associated portacabin office. There would be no increase in the impermeable areas on the site and consequently no additional rainwater run-off. These areas would need to be refurbished and upgraded to accommodate the new parking and access arrangements, lessening the possibility of surface water entering the ground without passing through the drainage channels.
21. Any waste material capable of creating harmful pollutants would be contained within the buildings and, although there might be a higher level of traffic movements on the site than generated by the previous use, I find no reason to believe that, with the mitigation measures in the form of the WEDS strategy in place, this would create an unacceptable risk to the SAC or that there would be any harmful change from the previously existing and authorised situation.
22. The site has already been allocated for waste related development in policy WAS 78 of the Norfolk Minerals and Waste Development Framework: Waste Site Specific Allocations DPD, subject to compliance with other relevant policies. However, I consider that, with the approved drainage scheme in place there would be no conflict with policy DM3 of the NMDWF which seeks to protect the quality of ground and surface water or Broadland Development Management Policy EN1 which aims to protect biodiversity and habitats.

Impact on the setting of the SAM

23. The tumulus lies in wooded surroundings where it can be seen through the mesh fence that separates the private land of The Warren in which it is located from the public footpath/cycleway of Marriot's Way. A Heritage Impact Assessment, dated February 2018 and written by Dr Richard Hoggett, considers the significance of the heritage asset and the adequacy of the mitigation measures proposed by the appellants and has been submitted by an interested third party. This report is agreed by Historic England (HE) to provide a good assessment of the significance of the SAM and I too find no reason to disagree with its analysis of the significance of SAM and its setting.
24. However, HE does not comment on whether any harm to the significance of the SAM could be outweighed by public benefits although it does recommend that mitigation measures would be required. These will be discussed in subsequent paragraphs of this Decision.
25. The setting of the SAM is the surroundings in which it is experienced and at present this includes views to and from the existing large warehouse building and other parts of the appeal site. The tranquillity of the area around the barrow is a factor that can affect how the SAM is appreciated and the presence of heavy goods vehicles accessing the adjacent site would obviously have an impact in this regard.
26. However, the site has an established B2/B8 use and although this has been disused for some time and the site is vacant and consequently quiet at present, this situation could change in the future without the need for any further planning consents. I also noted at the site visit that the presence of the building, directly opposite the barrow, has the effect of shielding the immediate surroundings from the considerable noise generated by traffic on the A1067. This would continue whether or not the rest of the site was in active use. The appeal scheme would refurbish this building and give the opportunity to improve its appearance and consequently that of the wider surroundings which form the setting of the SAM.
27. Dr Hoggett's report recognises that the setting of the barrow, in a tranquil and lightly wooded area which allows close up and medium distance views of the asset, contributes to its significance. It notes that the appellant's Heritage Report¹ concludes that the tidying of the site and the removal of the encroaching vegetation would make the refurbished development on it become more prominent and '*widen the conceptual gap*' between the modern environment to the south of Marriot's Way, as it exists at present, and the '*wild and unstructured environment of the heritage asset*' and that this would be harmful to its setting.
28. These points are noted but I consider that it would be unrealistic to assume that this previously developed site would, or should, be allowed to remain underused or revert to a more natural state, even if this might be more sympathetic to the setting of the SAM. As noted previously, the site has been designated for future development and the question to my mind is whether the appeal scheme would prove to be more harmful than the current authorised use.

¹ Prepared by MOLA in 2015 and revised in 2017

29. In considering this question, it is clear that here would be no additional physical impact on the SAM or its immediate surroundings as the majority of the development would be completely contained within the existing industrial site. It is also the case that the designation of the site for waste development accepts that this site will continue to be used for commercial or industrial purposes.
30. It seems to me that the refurbishment and re-use of the existing buildings would be of benefit to the wider surrounding area, in terms of both its appearance and putting a brownfield site to a productive use. Planning conditions, including the requirement for a landscaping and maintenance scheme would ensure that the setting of the SAM could be enhanced through the removal of derelict structures and additional planting.
31. The appellants have submitted a Unilateral Undertaking under s106 of the TCPA (UU) at the request of the Council which would provide funding for an information board about the SAM and contribute a sum of money for the improvement of Marriot's Way. This is required by the Council to set against the harm it considers would be caused to the setting of the SAM. The appellants have, however, suggested that these requirements are unnecessary and not relevant to planning.
32. Whilst I consider that a landscaping scheme could bring some improvements to set against the increased activities on the site, I recognise that there is more scope for the removal of redundant material and additional planting outside the site boundary, beyond the land within the control of the appellants. The UU proposal for Marriot's Way would therefore help to safeguard and improve the setting of the SAM and be another positive benefit to weigh against any harm brought about by the proposals.
33. In respect of the provision of an information board, whilst desirable, this would have only a tenuous link to the appeal scheme and would not, in my view, serve to lessen any harm to the setting of the SAM. I therefore consider that it is not necessary to tip the balance in favour of the proposals.
34. The SAM is of national importance and I have therefore paid special regard to the desirability of preserving its setting and in this regard I have accorded any harm significant weight. Nevertheless, the only harms I have identified are that to the tranquillity of the setting, which I consider would be minor when compared to previous and other nearby uses and that caused by the change to the more natural appearance of the site which has occurred through the current vacant state. This latter situation would, as previously noted, be likely to be temporary even if planning permission is not granted for the proposal.
35. I therefore conclude that the degree of harm to the setting of the SAM due to changes brought about by the appeal scheme would be slight and consequently classified as less than substantial as described in paragraph 196 of the National Planning Policy Framework 2018 (the Framework). In my view, the identified harm would be outweighed by the benefits discussed above.
36. Consequently there would be no conflict with policy CS14 of the NMDWF which seeks to protect the environment, including heritage assets, and Broadland Development Management Policy EN2 which aims to protect and enhance SAMs.

Conditions

37. In the following paragraphs the numbers refer to the conditions in Annex A. In addition to the standard commencement condition (1) and a condition requiring the development to be carried out in accordance with the submitted plans and details (2), the Council has suggested a number of conditions that it would wish to see imposed should planning permission be granted. The appellant has raised no objections to the majority of these, which I will discuss briefly below before considering those in dispute. In some cases I will vary the wording to comply with the advice in the Government's Planning Practice Guidance.
38. Conditions (3) & (4) will control the amount of material brought onto the site, condition (5) will ensure that the machinery used on the site is provided with proper noise attenuation and condition (6) will ensure the installation of the photo-voltaic panels, in the interests of sustainability. Conditions (7) – (11), (16) and (27) will control how the site is used, the hours of operation, the storage of materials on it and ensure a dust management scheme is approved and implemented. All these conditions are required to protect the amenities of nearby occupants.
39. Condition (12) relating to the recladding of the existing building is necessary to ensure a satisfactory appearance. Conditions (14) & (15) are required to ensure satisfactory pollution control and protection of the hydrological environment. Conditions (17) – (23) relate to works to the access and the provision of on-site parking and are necessary in the interests of highway safety. I consider that that the suggested condition requiring the stopping up of the existing access marked to be retained at the southern corner of the wider site is unnecessary. This was originally recommended by the Highway Authority, but they have since agreed that the other measures to improve the access, and the blocking of the 'central' access as required by condition (18) would now be sufficient to ensure highway safety.
40. Conditions (24) – (26) relate to the requirement to submit a landscaping scheme and tree protection plan and ensure a suitable treatment to the northern boundary of the site. These are necessary to protect the setting of the SAM and the character of the surrounding area.
41. The Council originally called for 2 conditions requiring the submission of a scheme for surface water disposal for approval but, following the agreement of the EA that the WEDS proposals would be acceptable and if they were to be implemented there would be no need for conditions requiring further details, I find there is no need to call for any additional submissions. The appellants suggest that the original scheme that they proposed would be sufficient. However, it was not until the 13 July 2018 that the EA confirmed that the condition they suggested would not be required, following consideration of the WEDS scheme, included with the HRA. I therefore find that it is the detail included in this strategy that has led to this conclusion and has provided the information necessary to enable the EA to withdraw its objections. I will therefore impose condition (13) requiring this scheme to be implemented. I will also include the condition requested by the LLFA in their letter of 18 July 2018, to ensure that all their concerns have been fully addressed.
42. In respect of the UU, as noted above I have concluded that the £7500 offered by the appellants for the improvement of Marriot's Way to mitigate the impact on the SAM is required but that the £2848.84 for the noticeboard is not.

Conclusions

43. I have taken account of all the representation made about the proposals and noted the objections to it. However, I find that there is general support for the development in the adopted Mineral and Waste plan for the county and I accord this considerable weight. The risk of pollution to the River Wensum SAC would be satisfactorily mitigated by the latest drainage proposals and the less than substantial harm to the SAM would be outweighed by the benefits of providing a sustainable waste management facility on the allocated site. Therefore, for the reasons given above I conclude that the appeal should be allowed.

Katie Peerless

Inspector

Annex A

Conditions to be attached to planning permission C/5/2015/5007

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Except where overridden by this schedule of conditions, the development must be carried out in strict accordance with the application form and plans and documents (including their recommendations) accompanying the application.
- 3) No more than 150,000 tonnes of waste shall be imported to the site per annum and no more than 75,000 tonnes of waste shall be stored on site at any one time. Records shall be kept of waste imported to and exported from the site and shall be made available to the County Planning Authority upon request. All records shall be kept for a minimum of 24 months.
- 4) No more than 5,000 tonnes of hazardous waste (which shall be strictly limited to Waste Electrical and Electronic Equipment ('WEEE')) shall be brought onto the site per annum.
- 5) No plant or machinery shall be used on the site unless it is maintained in a condition whereby it is efficiently silenced in accordance with the manufacturer's specification.
- 6) Notwithstanding the submitted plans, prior to the commencement of the development hereby permitted a detailed specification for the proposed photo-voltaic panels to be installed shall be submitted to and approved in writing by the County Planning Authority. The photo-voltaic panels shall thereafter be installed in accordance with the approved details prior to first use of the building and retained for the lifetime of the development.
- 7) No deliveries or collections of waste/process waste shall take place except between the hours of 07.00 and 18.00 Monday to Saturday.
- 8) No operation of the shredder shall take place except between the hours of 07.00 and 19.00.
- 9) No vehicle shall be operated on site unless it is fitted with working broad band noise reversing sounders.
- 10) There shall be no burning of waste on site.
- 11) Prior to the commencement of the development hereby permitted a scheme for the external lighting of the site shall be submitted to the County Planning Authority for approval. The approved scheme shall be installed on the site prior to first use of the building and thereafter maintained as approved.
- 12) Any damaged cladding or other building material that is replaced shall be done so with materials to match the existing colour and finish of the existing building.
- 13) Prior to the first use of site hereby permitted, that is before the site starts operating as a waste processing site, the drainage strategy detailed in the Wiser Environmental Drainage Strategy with associated appendices, dated May 2018 and referenced K197.1~03~009 and with

reference to Surface Water Drainage Strategy by Plandescil, Ref 13896 dated August 2016 shall be implemented in full.

- 14) Any drums and small containers used for oil and other chemicals on the site shall be stored in bunded areas which do not drain to any watercourse, surface water sewer or soakaways, and all oil or chemical storage tanks, ancillary handling facilities and equipment, including pumps and valves, shall be contained within an impervious bunded area of at least 110% of the total stored capacity.
- 15) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 16) No waste material (both incoming and processed stock) stored on site shall exceed 4 metres above original ground level.
- 17) Prior to the first use of the development hereby permitted, the vehicular access (shown new site entrance) shall be provided and thereafter retained at the position shown on the approved plan (drawing number 13896/103 Rev E) in accordance with a detailed scheme to be agreed in writing with the County Planning Authority, in consultation with the Highway Authority. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 18) Prior to the first use of the development hereby permitted the central access (shown as 'access to be stopped up' on drawing 03/001 Rev E) shall be permanently closed, and the highway verge shall be reinstated in accordance with a detailed scheme to be agreed with the County Planning Authority in consultation with the Highway Authority.
- 19) Notwithstanding the provision of Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking, amending or re-enacting that Order) no gates, bollard, chain or other means of obstruction shall be erected across the approved access unless details have first been submitted to and approved in writing by the County Planning Authority.
- 20) Prior to the commencement of the use hereby permitted, a visibility splay (from the access shown as 'main access') shall be provided in full accordance with the details indicated on the approved plan drawing 03/001 Rev C. The splay shall thereafter be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the adjacent highway carriageway. 11
- 21) Prior to the commencement of the use hereby permitted, the proposed access/access road/pedestrian routes/on-site car parking/servicing/loading, unloading/turning/waiting area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 22) Notwithstanding the details indicated on the submitted drawings no works shall commence on site unless otherwise agreed in writing until a

detailed scheme for the off-site highway improvement works (including a Ghost Island Right Turn Lane and associated works) as indicated on drawing number 03/001 Rev F have been submitted to and approved in writing by the County Planning Authority in consultation with the Highway Authority.

- 23) Prior to the first occupation of the development hereby permitted (or prior to the commencement of the use hereby permitted) the off-site highway improvement works referred to in Part A of this condition shall be completed to the written satisfaction of the County Planning Authority in consultation with the Highway Authority.
- 24) No development shall take place until a scheme of landscaping has been submitted to and agreed in writing by the County Planning Authority. The scheme as may be so agreed shall be implemented within the next planting season or such other period agreed in writing with the County Planning Authority. The scheme shall include details of size, species and spacing of trees, hedges and shrubs, arrangements for their protection and maintenance. It shall make provision for:
 - (a) the screening of the operations by trees, hedges (including the provision of hardwood trees along the northern boundary of the site);
 - (b) A plan identifying planting to take place in the highway verge including the required visibility splay;
 - (c) the protection and maintenance of existing trees and hedges which are to be retained on the site;
 - (d) A management plan to include the replacement of any damaged or dead trees (within a period of five years from the date of planting) with trees of similar size and species at the next appropriate season.
- 25) Prior to the commencement of development, an arboricultural method statement and tree protection plan for the new highway access to the A1067 (to include details of all trenching required) shall be submitted to the County Planning Authority for approval in writing and implementation thereafter during development of the site.
- 26) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any order revoking, re-enacting or modifying that Order), no fencing (and associated gates), hoarding or other means of enclosure shall be erected along the northern boundary of the application site adjacent to Marriot's Way other than those expressly authorised by this permission.
- 27) Prior to first use of the facility, a dust management scheme shall be submitted to the County Planning Authority for its approval in writing. The approved dust management scheme shall thereafter be implemented for the lifetime of the proposal.
- 28) Prior to works to implement the drainage strategy outlined in Condition 13 above commencing on site the following details should be provided to and agreed in writing with the County Planning Authority. These details should then be incorporated into the drainage scheme outlined in Condition 13.
 - i. Detailed designs, modelling calculations and plans of all parts of the drainage conveyance network in the:

- 1 in 30 year critical rainfall event to show no above ground flooding on any part of the site.
 - 1 in 100 year critical rainfall plus climate change event to show, if any, the depth, volume and storage location of any above ground flooding from the drainage network ensuring that flooding does not occur in any part of a building or any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development.
- ii. A maintenance and management plan detailing the activities required and details of who will adopt and maintain the all the surface water drainage features for the lifetime of the development.