

Application Number

P/2011/1037

Site Address

Land Holding At Churston Court Farm
Churston Ferrers
Brixham
Devon
TQ5 0JE

Case Officer

Mrs Helen Addison

Ward

Churston With Galmpton

Description

Use and sale of recycled stone from Churston Soil Recovery from crushing/screening process on Churston Court Farm- Retrospective

Executive Summary/Key Outcomes

The proposal is for the sale of recycled stone resulting from an operation of screening and crushing builder's waste that is currently controlled by the Council through two under enforcement notices. This use has been permitted for agricultural benefit until January 2015. The applicant advises that processed stone would leave the site in the same lorries that bring material to the site, although there is some doubt that this would be achievable in all cases. No buildings are proposed on the site. A noise assessment has been submitted that concludes, subject to the provision of 4 metre high earth bunds, the proposal would not have an adverse effect on the residential amenity of nearby occupiers.

It is recognised that there remains the opportunity to control the commercial operation (sale of stone) through conditions. It is further recognised that paragraph 28 of the NPPF encourages the 'development and diversification of agricultural and other land-based rural businesses'.

However, in this case, the key question as to the proposed use revolves around its proposed location. The application site is within the AONB. The National Planning Policy Framework contains a presumption against major development within the AONB. There does not appear to be adequate justification for permanent planning permission to be granted for the introduction of a commercial waste sales operation on agricultural land in the AONB. This is particularly so because alternative and adequate stone recycling facilities to serve the area are available at Yalberton Quarry. The permanent provision of raised earth bunds to screen the operation on the site would also be harmful to the high quality landscape within the AONB.

As such and given the sensitivity of the site and its environs, it is recommended that this application be refused.

Recommendation

Refusal (reasons at end of report).

Site Details

The application site relates to part of a field measuring 0.96 hectares, which is situated between Brixham Road and Copythorne Road. The site is not visible from these roads and has earth banks around its perimeter. There are no buildings on the site. There are private tracks that provide access from both Brixham Road and Copythorne Road. The application site is elevated above the level of Brixham Road. Dwellings to the north of the site on Copythorne Road are approximately 240 metres from the site.

Detailed Proposals

The application is for the sale of recycled stone from the site, resulting from a crushing/screening process that is already being carried out on the site, albeit that the current process is associated with the agricultural improvement of the land.

In December 2009 the Council served two under enforcement notices to control the use of the site for processing and storage of waste stone and builder's rubble. These under enforcement notices expire in January 2015.

The applicant currently brings waste soil and rubble from construction sites to the site. He processes (crushes and screens) these materials and stores them on site. Currently the soil and stone is reused on Churston Court Farm. Large amounts of soil from this process have been used on the land to improve its agricultural value and the stone is used to improve the access track and hardened/stoned areas on the farm. However from this process there is a considerable amount of larger stone that cannot be used for this purpose and could be recycled back for use in the construction industry.

The applicant advises that the proposal is to 'back load' the lorries that are already coming into the site to go out of the site with stone. Any stone over 1.5" (3.75cm) is removed and then sorted into sizes for reuse elsewhere. The proposal is to allow the applicant to sell this stone.

The two enforcement notices relating to use of the site for processing and storage of waste stone and builders rubble and depositing of processed material on specified fields came into effect on 17th January. These notices permitted the following;

- up to 60 deliveries a day (120 vehicular movements in total) between 8 am and 6pm on any day.
- No vehicles over 18 tonnes to enter or leave the land before 8 am or 6pm

and not on Sundays or Bank Holidays.

- At the end of each working day treat the road network so there are no deposits of mud on the road.
- Not to store waste stone or builders rubble outside the permitted areas.
- Within the permitted areas a maximum of 50,000 tonnes of engineering stone may be stored and it cannot be stockpiled higher than 2.5 metres.
- The notices will expire on 17th January 2015 or when works to specified fields is completed, whichever is the sooner.

The agent has advised that under this proposal the number of vehicles visiting the site would not exceed 60 per day as permitted by the enforcement notices. It is indicated there are currently up to 10 lorries attending the site on a daily basis that could leave with a backload of material that would be sold from the site, which would constitute around 150-200 tonnes per day. However, in the absence of an additional condition to control the number of vehicle movements, this could rise to 60 per day as permitted under the enforcement notices.

Details of the crusher and screening machine have been submitted. The crusher would be a jaw crusher rather than a tumble crusher, which it is advised by the agent would create less noise. The agent has confirmed that the crusher and screening machine would be sited within the application site, which has earth bunds seeded in permanent pasture grass seed mix around the perimeter. At the Council's request the applicant has carried out a Noise Impact Assessment of the operation of the machinery on the site.

A plan showing the route lorries take accessing the site has been submitted in support of the application.

In the Torbay Local Plan 1995-2011 the site is allocated as being within the Countryside Zone, Coastal Preservation Area and AONB. To the east is a Local Wildlife Site.

The Environment Agency has issued a permit to allow the deposit of waste materials to land as a recovery operation.

Under the provision of the 2011 Environmental Impact Assessment (EIA) Regulations the Council screened the proposed development and concluded that an Environmental Impact Assessment would be required, due to the sensitivity of the site. The applicant requested a screening direction from the Secretary of State. The Secretary of State concluded that the proposed development is not EIA development.

The proposed development has been screened under the Habitats Regulations 2010 and it was concluded that this proposal will not have a Likely Significant Effect (alone or in-combination) on the integrity of the South Hams Greater Horseshoe Bat Special Area of Conservation.

Summary Of Consultation Responses

Highways: Raise no objection. Advises the current proposal should match the existing time restriction in terms of the operation.

Natural England: The Authority should consider securing measures to enhance the biodiversity of the site from the applicant if it is minded to grant permission for this application.

Environmental Health Officer: The noise report indicates that if there is no line of sight to the equipment then the noised levels at the nearest residential properties will meet the criteria within Mineral Policy Statement 2 and the level of noise will be acceptable. The noise will only be acceptable if the bund is 4m high and cuts line of sight and the equipment remains within the allocated area.

Brixham Town Council: Recommends refusal due to potential noise pollution and recommends a site visit.

South Devon AONB Office: Because the proposal appears in the short term not to create additional significant impacts on the area over and above the current approved earth work operations already in progress, I would not maintain an objection to it. The current earth works are unsightly and damaging to the appearance and character of the area and it is essential that this land is rapidly returned to its primary agricultural purpose and appearance. A longer term change to landfill or materials recycling use would be wholly unacceptable here.

Ecology Consultant: (in discussion with Natural England)

We do not believe that the scheme is likely to have a significant effect on the integrity of the Berry Head SAC and its population of Greater Horseshoe Bats, and consequently it does not require a screening assessment or any further appropriate assessment under the HRA process.

Summary Of Representations

Large number of letters of objection received and reproduced at Page.B.200. The points raised include;

- Introduction of industrial process on agricultural land
- Process has been carried on for 5 years and caused problems of smell, dust, and noise
- Use of lanes by big lorries

- Existing use is temporary for agricultural purposes, no need to expand this use
- Hours proposed are not acceptable in close proximity to residential properties
- Number of lorries has led to quantities of mud in wet weather, some flooding and general deterioration of the surfaces
- Quarrying is not farming and we do not think this should be allowed to become an industrial area
- Impact on AONB
- 60 lorries per day is wholly unacceptable

Relevant Planning History

Two under enforcement notices are in force relating to the site.

Key Issues/Material Considerations

The main issues are the principle of the change of use from agricultural use to use for sale of recycled stone, impact on the AONB, effect on residential amenity, highways and impact on wildlife.

Principle and Planning Policy -

Processing of waste material from construction sites for use for agricultural improvement on Churston Court Farm is already being carried out on the site and is controlled by the two under enforcement notices. These notices include controls on the number of lorries visiting the site and the times of operation.

Paragraph 28 of the NPPF encourages the 'development and diversification of agricultural and other land-based rural businesses'. In this case the applicant considers the proposed commercial operation to be ancillary to the soil recovery and improvement operation that is already occurring as agricultural improvement on the land.

However, the sale of material resulting from the process would change the nature of the process being carried out on the site from purely agricultural improvement to a commercial activity, which requires the benefit of planning permission.

The relevant policies to the determination of this application relate to waste and also the location of the site in the AONB. They are as follows;

Policy WS in the Torbay Local Plan 1995-2011 advises that the granting of planning permission for waste management proposals will be subject to the

satisfactory resolution of any transport issues, protection of public amenity, the need to conserve the landscape character, nature conservation, historic environment, surface and groundwater of the area. Where appropriate, provision should be made for the restoration of the site for a beneficial after use.

There are no policies relating to waste in the National Planning Policy Framework (NPPF). PPS10 (Planning for Sustainable Waste Management) has been retained until the new National Waste Management Plan is issued. The overall objective in PPS10 is to protect human health and the environment by producing less waste and using it as a resource wherever possible. A key planning objective is identified to deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option.

It is the applicants stated intention to sell surplus stone that is a by-product of the agricultural improvement operation on the land. As such the applicant seeks to recycle and re-use materials that result from the existing agricultural process. However, it would be very difficult to control this process and ensure that only surplus materials from processes associated with the agricultural improvement of the land were sold on. In effect, the permission for the sale of stone could result in additional waste materials being brought to and processed on the site and the slowing down of the agricultural improvement of the land as a result.

It is also necessary to consider policies relating to the designation of the site as AONB. Paragraph 116 in the NPPF states;

“Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated”

Policy L1 in the Torbay Local Plan 1995-2011 states that within AONBs conservation and enhancement of their natural beauty will be given priority over other considerations. Development will only be permitted where it would support their conservation or enhancement or would foster their social and economic well being, provided that such development is compatible with their conservation.

Waste Strategy -

The objective in PPS10 is for more sustainable waste management, which is achieved through reuse, recycling and other recovery before considering disposal as a last resort. This proposal would meet this objective as it includes processing of waste for reuse. PPS10 also identifies that the planning process should provide “sufficient opportunities for new waste management facilities of the right type, in the right place and at the right time”. This is a key point as although the proposal is for a sustainable form of development in terms of the process that is carried on, it is important to consider whether the proposal is appropriate in this location or whether there would be any adverse effects on the amenity of the area.

This is an unallocated site for waste disposal. PPS10 sets out a number of criteria to assess waste proposals on unallocated sites. This includes;

- The physical and environmental constraints on development
Impacts on environmental quality, social cohesion and inclusion or economic potential
- Capacity of transport infrastructure
- Priority to be given to re use of previously developed land and redundant agricultural buildings and their curtilages.

In the Design and Access statement the applicant refers to the sustainable benefits of the proposal that would mean this waste is not sent to landfill. A case is also presented that the overall impact of the proposal would be minimal because it would not require any buildings, new machinery or changes to the land. It is advised that the existing lorries delivering to the site already coming to the site would be backfilled to remove the end product for sale. The end product would be used by the construction/building industry.

It is notable that the applicant has not provided any evidence of the need for this facility in this location or information on how the proposal would fit in with the Council's waste strategy. The same process is carried on at Yalberton Tor Quarry and the site at Yalberton has the capacity to process all of Torbay's soil and construction waste.

The question of how the operation on the site would change as a result of the proposal is also material. At the current time the scale of the waste processing is limited by the need to use the end product on a number of designated fields. This would limit the volume of material that can be processed to the amount that can be applied to the fields and would also provide an ultimate limit on the

operation, since once all the soil on the designated fields had been enriched the operation would cease.

The proposal would mean that the scale of processing on the site could be increased as it would be easier to dispose of the end product. There would also be no natural limit on how long the process could be carried out.

There is concern that the applicants suggestion that existing lorries would be backfilled would be unworkable. This is because the existing hauliers using the site to dispose of construction waste will likely have a contract with a development contractor to dispose of waste from the site. It would be an added complication to also pick up a load at the same time to be sold to a third party. It is likely that a haulage contractor would fulfil one contract at a time rather than operate two consecutive contracts. The applicant's response to this matter have has been requested and will be reported to Members.

Impact on the AONB -

Since this application was submitted the NPPF has come into force in March 2012. The wording of paragraph 116 is different from Policy L1 in the Torbay Local Plan 1995-2011, which supports development where there is conservation of the environment or development would foster social and economic well being within the AONB. In Paragraph 116 of the NPPF there is a presumption that planning permission for major development should be refused except in exceptional circumstances and where it can be demonstrated that they are in the public interest.

From the information submitted in support of the application there is no evidence that there is an exceptional circumstance to justify this development in this location or that the proposal would be in the public interest.

Paragraph 116 identifies three criteria that a proposal should be assessed against. These are;

- a) the need for the development - in this case the need is not proven, as there are existing facilities for carrying out the same operation at Yalberton Quarry,
- b) the cost of meeting the need in some other way – in this case the cost would be nil as this waste could be processed at Yalberton Quarry and
- c) any detrimental effect on the environment, and the extent to which that could be moderated - The AONB Manager's comments are helpful in response to this point. The majority of the earth bunds are already on the site, however, as a result of this proposal it would be necessary to extend these and the new earth bunds would need to be increased in height from 2.5 metres to 4 metres. These earth bunds would be temporary until the expiry of the enforcement notices in January 2015. This application is for full planning permission which would mean

the earth bunds would be permanent. The AONB Manager's advice is that the current earth works are unsightly and damaging to the appearance of the area. He advises that a longer term change to a landfill or material recycling use would be wholly unacceptable here.

As such it is concluded that the proposal would have a detrimental effect on the environment, as there would be potential for the existing earth works to become permanent which would harm the amenity of the AONB.

In summary, the proposal would fail to meet the requirements of Paragraph 116 of the NPPF.

Impact on residential amenity-

There have been a number of complaints from local residents about noise nuisance from the existing screening/crushing operation that is being carried out. With the existing under enforcement notices there is no restriction on where the crushing and screening machinery can be operated and it is currently moved around the farm. This application proposes that the machinery will only be operated in one location that is surrounded by earth bunds that would reduce noise in the surrounding area. This could present an opportunity for an improvement to the current situation for local residents.

As stated above a Noise Assessment has been submitted by the applicant and this concludes that the proposal would not have a detrimental effect on residential amenity. This conclusion is supported by the Environmental Health Officer on the basis that 4 metre earth bunds are provided on the site. In the Noise Assessment report it is suggested that the operational hours of the site could be reduced by two hours each afternoon (stopping at 4pm rather than 6pm) resulting in operating hours of 8am to 4pm weekdays and 8am to 1pm Saturdays. Again this would be an improvement compared to the current situation for local residents.

It is not considered that the proposed development would have a detrimental impact on residential amenities, provided that the operation is appropriately controlled by conditions.

Highways -

The under enforcement notices permit 60 lorries per day to visit the site, which is a considerable volume of vehicular movements. The agent has advised that currently there are up to 10 lorries attending the site on a daily basis, which results in a maximum of 150-200 tonnes material being delivered to site per day.

The maximum of 60 lorries per day could result in 1080 tonnes material being delivered in a day. The applicant proposes that the existing lorries arriving at the site would be backfilled so that there would be no increase in vehicular

movements to the site. There is concern, however, as to whether this is logistically possible as contractors may not be in a position to operate more than one contract at any one time.

There would be an opportunity as part of this planning application to negotiate the number of vehicular movements to the site and to reduce the amount that is currently permitted.

The Senior Transport Planner has raised concerns about the effect of a permanent use of the highway network for fully laden lorries. He has requested additional information in support of the application and he recommends that a sustainable transport contribution should be paid in order to mitigate the impact of the development on the highway network.

As part of the application a plan showing a one way route for lorries visiting the site has been submitted. This works effectively for lorries arriving from the Paignton direction. The arrangements for vehicles arriving from the Brixham direction would involve drivers phoning ahead to ensure the one way system for lorry movements is clear for their use.

Wildlife-

The site is within the sustenance zone of the Berry Head Special Area of Conservation. As there are no buildings proposed on the site, and the operation of screening and crushing soil has already been permitted by the Council it is unlikely that the sale of recycled stone from the site would have a detrimental impact on Greater Horseshoe Bats or other wildlife that use the site. A condition can be imposed to ensure that there is no floodlighting of the site.

It is noted that Natural England have not raised an objection to the proposal.

Conclusions

In conclusion, the proposal is for the sale of recycled stone resulting from an operation of screening and crushing builders' waste that has already been controlled by the Council through serving two under enforcement notices, on a temporary basis until January 2015. The current operation on the site is solely for agricultural benefit, and the introduction of sale of recycled stone would introduce a commercial waste operation on this agricultural site within the AONB on a permanent basis.

The applicant has submitted a noise assessment to demonstrate that subject to 4 metre high earth bunds being provided around the application site the proposal would not have an adverse impact on residential amenity. This proposal would also present an opportunity for new controls to be imposed on the applicant in terms of location of machinery, hours of operation and number of vehicles visiting the site which could constitute an improvement to the existing operation on the site.

However, the site is within the AONB and paragraph 116 of the NPPF restricts development within the AONB to that which is required in an exceptional circumstance and is in the public interest. A detailed analysis of this guidance has concluded that the proposal would not meet these objectives and the proposal should therefore be refused planning permission. There is also concern about the permanent effect of the proposed development on the landscape quality of the AONB.

There are clearly benefits from the processing and reuse of soil and stone, however, just because this operation is currently being carried out for agricultural benefit does not provide sufficient justification for an exception to be made to AONB Policy. In this case the applicant has not proven that this site is the right place for the proposed use.

Condition(s)/Reason(s)

01. The applicant has failed to prove that there are exceptional circumstances to justify the proposed sale of recycled stone on the site, which is located within an Area of Outstanding Natural Beauty designated for its nationally important outstanding landscape quality. Furthermore, the applicant has failed to demonstrate that the proposal would be in the public interest; as such the proposed development is contrary to paragraph 116 of the National Planning Policy Framework and the policy tests set out in policy L1 of the Saved Adopted Torbay Local Plan 1995-2011.

02. The application site forms part of the wider undeveloped countryside between Brixham and Paignton that acts as an important green wedge that separates the two towns. The proposed development would harm the value of this Area of Outstanding Natural Beauty by reason of the permanent formation of earth bunds within an agricultural area that are unsightly and damaging to the character of the area. Furthermore, the inevitable increased activity and disturbance that would be generated from the introduction of a commercial waste sales operation on the site would have a harmful impact on the character of the AONB. This would be detrimental to the tranquil nature of this agricultural area that is valued for its distinctive undeveloped character. As such the development would be contrary to the objectives of paragraphs 116 and 123 of the National Planning Policy and policy L1 of the Saved Adopted Torbay Local Plan 1995-2011.

Relevant Policies

- WS Waste management and disposal strategy
- L3 Coastal Protection Areas
- L4 Countryside Zones

T18 Major Road Network
T26 Access from development on to the highwa
EP4 Noise
EP5 Light pollution
L1 Areas of Outstanding Natural Beauty
NC5 Protected species