

Judicial Review

Planning Applications PL/0129/22 & PL/0130/22

Decision Notice issued 07/11/2023

Decisions - Granted

The policies which we consider to not have been considered and applied correctly by LCC in this instance –

DM17

Policy DM17: Cumulative Impacts

Planning permission will be granted for minerals and waste developments where the cumulative impact would not result in significant adverse impacts on the environment of an area or on the amenity of a local community, either in relation to the collective effect of different impacts of an individual proposal, or in relation to the effects of a number of developments occurring either concurrently or successively.

DM3

Policy DM3: Quality of Life and Amenity

Planning permission will be granted for minerals and waste development provided that it does not generate unacceptable adverse impacts arising from:

- noise,
- dust,
- vibration,
- odour,
- litter,
- emissions,
- the migration of contamination,
- illumination,
- visual intrusion,
- run off to protected waters,
- traffic,
- tip- and quarry- slope stability,
- differential settlement of quarry backfill, or
- mining subsidence

to occupants of nearby dwellings and other sensitive receptors.

And in respect of waste development is well designed and contributes positively to the character and quality of the area in which it is to be located.

Where unacceptable impacts are identified, which cannot be addressed through appropriate mitigation measures, planning permission will be refused.

DM17 is further explained by LCC thus –

The Cumulative Effect (LCC's Policy DM17: Cumulative Impacts) – Lincolnshire's recent consultation document lays out how sites for quarries should be chosen. Their policy DM17 in this document states - *that, in preparing Local Plans, local planning authorities should take into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality; and that, when determining planning applications, local planning authorities should take into account the cumulative effect of multiple Impacts from individual sites and/or from a number of sites in a locality.*

It goes on to say *It is important to consider the suitability of granting permission for sites which would be in close proximity to other minerals or waste sites. Proposals for simultaneous and/or successive operations at a number of sites in a wider area of commercially-viable deposits may impact on the amenity of communities and localities over an extended period, depending on the nature, age and size of the site(s).*

Such cumulative impacts can occur in a number of ways:

- *the cumulative impact of a number of separate effects from a single site;*
- *the cumulative effects from two or more active sites, including sites being restored or used for waste disposal;*
- *the combined effect on the landscape and ecology from the working, re-working and restoration of a number of sites; or*
- *the cumulative impact on the quality of life of local communities from a relatively unbroken sequence of working and restoration.*

In Lincolnshire, there are parts of the county where there has been a gradual build-up of sites in close proximity to other mineral sites. For example, sand and gravel extraction has been concentrated in 3 particular areas of the County. The cumulative impacts on amenity to local communities in these areas and on the existing landscape will need careful consideration when considering future developments.

Our Reasoning

It is our contention that the Mineral Planning Authority has failed and is failing to robustly assess the cumulative impact of the intense quarrying activity in the West Deeping area on its community and residents. Quarrying that has been ongoing for over 70 years with proposals for another 30 plus years.

Indeed it is our contention that the MPA is deliberately steering councillors away from the severity of the cumulative impacts in order to fulfil their landbank supply targets or in this instance to cover the fact that a proper assessment has not been done.

It is important to note here that it is not for us to prove or disprove that the Cumulative Impacts of all of these mineral activities should give rise to Objecting to the Proposals, that is for the LCC, the MPA to assess and for Breedon to also robustly assess. It is our contention that this hasn't been done robustly or correctly.

The reasons why we feel that these policies haven't been applied or considered fully enough are -

1. There is no Cumulative Impact assessment by Breedon in respect of these two planning applications. LCC has a duty to ensure that their policies are considered. This is a systemic and repeated omission.
2. During the Planning and Regulation committee meeting on the 6th November, LCC Minerals and Waste Officer Marc Willis commented thus –

“Yes thank you chairman Just a couple of observations really, just to remind members that we are dealing with the application that is in front of us today which is dealing with an amendment to conditions relating to the existing operations. A couple of the speakers there have referenced allocations in the local plan and proposed future working and the implications or precedent I guess that they are fearful of in regard to that application that's not what is in front of you today, the application is for the amendments to the working within this particular site and the impacts associated with that particular heritage asset. as I say, Molecey Mill has been referenced and has been considered within the report and you will see from the recommendations that we are satisfied that the impacts or no impacts or additional impacts are arising from this activity so just to bear that in mind please members when considering this application.

Marc Willis Council planning meeting 06/11/23

3. In LCC's response to our complaint, Neil McBride, Head of Planning commented thus-

"The applications were rightly considered on their own planning merits, and the allocation has no bearing on whether these proposals are acceptable or not. This is well founded practice within planning law."

Neil McBride - in response to our complaint email 28/11/23

4. The Committee Report dated 4th September 2023, Mr Willis states-

"Some of the representations received reference sites and that have been put forward by the applicant and operators for consideration as part of this current Minerals & Waste Local Plan Review. These sites include land lying to the south of the A1175 and east of West Deeping village as well as an existing allocated site within the currently adopted Minerals and Waste Local Plan (referred to as MS29-SL). Whilst these concerns are noted, no application has been made to work the MS29-SL and the sites being promoted as part of the Local Plan review are still under consideration and a decision on whether these sites will be taken forward to the next stage of the Plan has yet to be made. Given this, these comments and references to perceived potential impacts arising from these proposals are not relevant or material to consideration or acceptability of these proposals and so are given no weight in the determination of these applications."

Both Mr. Willis' and Mr. McBride's comments show either an ignorance or the planning policies or a deliberate attempt to divert due process and illustrate an underlying bias. The Councillors on the Planning and Regulation Committee are minded to base their decisions on the Committee Report's prepared by the Officers, and it is our contention that these reports and the information that they are based on do not adequately assess the cumulative impact of the multitude of sites working successively and concurrently around West Deeping.

Cumulative Impact

We suggest that a robust assessment of cumulative impact should follow the following guidelines -

Assessment Approach and Methodology

1. Whilst the NPPF requires consideration of cumulative effects there is no national or local guidance as to how this should be carried out.
2. In the absence of any such policy guidance, what constitutes a robust assessment of cumulative effects has been considered by the High Court in the case of *The Queen (on the application of Leicestershire County Council) v. the Secretary of State for Communities and Local Government and UK Coal Mining Ltd (2007) EWHC Admin 1427*. The case, known as the 'Long Moor judgement' was heard before Mr Justice Burton and was focused around the Secretary of State's granting of planning permission on appeal for surface coal mining at UK Coal's Long Moor site in Leicestershire.
3. The background to the case was that Leicestershire County Council (the Mineral Planning Authority or MPA) had originally refused planning permission on the grounds of cumulative impact. At appeal however, the Inspector and the Secretary of State accepted that none of the individual effects was of sufficient dis-benefit to justify the refusal of permission and accepted that in the absence of a further 'proper assessment', there was nothing to suggest that the cumulative impact was such as to warrant the refusal of permission.
4. When the decision was challenged in the High Court, Mr Justice Burton criticised the MPA's evidence as being based on conclusions which were simple value judgements, with no supporting reasons. Importantly, he concluded that reasons underpinning any conclusions on cumulative effects must be provided by the MPA for it to be considered a 'proper assessment'. In paragraph 41 of his judgement he gives examples of such reasoning as including:

5. Even though each individual area of potential impact was not objectionable yet each such feature was close to objectionability that, although none could be said to be individually objectionable, yet because each was nearly objectionable, the totality was cumulatively objectionable; or one, two, three or four of the particular features were close to being objectionable and that would be an important matter to take into account when looking at the totality; or one particular combination of two or three otherwise unobjectionable features could cause objectionability in their totality; or as was specifically addressed by the Interested Party and by the Inspector here, and found not to be the case, there could be some unusual feature or some unusual combination of features such as to render the combination objectionable when the individual feature was not.
6. The judgement of Mr Justice Burton therefore provides guidance as to how levels of objectionability should be assessed and, how, then they might be considered in combination.
7. Following on from this case the Secretary of State granted planning permission on appeal in respect of the 'Telford case' (Huntington Lane) which involved a proposal by UK Coal to extract 900,000 tonnes of coal and 250,000 tonnes of fireclay near Telford. The Planning Inspector in this case considered that "There are three categories of cumulative impact to consider: namely (i) successive effects (ii) simultaneous effects from concurrent developments, and (iii) combined effects from the same development."
8. The methodology for assessing cumulative impact should therefore take account of the above cases and potentially adopt the approach taken by the Inspector in the Telford case. This is one of the most recent cases to deal with this issue and, in terms of approach, has also received the approval from the Secretary of State.
9. In that regard, an assessment of cumulative effects should have regard to:
 1. successive effects;
 2. simultaneous effects from concurrent developments, and
 3. combined effects from the same development.

10. It is suggested that the first and second elements of cumulative impact (successive and simultaneous effects from concurrent developments) should be considered in parallel given that this assessment requires the identification of previous and new minerals developments in the locality (as well as other forms of development that might give rise to similar types of impact). The third element, combined effects from the same development, might be considered separately and will have regard to how potentially close each individual environmental impact is to being unacceptable or objectionable. This then enables a professional judgement to be made on the potential accumulated totality (i.e. the judged acceptability or otherwise of their combined environmental effect).
11. Regard should also be had to the potential for the proposal to give rise to a series of benefits (positive impacts) which could potentially offset or outweigh any harm which might be brought about by the proposed development. In this regard the cumulative impact assessment should therefore consider the potential cumulative benefits of the scheme.

Scope of the Assessment and Potential Receptors

1. The main impacts of the proposed development should be confined to those areas in closest proximity to the proposed site.
2. However, as part of the 'proper assessment' of cumulative impacts it is necessary to consider the potential successive and simultaneous effects of the development on the general locality. A suggested radius of 3 km from the centre of the proposed site might be considered as the 'general locality', taking into account a Zone of Visual Influence which can often be set out in the Landscape and Visual Impact Assessment.
3. In considering potential receptors, regard should be given to the contents of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended). Schedule 4 seeks to ensure that the impacts upon the following aspects of the environment are considered:
 - i. Population
 - ii. Soils, Flora and Fauna
 - iii. Air and Climatic Factors
 - iv. Archaeological Heritage
 - v. Landscape
 - vi. Transport
4. The assessment should have regard to the potential successive, simultaneous and combined cumulative effects of the development proposal, taking account of their impact upon the above receptors.

Successive and Simultaneous Effects

1. Successive and simultaneous effects comprise the impacts caused by the proposed development in conjunction with other developments that occurred in the past, present or are likely to occur in the foreseeable future.
2. As the proposed development is for a continuation of mineral operations, it is appropriate to consider the successive effects on the site and its immediate environs together with the cumulative impacts from all of the other activities in the area.

Combining the Potential Environmental Impacts

1. In order to assess the combined effects of the environmental impacts, it is necessary to consider whether some or all of the individually acceptable effects are so close to being unacceptable, that when combined together, the totality is unacceptable. The potential benefits of the proposal must also be considered into the cumulative planning balance.
2. The following Impacts need to be considered singularly and then together as their combined impacts
 - i. Landscape and Visuals
 - ii. Nature Conservation and Ecology
 - iii. Noise
 - iv. Dust and Air Quality
 - v. Cultural Heritage
 - vi. Water Resources Impact
 - vii. Flood Risk

SUMMARY

A Report should be submitted by the Applicant including an Environmental Statement (ES) is to assess the potential cumulative impact generated by the proposed development. Throughout the ES and associated technical appendices, the impacts that the proposed development could potentially have on the site and the surrounding area need to be assessed. This report should draw together the findings of all the technical assessments and outline whether any cumulative impacts may emerge from the interaction between different environmental impacts.

Cumulative impacts relate to the way in which different impacts can affect a particular environmental resource or location incrementally. In essence, cumulative impacts are those which result from incremental changes caused by other past, present or reasonably foreseeable developments, together with the proposed development. Therefore, the potential impacts of the proposed development cannot be considered in isolation but must be considered in addition to impacts already arising from existing or planned development.

The National Planning Policy Framework (NPPF) states that 'local planning authorities should ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality (paragraph 144, emphasis added).

Good practice suggests that an ES should include a cumulative impact assessment to identify, describe and evaluate the effects that are likely to result from the project in combination with other projects and activities that are being, have been or will be carried out. The following types of projects should be included in such an assessment-

- i. Existing completed projects;
- ii. Approved but incomplete projects;
- iii. Ongoing activities;
- iv. Plans or projects for which an application has been made and which are under consideration by the consenting authorities;
- v. Plans and projects which are reasonably foreseeable (i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and incombination effects.