Planning Inspectorate

Appeal Decision

Site visit made on 31 March 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2025

Appeal Ref: APP/Z3825/W/24/3349245
Lower Broadbridge Farm, Bury Hill Landscape Supplies, Billingshurst Road, Broadbridge Heath, West Sussex RH12 3LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Coles against the decision of Horsham District Council.
- The application Ref DC/2024/0190, dated 02 February 2024, was refused by notice dated 16 May 2024.
- The application sought planning permission for variation of conditions 5 and 6 of previously approved application DC/20/2126 (Change of use of the land and buildings for the blending, screening, storage and distribution of landscape materials (Class Sui Generis). Extension of an earth bund along the northern boundary and erection of 2.2m high wall to the western boundary) to allow for the removal of the hopper and in relation to the noise levels on site without complying with conditions attached to planning permission Ref DC/23/0578, dated 03 August 2023.
- The conditions in dispute are Nos 9, 10, and 13 which state that:
  - 9. The buildings shaded in grey and labelled as "Existing Bagging Plant Operation" on plan drawing BLS/2020/MK1 rev B shall be used for the purposes of blending, screening, and storage of landscape materials only. At no times shall the operations hereby permitted take place outside of the buildings;
  - 10. The extended yard area to the north, as referenced on plan drawing BLS/2020/MK2 shall be used for the storage of pallets and parked unladen vehicles only, and shall not be used for the storage of any finished or unfinished product or material. Any pallets stored/stacked in this area shall not exceed a total height of 3m;
  - 13. No externally located plant or equipment shall be installed or operated without the prior written approval of the Local Planning Authority by way of formal application.
- The reasons given for the conditions are: [9 & 10] To safeguard the amenities of the nearby neighbouring properties and in accordance with Policy 33 of the Horsham District Planning Framework (2015); [13] To safeguard the amenities of the nearby residential properties and users of land and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

Decision

1. The appeal is allowed and planning permission is granted for change of use of the land and buildings for the blending, screening, storage and distribution of landscape materials (Class Sui Generis). Extension of an earth bund along the northern boundary and erection of 2.2m high wall to the western boundary.at Lower Broadbridge Farm, Bury Hill Landscape Supplies, Billingshurst Road, Broadbridge Heath, West Sussex RH12 3LR in accordance with the application Ref DC/2024/0190 without compliance with the conditions previously imposed on the planning permission Ref DC/23/0578 dated 03 August 2023 and subject to the conditions contained in the attached schedule.

Applications for costs

2. An application for costs was made by Mr John Coles against the decision of Horsham District Council. This application is the subject of a separate decision.

Preliminary Matters

3. At time of my site visit, storage and screening of materials was operational in the yard area, and therefore the relevant conditions have been breached.

4. The description of development in the heading above has been taken from the planning application form. However, the effect of granting planning permission under DC/23/0578 was to create a second permission for the original development and therefore the description of development must reflect that. Therefore, I have reverted to the original description of development given planning permission.

Background and Main Issue

5. The business supplies topsoil, aggregates, and other landscaping materials to horticultural and retail markets. The site has an extensive planning history. Planning permission was granted in 2017 for the continued use of land and retention of buildings[1]. Planning permission was granted in 2021 for change of use of the land and the erection of an earth bund[2]. A condition for a scheme to control dust was discharged in April 2022. Conditions attached to the 2021 permission were varied through grant of planning permission in August 2023 concerning an alternative bagging system and a noise management plan[3].

6. As set out in the banner heading above, the proposal seeks variation of conditions nos 9, 10, and 13 of the 2013 permission which restrict the location of various operations within the site for the purpose of safeguarding the amenity of neighbouring properties and users of land. Therefore, the main issue in this appeal is the effect of the variation of these conditions on the living conditions of occupants of nearby dwellings, with particular regard to noise and disturbance.

Reasons

7. The appeal site is to the west of Broadbridge Heath, beyond the A281 road which provides a key route between the towns of Horsham and Guildford. The section of carriageway near the site has a national speed limit and is flanked by highway verges lined with mature trees.

8. The site comprises former agricultural buildings, now in use by the business, and a yard area enclosed by a tall earth bund. The A281 road, tree belts, and earth bund provide separation between the site and the built area of Broadbridge Heath, including residential estate development at Charrington Way.

9. A crushing and screening plant for stone and reclaimed materials adjoins the site and is a separate business, independent from the operations of the appellant's business. Beyond the site to the north, west, and south lies open countryside.

10. The activity of the business involves use of large machinery and vehicles, such as aggregate screening equipment, telehandlers, loading shovels, and heavy goods

[1] LPA ref: DC/17/0953
[2] LPA ref: DC/20/2126
[3] LPA ref: DC/23/0578

vehicles (HGVs). At time of my site visit, the site was busy with activity, and the operation and movements of such machinery and vehicles are of a scale and type capable of generating noise and dust.

11. HGVs and machinery were also operational at the neighbouring stone and reclamation plant during the site visit and would also be capable of generating noise and dust. From the vicinity of neighbouring dwellings, Lower Broadbridge Farm and The Bungalow, the business operations of both the appeal site and adjoining plant would be visible and audible.

12. The site has been the subject of historic noise complaints. However, the Council's Senior Planning Compliance Officer attributed noise issues to a motor attached to a hopper that has since been removed in accordance with conditions attached to the 2023 permission.

13. Condition no 5 of the 2023 planning permission imposes a maximum limit on noise levels from all operations at the site of 55dB LAeq, 1hour (freefield), measured from the site boundary with the A281 road. Therefore, the site is subject to existing measures to prevent harm from noise. The Council assert that condition no 5 is intended to operate in conjunction with the disputed conditions that control external activities on the site.

14. The Technical Note by WBM Acoustic Consultants, 16 July 2024, provides monitoring data from a measurement location stipulated in the August 2021 Noise Monitoring Plan at the southeast corner of the site near the A281 and close to Lower Broadbridge Farmhouse. It includes measurements of the aggregate screening machinery operating outside the bagging building, and other operational equipment such as pressure washers, forklifts, and HGVs. All measurements undertaken at the noise monitoring location had LAeq values below 55dB. This suggests that during working hours the operations of the business would be audible from the measurement location, but do not exceed the noise limit set out by condition no 5.

15. In addition, condition no 11 of the 2023 planning permission restricts the business's opening hours to 8am-6pm on weekdays, and 9am-1pm on Saturdays. Therefore, there would be no operational activity within the site at times of greatest sensitivity to noise, such as during the night.

16. As a requirement of the 2023 permission, a Dust Management Plan (DMP) applies to the site. The DMP includes procedures for dust monitoring and recording of complaints/incidents, dust prevention measures including construction of the earth bund, and various dust reduction measures for operational periods. Therefore, there is an existing strategy in place to avoid harm arising from dust emissions.

17. A dwelling, Lower Broadbridge Farm, is situated close to the site's southern boundary and to the immediate west is a dwelling known as The Bungalow. These dwellings are close to both the appeal site and neighbouring plant. Due to their close proximity, the nearby dwellings of Lower Bridge Farmhouse and The Bungalow are the receptors of greatest sensitivity to any noise and disturbance associated with the appeal site.

18. At time of my site visit, the weather was dry and calm. From the residential estate at Charrington Way, noise from the appeal site was not discernible against the background noise environment, including frequent traffic at the A281, passing

aircraft, and birdsong. On approaching the site from the public right of way which crosses the A281 from the recreation ground, the earth bund within the appeal site appeared effective at containing noise from the appeal site.

19. Therefore, due to the separation distance, physical barriers including tree belts and earth bund, the background noise environment, and existing planning conditions to control noise and dust, I consider the dwellings within the Charrington Way estate and users of the recreation ground receive adequate mitigation to prevent unacceptable exposure to noise and disturbance from the appeal site.

20. The proposal seeks to amend conditions nos 9, 10, and 13. The justification for these conditions is to safeguard the amenity of nearby neighbouring properties. In addition, condition no 13 also seeks to safeguard users of land. The conditions and accompanying justification do not identify the specific properties or users of land that are deemed vulnerable to the site's operations.

Proposed amendment to condition no 9

21. Amended condition no 9 would remove the existing restriction on business operations taking place outside the buildings. The Council suggest that open air stockpiling of unfinished and finished materials has the potential to generate odour and fugitive dust emissions.

22. The description of development is clearly defined, permitting the use of the land and buildings for the blending, screening, storage and distribution of landscape materials only. Processing of odorous materials, such as waste, would typically be outside the scope of the planning permission. Furthermore, the appellant asserts the site does not handle odorous materials such as manure, and the business activities do not produce odorous emissions. No evidence of odour sources or past complaints relating to odour has been provided.

23. However, the business supplies the horticultural trade which may have demand for organic materials that may be odorous. Open-air storage of odorous materials on the site would be unlikely and infrequent but would have the potential to adversely impact the living conditions of occupants of nearby dwellings. Therefore, it would be necessary to impose a condition to secure an Odour Management Plan to ensure that any open-air storage does not result in adverse odour.

24. The existing DMP applies to the whole of the site, and includes a range of monitoring and management measures, including spraying of stockpiles with water during dry and windy periods. I am satisfied the existing DMP would prevent dust emissions from open-air storage and processing within the site and have been provided no evidence to the contrary.

25. Subject to securing an Odour Management Plan and retaining the DMP, the amendment to condition no 9 would not result in harm to living conditions of occupants of neighbouring properties through odour or dust emissions.

Proposed amendment to condition no 10

26. The proposed amendment to condition no 10 would enable the yard area to be used for storage of unfinished and finished products and would intensify activity in this area of the site, with an associated potential to generate noise.

27. As set out at Appendix D of the Technical Note, measurements taken within the yard suggest machinery would be loud at moderate distances. However, as discussed above, the Technical Note presents the results of noise level measurements undertaken at the suggested monitoring location and considers the noise generated by activities on the site, including the operations that normally occur outside the bagging building and relevant activities did not exceed the 55dB LAeq 1 hour (freefield), as measured from the suggested noise monitoring position, as required by condition 5 of the planning approval.

28. The extent of noise insulation offered by the open-fronted buildings is unclear. However, activity in the yard would be further from residential receptors to south of site than the existing buildings. Furthermore, the yard area is enclosed by a tall, earth bund which provides noise attenuation. In addition, other landscape features, such as the tree belt, and the separation distance from residential development provides further noise attenuation.

29. Therefore, the submitted evidence suggests that activities in the yard would not result in the noise limit specified by condition no 5 being exceeded.

Proposed amendment to condition no 13

30. The appellant asserts condition no 13 is unnecessarily onerous as the site's operations require use of moveable plant and machinery. The proposed amendment to condition no 13 would enable the operation of externally located mobile plant machinery and equipment without obtaining prior written approval from the Council.

31. Operation of any mobile plant machinery would be subject to the maximum noise limit at the site boundary imposed by condition no 5, and therefore would not increase the overall volume of noise emitted from the site.

32. The appellant asserts that mobile machinery would typically operate a diesel engine, such as a loading shovel or telehandler, and therefore would not have distinctive characteristics over and above the background noise environment of road traffic. Installation of broadband reversing alarms to mobile machinery, rather than reversing bleepers, has reduced the potential for distinctive acoustic features.

33. I acknowledge that mobile plant machinery would not typically be distinctive from the ambient noise environment. However, through removing the requirement to obtain the Council's prior written approval, the proposed condition would provide opportunity to operate mobile machinery that may have a distinctive acoustic signature or result in other harmful cumulative effects. For example, it is possible that some mobile machinery may exceed the height of the bund, reducing or negating its ability to mitigate noise and disturbance.

34. Therefore, the proposed variation of the condition would create uncertainty with the potential for noise and disturbance of occupants of nearby dwellings. Therefore, the condition as currently imposed is necessary to maintain suitable living conditions of occupants.

Summary of assessment of proposed amended conditions

35. Noise and dust can be dealt with as a statutory nuisance. However, nuisance is a basic safeguarding standard and does not equate to amenity as considered under the planning framework. Conditions attached to planning consents afford a greater

level of protection against the impacts of commercial development. As set out above, I am satisfied that the proposed variation to conditions nos 9 and 10 would not result in harm to the living conditions of occupants of nearby dwellings.

36. Permission has been granted for residential development to the south of the application site. The noise assessment for this development assumed that the current planning restrictions for the appeal site would be maintained. As set out above, conditions relating to the overall noise limit for the site, hours of operation, and management of dust, would be maintained. Therefore, there is no compelling reason to consider the variation of conditions would alter the noise environment in the vicinity of the permitted residential development site.

37. In this regard, the proposal would comply with Policy 33 of the Horsham District Planning Framework 2015 which requires development proposals ensure that it is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.

38. However, the evidence before me fails to demonstrate that the proposed variation of condition no 13 would not result in harm to living conditions of neighbouring occupants or adversely impact upon the amenity of users of land. Therefore, I intend to reimpose the condition as originally drafted.

Other Matters

39. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires I have special regard to the desirability of preserving listed buildings, their setting, or any features of special architectural or historic interest.

40. Lower Broadbridge Farmhouse is a Grade II listed building. It is a 17th century, L-shaped, two-storey house. The ground floor comprises coursed stone and is tile-hung above, with a Horsham slab roof. It has casement windows, and a large brick, stepped chimney breast. The building's significance is therefore derived from its historic and architectural interest.

41. There are views between the site and the listed building. I have been provided no evidence to suggest the proposed variation of conditions would affect the listed building or its setting. The proposal does not involve development but relates to restrictions to business activities imposed by planning conditions. Therefore, I consider the proposal would have a neutral effect on the listed building and would thus preserve the listed building and its setting.

Conclusion and Conditions

42. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without disputed conditions 9 and 10 and retaining those non-disputed conditions from the original permission DC/20/2126 that appear to still be relevant, updating their implementation clauses where necessary.

43. In the interests of certainty, I have specified the plans submitted as part of the original planning permission as approved plans.

44. To maintain highway safety, I have included the condition requiring provision of wheel-cleaning facilities, as stated on the 2023 permission.

45. The original planning permission required the provision of cycle parking within 3 months of the date of the permission. I have re-instated the condition since there is uncertainty whether the condition has been discharged.

46. Condition 4 of the 2023 permission concerned the removal of a motor attached to an existing hopper. It is my understanding that the motor has been removed and therefore the condition is not necessary for the purposes of this proposal. Condition no 13 prevents the motor being reinstated without the Council's prior written approval. Therefore, the condition is no longer necessary.

47. To safeguard the living conditions of occupants of nearby dwellings from odour from open air storage, I have included a condition requiring submission of an odour management plan, as condition no 4. During the appeal, the Council and appellant provided written agreement to this condition. Also, for the purpose of maintaining the living conditions of occupants of nearby dwellings, I have restated condition no 5 imposing a maximum noise limit from all operations at the site.

48. The DMP was approved by the Council under condition no 8 of planning permission reference DC/20/2126. Likewise, to safeguard living conditions of nearby residents from dust emissions, I have restated the requirement from condition 6 of 2023 permission to implement and comply with the DMP.

49. In the interests of safeguarding living conditions or occupants of nearby dwellings, I have restated the conditions which specify hours when works for the implementation of the development may be carried out, and the operational hours of the business and delivery times.

50. To ensure the development is sympathetic to the landscape and townscape character and built form of the surroundings, I have restated the requirement for the proposal to maintain planting specified in the approved landscaping scheme.

51. As per the proposed variation, I have omitted the clause at condition no 9 restricting operations taking place outside the buildings. As discussed above, this requirement is not necessary to safeguard the amenities of the nearby neighbouring properties. However, I have retained the "storage of landscape materials" within the buildings, as it is not necessary to restrict this activity.

52. I have amended condition no 10 as per the appellant's suggested wording. As discussed above, I am satisfied the amended condition would safeguard the amenity of the nearby neighbouring properties.

53. As discussed above, the proposal fails to demonstrate that the proposed variation of condition no 13 would not result in harm to living conditions of neighbouring occupants or adversely impact upon the amenity of users of land. Therefore, I do not accept the appellant's proposed variation of the condition. I have therefore restated condition 13, as attached to the 2023 permission, requiring written approval of installation or operation of any externally located plant or equipment.

54. To conserve the character of the area, I have restated the condition controlling the provision of external lighting.

E Dade

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below. BLS_2020_MK1B *Location Plan*; BLS_2020_MK2 *Site Plan*; BLS_2020_MK3 *Existing Site Sections*; BLS_2020_MK4 *Building 1 (Floor Plan)*; BLS_2020_MK5 *Building 1 (Elevation Plan)*; BLS_2020_MK6 *Building 2 (Floor Plan)*; BLS_2020_MK7 *Building 2 (Elevation Plan)*.

2) The vehicle wheel-cleaning facilities installed at the site entrance shall be retained in working order and operated throughout the period of work on the site to ensure that vehicles do not leave the site carrying earth and mud on their wheels in a quantity which causes a nuisance, hazard or visual intrusion from material deposited on the road system in the locality.

3) Within 3 months of the date of the permission hereby granted, details of secure and covered cycle parking facilities for the development shall have been submitted to the Local Planning Authority for its approval in writing. The cycle parking shall be fully implemented and made available within 1 month of such approval being given. The cycle parking shall thereafter be retained for use at all times in accordance with the approved details.

4) Within 3 months of the date of the permission hereby granted, a scheme to control odour shall be submitted to the Local Planning Authority for its approval in writing. The approved scheme, and associated odour control measures, shall be implemented within 1 month of the scheme being approved, and shall be implemented and complied with thereafter for the duration of the use.

5) Noise levels from all operations at the site, when measured from the site boundary with the A281, shall not exceed a maximum noise limit of 55 dB LAeq, 1 hour (freefield).

6) The approved scheme to control dust shall be implemented and complied with thereafter for the duration of the use.

7) No works for the implementation of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or public Holidays.

8) No trees or hedges on the site shall be wilfully damaged or uprooted, felled/removed, topped or lopped without the written consent of the Local Planning Authority until 5 years after completion of the development. Any planting outlined within the Landscape and Visual Appraisal dated March 2021 by DB Landscape Consultancy and specified in any subsequent approved details, which within a period of 5 years, dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

9) The buildings shaded grey and labelled as “Existing Bagging Plant Operation” on the plan drawing BLS/2020/MK1 rev B shall be used for the purposes of blending, screening, and storage of landscape materials only.’

10) The extended yard area to the north, as referenced on plan drawing BLS/2020/MK2 shall be used for storage of pallets, parked unladen vehicles and finished and unfinished products and materials only. Any pallets stored/stacked in this area shall not exceed a total height of 3m.

11) The premises shall not be open for trade or business except between the hours of 8:00 and 18:00 Monday to Friday and 09:00 and 13:00 on Saturdays, and at no times on Sundays or Public and Bank Holidays.

12) No deliveries associated with the development hereby approved shall take place except between the hours of 08:00 and 18:00 Monday to Friday and 09:00 and 13:00 on Saturdays, and at no times on Sundays or Public and Bank Holidays.

13) No externally located plant or equipment shall be installed or operated without the prior written approval of the Local Planning Authority by way of formal application.

14) No external lighting or floodlighting shall be installed other than with the permission of the Local Planning Authority by way of formal application.

END OF SCHEDULE