HEARING STATEMENT FOR THE APPELLANT

Introduction

1 This appeal results from the refusal of the Appellant’s application for planning permission for development of the appeal site for agricultural development, comprising a new grain store, silos, rainwater harvesting tank, access and associated hardstanding, and a noise attenuation bund\(^1\). The application was refused by the Council’s planning committee, contrary to officer recommendation for approval.

2 Full background to the Appellant’s application, including the location, history of the appeal site, and the reason for refusal, is set out in the Appellant’s Statement of Case and the Statement of Common Ground. A copy of the following documents accompany this Hearing Statement, and the authorities referred to may be provided on request or provided at the hearing:

\[ 2.1 \] Statutory Declaration of David Walston.

\[ 2.2 \] Technical Addendum – Noise – prepared by Cass Allen.

\[ 2.3 \] Technical Addendum – Landscape – prepared by Liz Lake Associates.

\[ 2.4 \] Two revised plans (092-200-L and 092-201-M omitting the noise attenuation bund).

3 It is important to note that the Appellant is a family owned and run business. The appeal site forms part of the wider 900 hectare Thriplow Farm, which has been in the family business for over a century. The farm grows a variety of crops, using sustainable techniques, which serves the needs of the local market and throughout East Anglia.

4 The Appellant is committed to the continuation of its business, although relocation of its current grain store and operations is essential for a range of operational and commercial

\(^1\) Through the Statement of Common Ground the Appellant and the Council agree that the noise attenuation bund is not required and removed from the proposed development if alternative noise mitigation measures are secured. This is discussed below.
reasons. This reasoning is emphasised in the Statutory Declaration of David Walston\(^\text{2}\), which confirms the need for the appeal scheme as repeated by the Appellant throughout the application; set out in the Appellant’s Statement of Case; and endorsed by the Council’s planning officer in her report to planning committee.

The application was refused for one sole reason, namely that the appeal scheme was considered by the Council to be “inappropriate development” for the purposes of now policies S/4 and NH/8 of the South Cambridgeshire Local Plan (2018)\(^\text{3}\) (“Local Plan”), which in substance mirrors the requirements of the National Planning Policy Framework (February 2019) (“NPPF”) at paragraphs 145 and 146 in particular.

As agreed in the Statement of Common Ground, and despite the concerns raised by third parties, the Council has confirmed that it has no other concerns with the appeal scheme, and that the application is in conformity with all remaining policies in the Local Plan. The Council and the Appellant also agree the proposals are unlikely to lead to significant impacts on the environment and no environmental statement is necessary\(^\text{4}\).

The key issue at this appeal is therefore confined to whether the Council was correct to refuse planning permission on the basis of conflict with policies S/4 and NH/8 of the Local Plan and paragraphs 143, 145 and 146 of the NPPF (referred to collectively in this Hearing Statement as the “Green Belt Policies”).

This issue may however be confined further. Whilst development in the Green Belt is treated as prima facie “inappropriate” unless justified by “very special circumstances”, development can be treated as being “appropriate” to the Green Belt and not in conflict with the fundamental aims of the Green Belt policies (and therefore not harmful) if one of the exceptions in paragraphs 145 to 146 applies\(^\text{5}\). This is not a matter of planning judgment but inherent in the policy\(^\text{6}\).

The Council has agreed through the Statement of Common Ground that the grain store, silos and rainwater harvesting tank are not inappropriate development for the purposes of paragraph 145 of the NPPF; and therefore in turn are deemed compliant with policies S/4 and NH/8 of the Local Plan.

\(^{2}\) Statutory Declaration of David Walston dated 12 February 2019; submitted with this Hearing Statement.

\(^{3}\) Policy GB/1 of the South Cambridgeshire Local Development Framework Development Control Policies DPD 2007 at the time of, and as referenced within, the reason for refusal.

\(^{4}\) Pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

\(^{5}\) Confirmed in Timmins v Gedling District Council [2014] EWHC 654

\(^{6}\) R (Lee Valley Regional Park Authority) v Epping Forest District Council [2016] EWCA Civ 404
Consequently, the only issue at the heart of this appeal is whether the remaining elements of the appeal scheme (namely the access, associated hardstanding (including weighbridge) and noise attenuation bund (the “Engineering Operations”)) constitute “inappropriate development” as “engineering operations” under paragraph 146 of the NPPF, or if planning permission should nonetheless be granted due to very special circumstances or other material considerations evidenced by the Appellant.

**The Key Issue: Principle of Development and Green Belt Policies**

The key Local Plan policies include S/4 and NH/8, which are the policies governing development within the Green Belt, in essence reflect the provisions of paragraphs 143 – 147 of the NPPF.

The Council has correctly accepted in the Statement of Common Ground that the grain store, silos and rainwater harvesting tank are not “inappropriate” development for the purposes of the Green Belt Policies under the “buildings for agriculture and forestry” exception in paragraph 145 of the NPPF. There is no caveat or condition associated with this exception, and no requirement to prove that the openness of the Green Belt is preserved and the purposes of including land within Green Belt is not conflicted with.

Consequently, if the grain store, silos and rainwater harvesting tank were proposed in isolation, such development *would not* be considered inappropriate development that is harmful to the Green Belt. Instead, they would be deemed acceptable in their own right under the Green Belt Policies.

It is against this context that the remaining elements (namely the Engineering Operations, comprising the noise attenuation bund, access and hardstanding of the appeal the scheme) should be considered under paragraph 146 of the NPPF. This is because the Appellant may – and if this appeal is refused proposes to – construct the access and hardstanding under permitted development rights following which a planning application may be made for the agricultural buildings and silos, which are not deemed inappropriate under the Green Belt Policies.

Under paragraph 146 of the NPPF, “engineering operations” are not considered inappropriate development in the Green Belt if they preserve its openness or do not

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7 Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2018] EWCA Civ 489; R (Lee Valley Regional Park Authority) v Epping Forest District Council [2016] EWCA Civ 404
conflict with the purposes of including land in the Green Belt. In this context, the
requirement to “preserve” the openness of the Green Belt is not interpreted to mean that it
must be left unchanged, but instead not harmed.\(^9\)

16 The access and hardstanding are at ground level. The bund is adjacent to the grain store
and silos, and much lower than the ridge height of these buildings. Therefore, as
concluded in the Appellant’s LVIA Technical Addendum (“LVIA Addendum”), these
elements when assessed against the context of the agricultural buildings and silos (which
are not deemed inappropriate development in the Green Belt), will preserve the openness
of the Green Belt\(^10\) and not lead to harm. The Engineering Operations are not therefore
inappropriate development for the purposes of paragraph 146 of the NPPF.

17 If required by the Inspector, the Appellant would also be willing to remove the noise
attenuation bund from the development proposals. A technical note from the Appellant’s
noise consultant confirms that the removal of the bund, and replacement with other
mitigation measures in the form of silenced fans, would ensure the noise amenity impacts
are acceptable. Alternative plans and planning conditions have been provided to
illustrate this as agreed in the Statement of Common Ground, which would in turn limit the
“engineering operations” to the ground level access and hardstanding areas only
(including weighbridge).

18 In any event, the Appellant submits that there are “very special circumstances” that justify
approval in accordance with paragraph 143 of the NPPF.

19 It is a matter of planning judgment for the decision maker as to whether a particular factor
constitutes a very special circumstance\(^12\), to include a balancing of all the benefits of the
proposals. These benefits or justification for the development, do not need to be rarely
occurring, but can be commonplace in the context of a particular business or development
proposal\(^13\).

20 The Appellant through its application, Statement of Case and as emphasised in the
Statutory Declaration of David Walston, has explained why it is crucial for the current
farming and storage operations to relocate to the appeal site. This is for a variety of

\(^9\) Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2018] EWCA Civ 489
\(^12\) R (Khan) v LB Sutton [2014] EWHC 3663 (Admin)
\(^13\) R (Wildie) v Wakefield Metropolitan BC [2013] EWHC 2769 (Admin)
operational and commercial reasons, and to ensure the prosperity of the business that has been in operation for over a century.

21 For example, the buildings on the Appellant’s existing site were constructed during 1950 – 1984, and require regular maintenance and upkeep. Agricultural buildings of this type generally only have a life span of 25 years. All the existing buildings on the Appellant’s existing site far exceed this expectancy and will be in need of urgent replacement which necessitates the appeal scheme at the current time. The appeal scheme will also allow the business operations to operate in a much more efficient manner to support the requirements of modern day farming.

22 It must also be noted that the appeal scheme must be provided on the appeal site as this is found to be the most suitable location, not least because virtually all of the Appellant’s landholding is within the Cambridgeshire Green Belt.

23 The Appellant considers for all the above reasons – and as acknowledged and agreed by the Council’s planning officer\(^{14}\) - that very special circumstances are proved so as to justify approval.

24 This is particularly so as all of the Engineering Operations proposed through the appeal scheme may be constructed pursuant to permitted development rights\(^{15}\), subject only to the prior approval of the siting and means of construction of the access.

25 No further express planning consent would be required for the Engineering Operations (or indeed the rainwater harvesting tank). It is indeed possible – and would be the Appellant’s intention – to deliver the Engineering Operations (and rainwater tank) and secure planning consent for the remaining agricultural buildings and silos only in the event the appeal is refused.

26 The Council has agreed through the Statement of Common Ground that all these Engineering Operations (and the rainwater tank) are not “inappropriate development” under the Green Belt Policies and has raised no other concerns with these elements in planning terms. The delivery of the Engineering Operations – and likely grant of planning permission for the agricultural buildings – is a realistic prospect therefore\(^{16}\).

\(^{14}\) Committee Report dated 25\(^{th}\) April 2018 paragraphs 3 to 7 and 96 to 97.
\(^{15}\) The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 6, Class A
\(^{16}\) Pursuant to Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314, where the Court found that a “fall back” position does not need to be probable but a “real prospect” to be treated as a relevant material consideration, with does not require planning permission to be secured or the site allocated.
The Appellant considers that these factors should also be treated as very special circumstances to justify approval.

Other Matters

The Council has confirmed that, apart from alleged conflict with the Green Belt Policies, the scheme is otherwise acceptable and compliant with the remaining policies in the Local Plan and the NPPF.

For completeness, the Appellant summarises below why it considers that the remaining policies in the Local Plan are complied with; compliance with which in turn evidences compliance with the relevant policies in the NPPF.

Climate Change, Renewable Energy and Water Efficiency

The appeal scheme is supported by a Sustainability Statement\textsuperscript{17} that clearly evidences why the scheme constitutes sustainable development.

In particular, with regards to energy and natural resources, the agricultural nature and type of development has a low energy demand, and does not therefore incorporate any heating. The harvesting rainwater system will also further reduce demand on water resources.

Whilst it is acknowledged that policy CC/3 of the Local Plan recommends use of on-site renewables, agricultural buildings such as the appeal scheme are exempt from energy efficiency regulations due to its low energy demand. Therefore, it is not considered that further renewable technologies are required\textsuperscript{18}.

For these reasons, and in absence of any statutory consultee objection, it is clear that policies CC/1, CC/3 and CC/4 of the Local Plan are complied with, to the extent relevant.

Construction Methods

It is not considered that this is a type or scale of development that would have material adverse impact on amenity or the environment during the construction phase. Further, proposed condition 19 ensures that construction activities are limited to acceptable daytime hours, and prevented on Sundays and Bank Holidays.

\textsuperscript{17} Sustainability Statement of October 2017, prepared by Beacon Planning
\textsuperscript{18} See technical note of Energist UK of 23 August 2017
35 Whilst not considered necessary for the above reasons, if the Inspector considers necessary, the Appellant would be prepared to agree a further planning condition requiring agreement and implementation of a construction management plan in the usual manner.

36 For these reasons, and in absence of any statutory consultee objection, it is clear that policy CC/6 of the Local Plan is complied with.

**Water Quality, Sustainable Drainage and Flood Risk**

37 The appeal site is located in Flood Zone 1 and the Appellant’s Flood Risk Assessment and Drainage Strategy\(^\text{19}\) concludes that the drainage of the site can be suitably managed through the wetland areas ensuring no increased risk of flooding. The rainwater harvesting system proposed shall ensure that rain water is harvested sufficient to cover the appeal scheme’s annual water requirements.

38 For these reasons, and in absence of any statutory consultee objection\(^\text{20}\), it is clear that policies CC/7, CC/8 and CC/9 of the Local Plan are complied with.

**Design**

39 The agricultural buildings have been carefully designed to ensure they are in-keeping with the landscape area and similar agricultural buildings, through cladding and other design considerations. There are no potential impacts identified on heritage assets.

40 For these reasons, and in absence of any statutory consultee objection, it is clear policy HQ/1 of the Local Plan is complied with.

**Landscape and Biodiversity**

41 An extensive landscape scheme is secured through proposed conditions 7, 8 and 9. This shall include a substantial tree buffer and planting around the appeal scheme to ensure that this is fully integrated into the landscape. In visual impact terms, once the proposed

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\(^{19}\) NPPF: Flood Risk and Drainage Strategy dated December 2017, prepared by enzygo environmental consultations

\(^{20}\) The Appellant acknowledges that the Local Lead Flood Authority (“LLFA”) originally objected to the proposal as further clarification was required in the Appellant’s original Flood Risk and Drainage Strategy of September 2017. A revised assessment was prepared and submitted in December 2017, but no further comments received from the LLFA. No objection was raised by the Council’s Drainage Officer subject to the imposition of proposed condition 13.
planting is established, the residual impact will be low at worst, to neutral, as evidenced through the Appellant’s landscape and visual impact assessment\textsuperscript{21}.

42 In addition, proposed conditions 11 and 12 safeguard habitats for breeding birds and secure a biodiversity enhancement scheme to be agreed and implemented as set out in the Appellant’s ecological assessment, which found the appeal scheme acceptable\textsuperscript{22}.

43 For these reasons, and in absence of any statutory consultee objection, it is clear that policies NH/2 and NH/4 of the Local Plan are complied with.

\textbf{Lighting}

44 Pursuant to proposed planning condition 10, no external lighting is permitted unless agreed with the Council and must be installed and maintained in accordance with the approved details.

45 For these reasons, and in absence of any statutory consultee objection, it is clear that policy SC/9 of the Local Plan is complied with.

\textbf{Noise}

46 The appeal scheme has been carefully designed to minimise noise impacts. The Appellant’s noise assessment\textsuperscript{23} has concluded that the noise generated from the appeal scheme will be acceptable and typical of the arable farming activities found in the area.

47 Whilst the appeal scheme does include a noise attenuation bund to further reduce the noise impact, as explained above this is not considered necessary to make the development acceptable in noise amenity terms. It is instead possible to omit the noise attenuation bund, in replacement of other at source mitigation measures which may be agreed and secured through alternative planning conditions. This principle is agreed with the Council through the Statement of Common Ground.

48 For these reasons, and in absence of any statutory consultee objection, it is clear that policy SC/10 of the Local Plan is complied with.


\textsuperscript{22} Preliminary Ecological Appraisal dated 29 September 2017, prepared by Geosphere Environmental Ltd

\textsuperscript{23} Noise Impact Assessment dated September 2017, prepared by Cass Allen Associates
Travel and Highway

49 The Appellant’s transport assessment has concluded that the appeal scheme shall be acceptable in transport and highway terms, with the highway network capable of accommodating the proposed traffic generation. The highways authority also raised no objection.

50 For these reasons, and in absence of any statutory consultee objection, it is clear that policy TI/2 of the Local Plan is complied with.

Infrastructure

51 For all the above reasons, and in absence of any statutory consultee objection, it is clear that the appeal scheme includes all necessary infrastructure to make the scheme acceptable in accordance with policy TI/8 of the Local Plan.

Scheme Amendment

52 As explained above, it is not considered that the appeal scheme should be considered unacceptable by reason of the noise attenuation bund or otherwise, which does not lead to a loss of openess to the Green Belt in the context of the agricultural buildings deemed appropriate under the Green Belt Policies.

53 The Appellant is however mindful of the third party objections and the Council’s concerns concerning the noise attenuation bund party. For this reason, the Appellant is prepared to omit the noise attenuation bund from the appeal scheme if the Inspector considers necessary.

54 As explained above, omission of the bund would still ensure that the appeal scheme remains acceptable in noise and amenity terms, as alternative mitigation measures may be secured through planning condition in the form of silenced fans.

55 If the Inspector considers omission of the bund is necessary, the following amendments to the proposed planning conditions at Appendix 4 of the Statement of Common Ground are proposed:

55.1 Amendment of Condition 1 by replacing references to plan “Site Layout 092-200 Rev.No K” with plan reference “Site Layout 092-200 Rev. No L”;

24 Transport Statement dated September 2017, prepared by Transport Planning Associates
55.2 A new Condition 20 to read “Prior to the commencement of the approved use, the cooling fans on the northern elevation of Building A will be installed in accordance with the specification provided at Attachment 2 of Cass Allen’s Technical Addendum, reference LR02-17264 and dated 25 February 2019 and retained thereafter.”

56 It is not considered that the omission of the noise attenuation bund would change the scheme so as to cause prejudice to the Council or other parties. The Council has agreed through the Statement of Common Ground that the bund may be omitted if alternative mitigation is secured.

57 The bund is a minor – and freestanding – element of the appeal scheme; removal of which would not change the development so substantially so as to deprive third parties with the opportunity to be consulted. On the contrary, the proposed omission of the bund is to address concerns of third parties and the Council on the bund, should the Inspector consider it necessary.

58 Therefore, the Appellant maintains that amending the scheme through the removal of the bund is acceptable under the Wheatcroft principles, particularly considering the Council’s agreement to this.

Concluding Remarks

59 The Appellant considers that:

59.1 The appeal scheme is appropriate development for the purposes of the Green Belt policies, given that no harm shall be caused to openness to the Green Belt or otherwise from the Engineering Operations when considered against the context of the agricultural buildings, which are neither “inappropriate” nor harmful pursuant to paragraph 145 of the NPPF.

59.2 In any event – as accepted by the Council’s planning officer – it is clear through the Appellant’s evidence that very special circumstances exist to justify approval.

59.3 As accepted by the Council, all remaining policies of the Local Plan are complied with and there are no other concerns identified. It is therefore clear that the Local

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25 Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37], confirmed in Wessex Regional Health Authority v SSE [1984] and Wadehurst Properties v SSE & Wychavon DC [1990] and Breckland DC v SSE and T. Hill [1992]
Plan is complied with as a whole, and there are no other relevant material considerations (including the NPPF policies) which justify refusal.

59.4 In any event, it should be noted that the Engineering Operations (and indeed the rainwater harvesting tank) may be constructed without further planning consent under permitted development rights. If this appeal is refused, the Appellant may construct these elements, subject only to prior approval of the siting and construction of the access. The Appellant may then be entitled to apply for planning permission for the agricultural buildings; buildings to which the Council has raised no concern and are not considered to be “inappropriate development” under the Green Belt Policies. To force the Appellant down this road would be perverse, considering the comprehensive application now before the Inspector.

59.5 Finally, in the alternative, if the Inspector considers that – contrary to the Appellant’s submissions - only the agricultural buildings should be permitted as the Engineering Operations are not acceptable, as the Engineering Operations may be constructed pursuant to permitted development rights the Inspector is invited to grant planning permission for the agricultural buildings only\(^{26}\). The Appellant would be prepared to agree to planning conditions requiring:

59.5.1 Details of the location, specification and materials of the access to be agreed prior to commencement of development; and

59.5.2 No use of the agricultural buildings until the access, hardstanding areas, noise attenuation bund (if necessary), and harvesting tank have been constructed and ready for use.

60 For all the above reasons, it is clear that the Council’s reason for refusal cannot be substantiated and - in any event - planning permission should have clearly been granted. The Appellant considers it clear that this appeal should be allowed, and reserves its position as to costs.

Howes Percival LLP

1 March 2019

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\(^{26}\) The Appellant may provide separate drawings identifying the agricultural buildings only, if the Inspector requires and does not consider this may adequately be referred to by reference to the existing submitted plans.