

Regulatory Committee – 6 July 2021

Re-grading of agricultural land, at land off Newton Lane, Coton Park Farm, Rugby, Warwickshire, CV23 0TB

RBC/20CM014

Application No.: RBC/20CM014

Advertised date: 17 December 2020

Applicants: Selwyn and Emma Rees,
Coton Park Farm
Newton Lane
Shawell
Rugby
CV23 0EB

Agent: Mr Robert Gandy
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Samuel House
5, Fox Valley Way
Sheffield
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Registered by: The Strategic Director for Communities on 04 December 2020

Proposal: Re-grading of agricultural land, at land off Newton Lane, Rugby, Warwickshire, CV23 0TB

Site & location: Coton Farm, Newton Lane, Rugby, CV23 0EB.
[Grid ref: 452998.279751].

See plan in Appendix A

Recommendation

That the Regulatory Committee authorises the grant of planning permission for the re-grading of agricultural land on land off Newton Lane, Rugby subject to the conditions and for the reasons contained within Appendix B of the report of the Strategic Director for Communities.

1. Application details

- 1.1 The planning application seeks consent for the re-grading of agricultural land at Coton Farm. The proposed operation would import certified topsoil onto the site to re-grade the currently steeply sloping field to create a relatively flat finished surface level which would enable more productive use of the site for agriculture.
- 1.2 A topographical survey and detailed cross sections submitted with the application inform that the maximum void to re-grade to a more horizontal level would require 91,395 cubic metres or 136,410 tonnes of topsoil.
- 1.3 It is proposed that topsoil would be imported to the application site from a storage yard at The Fisheries located approximately 1.7 km to the southeast, on the A5. Vehicles would travel via Watling Street A5 north from The Fisheries, turning left into Newton Lane and then right into the application site.
- 1.4 The Planning Statement supporting the application advises that using a 20-tonne load capacity vehicle (calculating that 1 tonne of topsoil equates to 0.67 cubic metres), the required volume of topsoil to complete the proposed re-grading would require approximately 6,821 vehicle trips. Working Monday to Friday, with on average 13 deliveries per day or 26 2-way trips, the import of soil would require a period of two years (104 weeks) to complete the proposed re-grading.
- 1.5 Access into the application site would be from Newton Lane using an existing field entrance that has not been in use for a period of years and become overgrown.
- 1.6 The access to the site would be increased to 5.5 m in width, to allow for two HGVs to pass. The access would be secured by a gate set back 15 m from the highway to ensure a 20-tonne tipper truck would not block Newton Lane if the gates to the site were closed.
- 1.7 A site compound would be constructed at the entrance to the site. The application proposes an area of hardcore to be laid to provide for vehicle parking, wheel wash facility and a site for the installation of a cabin to provide mess and welfare facilities. The cabin would be a temporary mobile structure that would not require a water supply or a drainage connection.
- 1.8 A turning area would be provided on site to allow vehicles to both enter and leave the site in a forward gear.
- 1.9 Existing vegetation on site would be removed and exported to a suitable licenced facility for composting. Existing topsoil on the application site would be excavated and stockpiled for re-use.

- 1.10 The landfill /landraising works would commence at the south-western area of the application site, furthest from the entrance, with infilling progressing towards the site entrance. The final area of filling would be the site compound area. The method of working would be for soils to be delivered to the site by 20-tonne tipper lorries, end tipped from the vehicles and the soils placed in graded layers on site by a bulldozer. Layers would be compacted by a smooth roller towed by the bulldozer to provide a compact surface to allow lorry traffic across the surface. The planning statement advises that the compacted surface would also allow soils to shed excess water during periods of wet weather to prevent softening of soils.
- 1.11 Vehicles exiting the site would use the wheel wash facility to prevent mud being deposited on the road. A road sweeper would be in use in the event of there being mud on the road.
- 1.12 On completion of the re-grading works, an excavator with a grading bucket would be used to create the final landform. Finally, the top surface would be ripped to remove excess compaction to create a suitable soil structure for agriculture.

2. Consultation

- 2.1 **Rugby Borough Council – Planning:** No objection. Subject to the proposals not having an adverse impact on archaeology or protected species Rugby Borough Council has no planning objections to the proposals. The impact on visual amenity must also be taken into consideration.
- 2.2 **Rugby Borough Council – Environmental Health:** No objection to this proposed development subject to the following conditions being attached to any decision notice, should approval be granted.

I note that the proposal is for the importation of certified topsoil onto site and to improve drainage. The closest residential receptor is the dwelling to the east, which is located to the south of the Tripontium commercial/industrial units.

I have recommended conditions relating to hours, reversing alarms and a Construction Method Statement (CMS). This last is because the submitted CMS is in draft form. If a 'final' version is provided prior to determination of this application I would consider amending my recommendations.

Planning Officer update: A finalised version of the CMS was submitted to state the standard hours of operation recommended by RBC EHO. A condition is recommended for the standard hours of operation and for development in accordance with the submitted final version of the Construction Management Plan.

2.3 **Churchover Parish Council:** Object.

Having reviewed the new Planning Statement and the other documents (on WCC's website) we have several concerns: -

- It says that the soil is in storage currently, 1.7km down the A5. There is no explanation of what it is doing there, where it came from, when it arrived, and what condition it is in.
- If it is legally deposited where it is, does it have a waste licence and planning permission?
- If it does have permission to be where it is, it will also need a permission to dig it up and another permission to deposit it at Newton Lane. Does it have permission to dig it up? This application only covers placing it at Newton Lane, not lifting it from elsewhere.
- Looking at the field over which it is proposed to (re-)spread it, there seems to be nothing to suggest the field needs agricultural improvement. It has been farmed for many years, we suspect, without needing any improvement of this nature.
- The Statement repeatedly refers to "Certified Topsoil ": this begs these important questions:
 - 1. Is their evidence that the Environment Agency agrees with the certification?
 2. If so, when did they do so?
 3. What has happened to the soil since it was certified?
 4. What does such "certification" cover?
 5. Does certification preclude it being chemically or physically contaminated?
- Assuming that the topsoil is actually good quality, what will be the Agricultural Land Classification grading of the receptor site on completion?
- Also, if it is actually good quality then tipping at as much as 6-7m thickness is a waste of a valuable resource.
- In what way will compacting it (as stated) improve drainage?
- Transporting, placing, compacting and remediating 91,350m³ of soil is an expensive process. The site is a gross area of ~3ha. Even if it cost only £1/m³ to undertake the work (and double that would be more likely) on what basis is expending ~£30,000/ha on land that, when filling is completed, might be worth only 10% of that, a sensible investment?

The economics and background to this proposal are obscure. Although those are not necessarily material planning considerations, it is material that the environment harm arising from and development is only incurred for a realistic development, whatever the ultimate gain.

In this instance, is something hidden in the background and is not being disclosed. For example, landfill tax on inert waste is £3/tonne, over £400,000 in this case, plus landfill charges and transport. Is this planning application being made in order to avoid landfill tax? We therefore conclude that this application should be refused.

2.4 **Newton & Biggin Parish Council:** No objection in principle subject to the following:

The site lies within Churchover Parish but is immediately adjacent to the Newton and Biggin boundary. Nearby neighbours of the site live in Newton Parish and Newton is the nearest settlement.

The Parish Council is satisfied that the agricultural quality of the application site would be improved by the importation of topsoil, although it is questionable whether this needs to be 7m in depth.

It is concerning that the application is so tightly linked to the Reilly site which has operated outside of its planning permission for many years, something that Warwickshire County Council (WCC) has not been prepared to enforce. The removal of substantial amounts of material from the Reilly site is to be welcomed although it might be suggested that utilising the material for agricultural purposes and thus avoiding landfill tax is the real driver behind the application.

The Parish Council is not able to determine whether there is 150,000 tons of clean, certified topsoil on the Reilly site. It is important that WCC satisfies itself on this as the importation of general spoil from the Reilly site or the need to obtain topsoil from another source both lie outside the scope of the current application.

The Parish Council is also concerned that the failure of WCC, over many years, to control operations on the Reilly site suggests that there will be no effective control over the current application site should it not adhere to any planning permission that might be granted.

So, subject to WCC confirming that:

- a) the proposals are legitimately and proportionately in the interests of agriculture;
- b) that there is sufficient clean, certified topsoil on the Reilly site; and
- c) that the development will be monitored and any necessary action taken.

The Parish Council raises no objection to the principle of the development, subject to the following conditions:

1. No start shall be made on the application site until WCC has confirmed that all outstanding breaches of planning control on the Reilly site, from which the topsoil is to be sourced, have been resolved. (Reason - in the interest of the proper planning of the area);
2. No material shall be imported onto the application site other than topsoil, independently certified as clean, from the Reilly site. (Reason - in the interests of agriculture and sustainability);
3. Before development commences, a Traffic Management Plan shall be submitted to and approved by WCC indicating the routes to be taken by all vehicles servicing the development and such plan shall

explicitly preclude any vehicle movements through the village of Newton. (Reason - in the interest of highway safety and amenity);

4. All vehicles bringing material to the site shall be securely sheeted. (Reason - in the interest of highway safety and amenity);

5. The development shall not be carried out other than between the hours of 08.00 and 17.00 on Monday to Friday and not at all on Bank Holidays. (Reason - in the interests of the amenity of the area);

6. Before development commences measures designed to prevent dust spreading beyond the confines of the site shall be submitted to and approved by WCC. (Reason - in the interests of the amenity of the area);

7. Before development commences details of measures to be taken to prevent any mud being deposited on Newton Lane and neighbouring highways, including on site wheel washing facilities, shall be submitted to and approved by WCC. (Reason - in the interests of highway safety); and

8. Any audible reversing warnings fitted to vehicles shall be disabled or suppressed at all such times that vehicles are on the site. (Reason - in the interest of the amenity of nearby residents).

2.5 **Councillor Adrian Warwick:** No comments received by 24 June 2021.

2.6 **WCC Flood Risk and Water Management:** No objection subject to a condition for the development to comply with the approved drainage documents.

2.7 **WCC Highways:** No objection subject to conditions:

- the re-modelling of the access in accordance with submitted drawing;
- bound surface for access road within 15 m of public highway; visibility splays;
- provision of an HGV turning area within the site;
- development in accordance with the Construction Method Statement, and
- routing of HGVs connected with the development arriving and departing the site in accordance with the details in the Transport Statement.

2.8 **WCC Archaeology:** No archaeological comments to make on this application.

2.9 **WCC Ecology:** A Biodiversity Impact Assessment was requested by Ecology to assess the ecological impact of the proposed works. In addition, an up to date Habitat Suitability Index (HSI) was required to

determine the suitability for Great Crested Newts (GCN) of the site and the land between the site and the pond to the west.

In January 2021 the revised Ecological Impact Assessment (EclA) prepared by Enzygo was submitted to assess the ecological impact of the proposed works. In response, Ecology raised no objection to the development subject to planning conditions for a Landscape and Ecological Management Plan (LEMP) to ensure a net biodiversity gain in accordance with the BIA; a Construction and Environmental Management Plan (CEMP) requiring a Great Crested Newt mitigation plan, pre-checks for reptiles, mitigation measures for badger and for the control of lighting. In addition a condition to protect the adjacent watercourse, a root protection area condition and a pre-development badger check condition are recommended. Notes relating to reptiles as protected species should be attached to any permission granted.

2.10 Highways England: No objection subject to recommended conditions.

It is noted that the land to be re-graded is located away from the Strategic Road Network (SRN). However, the tipper trucks carrying out the work will be moving back and forth between the site and the works compound. This will involve large, slow moving vehicles turning at the A5 / Newton Road junction and travelling along the A5. The supporting information states that 'Observations confirm that visibility of 215 metres could be achieved in both directions, taken from a 2.4 metres setback distance at the junction in line with the sign posted speed limit.' However, there is a risk that visibility between drivers travelling north on the A5 and vehicles approaching the junction on Newton Lane can be partially restricted by vegetation on the A5 verge. Given that the proposal includes increased numbers of larger vehicles turning at the junction we would like to see vegetation clearing included on the southern side of the junction. This would improve safety for drivers turning at the junction and drivers proceeding on the A5. Our other concern is the potential for the tipper trucks to drop soil from either their load or their tyres onto the A5.

The proposed works should therefore include measures to mitigate against that occurring.

Condition 1: The minimum required visibility distance of 215m in both directions at the A5 / Newton Lane junction should be maintained at all times, throughout the duration of the works. Vegetation clearance should be carried out when required in order to ensure that this can be achieved.

Condition 2; No soil or deleterious material should be deposited on the SRN by vehicles associated with the regrading works.

Reason for conditions To ensure that the A5 continues to serve its purpose as part of a national system of routes for through traffic in

accordance with Section 10 (2) of the Highways Act 1980 by minimising disruption on the SRN resulting from the works and in the interests of road safety.

Revised wording of the visibility condition was subsequently agreed with Highways England.

- 2.11 **Environment Agency:** According to our maps this site lies within Flood Zone 1 and therefore we have no comment to make on this proposal.

The proposed activities may require an Environmental Permit or Exemption from us under the Environmental Permitting (England and Wales) Regulations 2016. Any pollution prevention measures in relation to the proposed activity would be enforced via this permit. There is no guarantee that a permit will be granted.

The applicant / developer should contact the Environment Agency on 03708 506 506 for a pre-application discussion to determine whether a permit is required. Further information regarding the need, and applying, for an Environmental Permit can be found on our website: <https://www.gov.uk/topic/environmental-management/environmental-permits>.

- 2.12 **Historic England:** No comments received.
- 2.13 **Leicestershire County Council Highways:** The proposals would lead to 26 two-way daily movements for a temporary period of 2 years, and the routing strategy does not utilise the highway network within Leicestershire County or the Gibbet Hill roundabout. Therefore, it is not considered to represent a material impact on the operation of the highway network within Leicestershire County. Subsequently it is deferred to Highways England and WCC to consider the remaining impact on the highway network.
- 2.14 **Leicestershire County Council Planning:** No comments received.
- 2.15 **Harborough District Council:** No comments received.
- 2.16 A site notice was displayed on a field gate on the western side of Newton Lane, opposite the entrance to the residential property 'The Three Bridges' and a second site notice displayed on the timber fencing at the south-eastern boundary of the application site on 17 December 2020.
- 2.17 A press notice was published in the Rugby Advertiser and notification letters were sent to 16 nearest residential properties on 17 December 2020

3. Representations

- 3.1 An objection received from a neighbouring resident making the following comments:

Highways/Traffic:

- With 26 trucks coming down Newton Lane each day is just obscene, the amount of vibration that will come through to our house will just be horrendous, our whole house already shakes when 1 tractor goes down the lane It would be unbearable with this many trucks.
- Newton lane is muddy at the best of times, and has very poor drainage which causes a lot of standing water on the lane could you imagine what it would be like with these trucks coming in and out with the amount of top-soil they will be carrying it would be very dangerous, Alongside this the lane is very small and with the new development of Ellis Gardens down the road, the lane has got busier and busier and these are mainly new families that are using the lane to get to the village this will create more chaos and be more unsafe then it already is.

Noise:

- The noise pollution that will come of the trucks will also be awful we would not be able to enjoy our house with these trucks going up and down the lane.

Visual Impact:

- As our house sits in quite low grounds we would be able to see the trucks go from our house all the way up to the farm and it will be a terrible eye sore.

Dust/Air pollution:

- We are concerned with the amount of air/dust pollution that will come of these trucks and as we live so close to the farm, we know it will have a severe impact on our health.

4. Previous Planning History

- 4.1 There is no planning history for the application site.
- 4.2 The applicant describes that the field was excavated for sand and gravel during the late 1950s.

5. Assessment and Observations

Location and Site Description

- 5.1 The application site is a 3-hectare field located to the west of Newton Lane, some 5 km to the north-east of the centre of Rugby. The field is 1.5 km north of the village of Newton, 2 km to the east of the village of Churchover and 1.5 km to the west of the village of Shawell, over the County border in Leicestershire.
- 5.2 The scheduled monument of the Tripontium Roman station is located some 350 m to the east of the application site close to the route of the Roman road, Watling Street (A5).
- 5.3 The nearest residential property is located approximately 125 m to the north-east of the application site and appears on maps as The Homestead but has been renamed The Three Bridges.
- 5.4 The fields to the west and south of the application site are within the control of the applicant as part of Coton Farm and are in agricultural use, currently for raising poultry / game birds.
- 5.5 In the south-western corner of the application site is a derelict brick building. The building would not be removed or impacted as a result of the proposed land-raising.
- 5.6 Ground levels on the field slope down towards the north. The northern boundary of the site is marked by an unnamed line of drainage with Newton Spinney, an area of mature woodland beyond. The eastern boundary of the application site is marked by a mixed species hedgerow running the length of Newton Lane.
- 5.7 At the time of the Officer's first site visit in December 2020, a quantity of soil and subsoil had been piled along the western boundary of the site. The applicant explained that the material had been derived from the excavated footings of building work under construction at the Coton Farm farmhouse, 200 m to the south. The excavated material would be used as part of the infill material should the application be granted planning consent.

Planning Legislation and Policy

- 5.8 Section 38(6) of the 2004 Planning and Compensation Act requires that planning applications are determined in accordance with the provisions of the Development Plan 'unless material considerations indicate otherwise'.
- 5.9 **Paragraph 11** of the National Planning Policy Framework (NPPF) February 2019 explains that there is a presumption in favour of

sustainable development and what that means. What the presumption means in relation to a planning application is that:

(a) proposals which accord with an up-to-date development plan should be approved without delay; and

(b) where there are no relevant development plan policies or the policies most important for determining the application are out-of-date, then permission should be granted unless:

- the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Where the presumption in (b) applies, it is often referred to as the “tilted balance” in favour of the application.

- 5.10 **Paragraph 12** goes on to explain that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
- 5.11 **Paragraph 48** explains that authorities may give weight to relevant policies in emerging development plans according to: a) the stage of preparation of the emerging plan; b) the extent to which there are unresolved objections to relevant policies; and c) the degree of consistency of the relevant policies in the emerging plan to this Framework
- 5.12 In this case, there is an up to date development plan comprising the Warwickshire Waste Core Strategy, Adopted Local Plan (2013 – 2028) and the Rugby Borough Council Local Plan 2011 – 2031 (Adopted June 2019). Therefore, the application should be determined (as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004) in accordance with those policies unless material considerations indicate otherwise.
- 5.13 The courts have made it clear that for the purposes of section 38(6) it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy in the plan. It is a matter of judgement for your Committee

whether the proposal accords with the plan, considered as a whole, bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach.

National Planning Policy Framework (NPPF)

- 5.14 **Paragraph 109** states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.15 **Paragraph 163** states that determining any planning application, local planning authorities should ensure that flood risk is not increased elsewhere.
- 5.16 **Chapter 15** of the NPPF relates to conserving and enhancing the natural environment, requiring that planning decisions should contribute to and enhance the natural and local environment by means including ensuring they minimise impacts on and provide net gains for biodiversity and prevent new and existing development from contributing to unacceptable levels of soil, air, water or noise pollution or land instability.
- 5.17 **Paragraph 183** states that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

National Planning Policy for Waste (NPPW)

- 5.18 Regulation 18 of the Waste (England and Wales) Regulations 2011 requires that planning authorities shall have regard to certain provisions in Articles 13 and 16 of the EU Waste Framework Directive when exercising their planning functions. This requirement continues to apply notwithstanding the departure of the United Kingdom from the European Union. Article 13 concerns the protection of human health and the environment. Article 16 sets the objective of establishing an adequate and integrated network of installations which enable waste to be disposed of or recovered in one of the nearest appropriate installations, by means of one of the most appropriate methods and technologies, to ensure high level of protection for the environment and public health.
- 5.19 To help deliver these objectives, the Government published the National Planning Policy Waste (NPPW) in 2014 to be read in conjunction with the NPPF and the Waste Management Plan for

England. Its Introduction explains that it is the Government's ambition to work towards a more sustainable and efficient approach to resource use and management and that positive planning has a pivotal role in delivering these ambitions.

5.20 The NPPW requires that in determining planning applications waste planning authorities should:

- only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date local plan;
- consider the likely impact on the local environment and on amenity against the criteria set out in Appendix B of the NPPW and the locational implications of any advice on health from the relevant health bodies;
- ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located;
- concern themselves with implementing the planning strategy in the local plan and not with the control of processes which are a matter for the pollution control authorities;
- ensure that land raising or landfill sites are restored to beneficial after uses at the earliest opportunity and to high environmental standards through the application of appropriate conditions where necessary.

The criteria in Appendix B of the NPPW are:

- a) protection of water quality and resources and flood risk management
- b) land instability
- c) landscape and visual impacts
- d) nature conservation
- e) conserving the historic environment
- f) traffic and access
- g) air emissions, including dust
- h) odours
- i) vermin and birds
- j) noise, light and vibration
- k) litter
- l) potential land use conflict

5.21 Regulation 20(1) of The Waste (England and Wales) Regulations 2011 states that a planning authority must not grant planning permission for a landfill unless it has taken into consideration certain requirements in Annex I of the EU Landfill Directive. The requirements include a

requirement that the location of a landfill must take into consideration requirements relating to:

- a) the distances from the boundary of the site to residential and recreation areas, waterways, water bodies, and other agricultural or urban sites
- b) the existence of groundwater, coastal water or nature protection zones in the area
- c) the geological and hydrogeological conditions in the area
- d) the risk of flooding subsidence, landslides or avalanches on the site,
- e) the protection of the nature of cultural patrimony in the area.

Local Planning Policies

Warwickshire Waste Core Strategy, Adopted Local Plan (2013 – 2028)

- 5.22 The Warwickshire Waste Core Strategy contains policies specific to directing future waste development including general development management policies which apply to all development proposals on waste sites. The Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
- 5.23 **Policy CS1 - Waste Management Capacity:** states that the County Council will seek to ensure that there is sufficient waste management capacity provided to manage the equivalent of the waste arisings in Warwickshire and, as a minimum, achieve the County's targets for recycling, composting, reuse and landfill diversion. The Council will seek to meet identified capacity gaps for each waste stream where a shortfall is indicated. Where it is demonstrated that there is no identified capacity gap, or where the capacity gap has been exceeded, then any planning application will be assessed against the Core Strategy policies and the principles of proximity and driving waste up the Waste Hierarchy.
- 5.24 **Policy CS5 – Proposals for reuse, recycling, waste transfer/storage and composting:** states that proposals for reuse, recycling, waste transfer/storage and composting will be encouraged provided that the proposal accords with all other relevant policies.
- 5.25 **Policy CS7 – Proposals for disposal facilities:** requires applicants to demonstrate that proposals for a waste facility will not prejudice the management of waste further up the waste hierarchy. Proposals for landfilling of waste or landraising, will not be acceptable unless it is demonstrated that:
- (i) the waste cannot be managed by alternative methods that are higher up the Waste Hierarchy; and
 - (ii) there is an overriding need for waste to be disposed of through landfilling or landraising; and

- (iii) significant environmental benefits would result from the proposal; and
- (iv) it does not divert significant quantities of material away from the restoration of mineral workings or permitted landfill sites.

Where any landfill or landraise proposals do not clearly meet all four criteria, the proposal will only be permitted if it is demonstrated that landfilling or landraising at that location will deliver overriding community or environmental benefits to justify granting planning permission.

The supporting text of the policy states that in certain circumstances, materials can be used to landfill or landraise as part of an agricultural improvement scheme. These situations will need to be strictly controlled and monitored as such schemes can be used to avoid waste disposal costs. These instances can not only have a damaging impact on the local environment, but also prevent the adequate restoration of mineral extraction sites. Proposals seeking to landfill or landraise for agricultural improvement purposes will need to provide a detailed justification for the proposal, with adequate evidence that the site is in agricultural use, together with a full statement of the characteristics and conditions of the site, evidence of how the proposed method will improve the land, evidence that the materials used are soil improvers and a comprehensive restoration/improvement scheme is submitted.

5.26 Policy DM1 – Protection and enhancement of the natural and built environment: states that new waste development should conserve and where possible enhance the natural and built environment by ensuring that there are no unacceptable adverse impacts upon: amongst other things: natural resources (including water, air and soil); biodiversity; archaeology; heritage and cultural assets and their settings; the quality and character of landscape, adjacent land uses or occupiers.

Proposals should also maintain or, where possible enhance biodiversity and recognised sites, species, habitats and heritage assets of sub-regional or local importance.

If it is considered that the development is justified against the above criteria, proposals will only be permitted where the adverse impacts will be:

- i) avoided;
- ii) satisfactorily mitigated (where it is demonstrated that adverse impacts have been avoided as far as possible); or
- iii) adequately compensated or offset as a last resort where any adverse impacts cannot be avoided or satisfactorily mitigated.

5.27 Policy DM2 – Managing Health and Amenity Impacts of Waste Development: states that planning permission will not be granted for waste management proposals which have unacceptable adverse impacts on the local environment, economy or communities through any of the following: noise, lighting/illumination, visual intrusion, vibration, odour, dust, emissions, contamination, water quality, water

quantity, road traffic, loss of best and most versatile agricultural land or land instability. Proposals will only be permitted where the adverse impacts will be avoided or satisfactorily mitigated where an adverse impact cannot be avoided or the adverse impacts have been avoided as far as possible.

- 5.28 **Policy DM3 - Sustainable Transportation:** requires developers to demonstrate that where road is the only viable method of transportation, that there is no unacceptable adverse impact on the safety, capacity and use of the highway network.
- 5.29 **Policy DM6 – Flood Risk and Water Quality:** states that planning permission will not be granted where waste management proposals would be at risk of flooding or would be likely to increase the risk of flooding elsewhere; or where waste management proposals would have a detrimental effect on water quality or achieving the targets of the Water Framework Directive.

Rugby Borough Council Local Plan 2011 – 2031 (Adopted June 2019)

- 5.30 **Policy GP1 – Securing Sustainable Development:** Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay unless material considerations indicate otherwise.
- 5.31 **Policy NE1: Protecting Designated Biodiversity and Geodiversity Assets:** The Council will protect designated areas and species of international, national and local importance for biodiversity and geodiversity as set out below. Development will be expected to deliver a net gain in biodiversity and be in accordance with the mitigation hierarchy below. Planning permission will be refused if significant harm resulting from development affecting biodiversity cannot be:
- Avoided, and where this is not possible;
 - Mitigated, and if it cannot be fully mitigated, as a last resort;
 - Compensated for.
- Sites of Local Importance: Development likely to result in the loss, deterioration, degradation or harm to habitats or species of local importance to biodiversity, geological or geomorphological conservation interests, either directly or indirectly, will not be permitted for Local Nature Reserves (LNRs); Local Wildlife Sites (LWS), Local Geological Sites (LGS), European and UK protected species, or Biodiversity Action Plan habitats unless:
- The need for, and benefits of, the development in the proposed location outweighs the adverse effect on the relevant biodiversity interest. All Development proposals impacting on local wildlife sites will be expected to assess the site against the 'Green Book'1 criteria to determine the status of the site and to ascertain whether the development clearly outweighs the impacts on the site;

- It can be demonstrated that it could not reasonably be located on an alternative site that would result in less or no harm to the biodiversity interest; and
- Measures can be provided (and secured through planning conditions or legal agreements), according to the mitigation hierarchy as set out above. The level of protection and mitigation should be proportionate to the status of the habitat or species and its importance individually and as part of a wider network.

5.32 Policy NE3: Landscape Protection and Enhancement:

New development which positively contributes to landscape character will be permitted.

Requirements of development proposals include that they relate well to local topography and built form and enhance key landscape features, ensuring their long term management and maintenance; aim to either conserve, enhance or restore important landscape features in accordance with the latest local and national guidance; address the importance of habitat biodiversity features, including aged and veteran trees, woodland and hedges and their contribution to landscape character, where possible enhancing and expanding these features through means such as buffering and reconnecting fragmented areas.

5.33 Policy SDC3: Protecting and Enhancing the Historic Environment:

Development affecting the significance of a designated or non-designated heritage asset and its setting will be expected to preserve or enhance its significance.

5.34 Policy SDC5: Flood Risk Management: A sequential approach to the location of suitable development will be undertaken by the Council based on the Environment Agency's flood zones as shown on the latest Flood Map for Planning and Strategic Flood Risk Assessment (SFRA). This will steer new development to areas with the lowest probability of flooding, in order to minimise the flood risk to people and property and manage any residual risk.

Policy Considerations

5.35 The aim of the proposed development is infilling and land-raising to re-grade the application site to a more level profile in order to improve drainage and increase agricultural productivity. The key issues to be considered are:

- Whether an adequate case has been made to demonstrate the need and justification for the proposed landraising;
- Whether the development optimises the waste hierarchy;
- Whether objections can be overcome by reasonable and enforceable planning conditions.

5.36 The general aim of the policies of the Development Plan are to achieve high quality development that is sustainable in the long term. The aims

of waste policies are to drive waste management up the waste hierarchy.

- 5.37 The applicant has provided adequate evidence that the site is part of an agricultural unit and has been in agricultural use. The application site is believed to have been excavated for sand and gravel in the past with seemingly limited restoration, resulting in a parcel of land with a dished profile that the landowner describes as not particularly productive.
- 5.38 In the context of Policy CS7 (Proposals for disposal facilities) of the Warwickshire Waste Core Strategy the proposed landraising is considered to accord with the aims of the policy by moving the topsoil recovered as waste from other development areas higher up the Waste Hierarchy than would be the case if it were taken to a landfill site.
- 5.39 The restoration of levels and landraising following historic mineral extraction would provide the environmental benefits required by Policy CS7 by improving drainage to enable the field to be used more productively for agriculture. At the time of the Officer's site visit, the field was predominantly grassland. Ground levels drop away over the site towards the drainage ditch along the northern boundary. The sloping nature of the site and the poor drainage and waterlogging has resulted in the land being unsuitable to grow crops and being left fallow for several years. The proposed application of certified topsoil in this location would re-grade the land, improve drainage and result in a restored parcel of land suited to a more productive agricultural use in accordance with policies of the Waste Core Strategy.
- 5.40 Details submitted with the application provide cut and fill sections across the application site indicating the depth of the topsoil. In places the depth would be up to 7 metres in order to create the proposed level profile. A 1 in 3 slope would be formed along the northern edge of the levelled field, falling away to the drainage ditch running along the northern boundary.
- 5.41 Concern has been expressed by Newton and Biggin Parish Council and Churchover Parish Council that the proposed depth of topsoil is excessive. First, as it could be a waste of a valuable resource and also that the extent of landraising is a function of the avoidance of landfill charges and landfill tax. At the meeting of the Newton & Biggin Parish Council on 28 January, attended by the Planning Officer, the applicant stated that as the owner of the land and as a working farmer he wants only clean topsoil on the site. It would not be to his advantage to use unsuitable material which could adversely affect the ability to farm the land. The use of topsoil in the volume proposed would achieve the required profile for the field.

Source of infill material

- 5.42 The material proposed to re-grade the application site would be inert screened soil (that is soil free of contamination by harmful substances or chemicals) derived from the local construction industry. The soil is currently stored at The Fisheries, an authorised site that processes and stores construction waste materials. The screened soil would be imported from the storage site at The Fisheries, less than 2 km to the south-east of the application site, via the A5 Watling Street and the northern end of Newton Lane. The applicant advises that topsoil imported to The Fisheries site has been tested by Environmental Scientific Groups Ltd who are certified by the United Kingdom Accreditation Service (UKAS).
- 5.43 While the storage facility at The Fisheries is not the subject of the current planning application, the source of and the quality of the topsoil are material planning considerations. Comments and objections have been received from both Churchover Parish Council and Newton & Biggin Parish Council regarding The Fisheries. The Fisheries operates with planning consent, however the storage bund on that site exceeds the permitted height by several metres and is currently the subject of enforcement to resolve the matter. An enforcement notice served at The Fisheries site is currently subject of an appeal on the grounds that the enforcement period of 6 months is unreasonably short. Removal of excess material stored at The Fisheries site and its transfer to Coton Farm would have the benefit of aiding the resolution of the excessive height of the bund. It should be noted that possible breaches of planning control at The Fisheries would not be a reason for refusing permission at Coton Farm or imposing a condition preventing development until enforcement issues elsewhere have been resolved. The development proposed would not cause or aggravate any breaches of planning control.

Amenity Issues

- 5.44 The field on Coton Farm subject of the application is located within a predominantly rural location, with agricultural land to the west and south, woodland to the north and with agricultural land east, beyond Newton Lane which forms the eastern boundary of the site. The closest residential property is The Three Bridges (formerly The Homestead), located some 120 metres to the north-east of the proposed access to the field from Newton Lane.

Noise

- 5.45 The initial works on the site to re-open the access into the field; create a hardsurface area for the site compound and the turning area within the site and the delivery of topsoil to the site would be sources of noise. Noise during the operation of vehicle movements across the site to disperse the deposited topsoil would be less significant. As an area of

land within an agricultural holding the movement of farm vehicles on the field would be expected and the movement of a bulldozer would not be dissimilar to a tractor. The Construction Method Statement submitted with the application advises that no construction noise is anticipated at the site. However, a local resident has expressed concern that the increase in traffic, with HGV travelling along Newton Lane to and from the application site would result in noise pollution which would adversely impact their residential amenity.

- 5.46 The Rugby Borough Council Environmental Health Officer (EHO) has raised no objection to the proposed development, although both EHO and Newton & Biggin Parish Council have recommended a condition to control reversing alarms on HGV working on the application site. A suitably worded condition is proposed (condition 21).

Dust/Air Quality

- 5.47 The transport of topsoil to the site and the placement, storage and working of the material would all be potential sources of dust. The Construction Method Statement submitted with the application outlines the measures to monitor and control the potential impacts of dust and debris on the local inhabitants and the local area. The measures would include the sheeting of vehicles travelling to and from the site; wetting down sub-formation surfaces and stockpiles to mitigate dust generation; the use of wheel wash facilities; regular inspections of the surrounding area for dust and mud deposits and their removal as necessary using a road sweeper. The Rugby Borough Council EHO assessed the Construction Management Statement and has no objection to the proposed development. Planning guidance advises that planning authorities should not concern themselves with the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. Notwithstanding this a condition is recommended to ensure that measures are taken to minimise the raising of dust (condition 18).

Hours of operation

- 5.48 The Construction Method Statement as submitted stated that working hours would be 07:00 to 18:00 Monday to Friday and 08:00 to 18:00 on selected Saturdays with no working on Sunday or Bank Holidays. Newton & Biggin Parish Council have requested a condition to control the hours of operation, suggesting Monday to Friday and not at all on Bank Holidays. The EHO recommended a condition to control the proposed development to the standard operating hours accepted by Rugby Borough Council, that is: Monday – Friday 7.30 a.m. – 6.00 p.m. Saturday 8.30 a.m. – 1.00 p.m. with no working on Sundays and Public Holidays. The Construction Method Statement was subsequently amended to accord with the Rugby Borough Council standard hours

and a condition is recommended to ensure compliance with the hours of operation agreed (condition 23).

Environmental Issues

- 5.49 The Planning Statement submitted with the application provides information on the Agricultural Land Classification in the vicinity of the site. Land to the west and south of the application site is Grade 2 ALC (very good), Grade 3 ALC (good to moderate) to the north and Grade 4 ALC (poor) to the east.
- 5.50 The landowner advises that the field subject of the application was in the past quarried for sand and gravel and the ground levels not subsequently restored. The field is not particularly productive and has been left fallow for several years due to not being able to grow crops as a result of waterlogging. The planning statement states that by importing screened soil the agricultural land would be improved to increase yield. In addition, the improvement to the drainage and the re-graded ground levels through land-levelling and contouring would improve land quality.

Visual Impact

- 5.51 The application site is a field forming part of the agricultural holding of Coton Farm. The field is visible from public view, being positioned adjacent to Newton Lane. Both the woodland to the north of the site and the existing hedgerow along the eastern boundary provide a visual screen.
- 5.52 In the short-term, for the two years required to complete the re-grading operation, there would be an impact on the appearance of the area. An old field access onto Newton Lane at the north-eastern boundary of the site would be re-opened and widened to accommodate two passing HGV. The hedgerow bounding Newton Lane along the eastern length of the application site would be required to be reduced in height to ensure adequate sightlines would be achieved for the vehicular access. The application site would as a result be more easily seen from public viewpoints while the re-grading is undertaken. In the longer term, the field would be restored to an area of open agricultural land, available for cultivation and the hedgerow allowed to grow beyond the restricted height required for the sightlines. Therefore, the negative impact on the visual amenity of the area would be for a limited period of time.

Access & Highways

- 5.53 Soil is proposed to be transferred to the application site from The Fisheries on the A5 Watling Street. The route for vehicles would travel north from The Fisheries via the A5/Watling Street, turning left into Newton Lane, then a right turn into the proposed access to the application site on the western side of Newton Lane. Vehicles leaving

the site would turn left out of the site to return to The Fisheries via the A5.

- 5.54 The application details state that a total of 136,410 tonnes of soil would be required to complete the re-grading operation. Using tipper vehicles with a capacity of 20 tonnes the operation would amount to a total of 6,821 trips over a two-year period, with on average 13 deliveries per day or 26 2-way trips, working Monday to Friday.
- 5.55 The A5 Watling Street is under the authority of Highways England. The road is a dual carriageway in the vicinity of The Fisheries and reduces to a single two-way carriageway some 800 m south of the junction with Newton Lane. Highways England raised no objection to the application subject to imposition of conditions. A condition is recommended to ensure no mud or debris is deposited on the highway. In addition, Highways England recommend the maintenance of a minimum visibility distance of 215 metres in both directions at the junction of the A5 with Newton Lane with vegetation cleared as required for the duration of the works. The suggested maintenance work on the highway verge would not be work that could be undertaken by the applicant and the suggested planning condition could not be enforced. An alternative pre-commencement condition has been agreed with Highways England which would require evidence of a scheme of work agreed between the owner of the application site and Highways England to be submitted (condition 7).
- 5.56 The Transport Statement supporting the application states that several access points onto the application site were considered at pre-application stage, with the proposed access located in the north-eastern corner of the field selected as the preferred option. An old field access exists at this location, with the remains of a field gate in the overgrown vegetation on the field edge.
- 5.57 Newton Lane has a 7.5 tonne weight limit restriction (except for access) along the entire length. HGV vehicles would be able to access the application site but would not be permitted under that weight restriction to travel further south towards Newton.
- 5.58 A local resident has raised objection to the level of traffic that would result from the proposed re-grading and the resulting vibration of their property, mud on the road, dust generated by truck movements and the visual impact. The Newton and Biggin Parish Council have raised concern that HGV should not travel through the village of Newton and recommend that a condition be imposed to prevent such routing.
- 5.59 The County Highway Authority raised no objection to the proposed operation or to the access into the application site subject to conditions including a requirement for the provision of a turning area; a bound surface within the application site for a distance of 15 m from the public highway and for adequate sightlines. In order to provide the sightlines

for the access it would be necessary to reduce the height of the field boundary hedge to comply with the required restriction of no structure, tree or shrub within the visibility splay over a height of 0.6 m.

- 5.60 Both Highways England and Warwickshire County Council as the Highway Authority for Newton Lane require conditions to ensure there is no mud or debris on the respective highways. Suitably worded conditions are recommended (conditions 15 and 16).
- 5.61 The application as submitted indicated the internal site road constructed of recycled hardcore / crushed concrete. Notwithstanding the details submitted it is recommended that the internal site road should be constructed of concrete or asphalt to ensure the haul road could be cleaned by a road sweeper and vehicles remain clean after the wheelwash (condition 10).

Ecology

- 5.62 The application site is a field within an agricultural holding, currently fallow, surrounded by hedgerow to the south and east with a drainage ditch along the northern boundary with an area of mature woodland beyond.
- 5.63 An Ecological Impact Assessment (EclA) was submitted to support the application and includes a baseline survey of the ecological conditions of the site and surroundings and identified the ecological features that could be affected by the proposed landraising. The assessment identified the potential risk of damage to the River Avon Local Wildlife Site (LWS), including the ditch at the northern boundary of the site. To avoid potential pollution and run-off impacts the EclA advises that development would be undertaken in accordance with the appropriate Environment Agency Pollution Prevention Guidance. Heras fencing would be erected to protect the drainage ditch from imported topsoils being accidentally deposited into the watercourse. A condition is recommended to ensure this guidance is adhered to.
- 5.64 The Broadleaf woodland running alongside the northern boundary of the site is covered by a Tree Preservation Order. The boundary trees and hedges on the application site would be protected throughout the construction in accordance with BS5837:2112 - 'Trees in relation to design, demolition and construction' The County Ecologist recommends a planning condition for a root protection zone to protect the trees and hedgerows bounding the application site during the development (condition 24).
- 5.65 The EclA identified bats and badgers as potentially impacted by the proposed development. There is a derelict building/walls to the south of the application site, which is proposed to be retained, together with boundary trees which could provide for a bat roost. As the proposed infilling works are to the north of the building, the County Ecologist

agreed that there would be little or no disturbance to the building/walls to impact a bat roost should one be present. However, if the plans change and the building/walls or boundary trees are to be removed then a bat survey would be required.

- 5.66 In relation to badger, the County Ecologist recommends the avoidance and mitigation measures set out in the EclA be part of the Construction and Ecological Management Plan (CEMP) including a pre-works updated Badger Survey.
- 5.67 The application site is in the impact zone of Cave's Pit SSSI as a result Natural England were consulted. They considered that the proposed development would not damage or destroy the SSSI and raised no objection.
- 5.68 At the request of the County Ecologist a Biodiversity Impact Assessment (BIA) was submitted which concluded that there would be no net biodiversity loss and a net increase in biodiversity could be achieved as a result of the set aside at the field margins to the north, south and east to compensate for removal of habitat as a result of the proposed development. A Landscape Ecological Management Plan (LEMP) condition is recommended to ensure the proposed provision is made.
- 5.69 In relation to Great Crested Newts (GCN), the County Ecologist advised that there are records of GCN in the local area. There is a pond 245m to the west of the site proposed for regrading. As no newt habitat is to be removed as part of the proposed works, it is considered that the potential for newts to disperse from the pond via nearby hedgerows would not be impacted. However, as there is the potential for GCN to commute to the proposed site, the County Ecologist recommends that GCN mitigation should form part of the requirement to discharge a condition for a Construction Ecological Management Plan (CEMP) prior to the commencement of works. In addition, it is recommended that heras fencing is erected along the western boundary of the application site, signposted 'Wildlife Area Keep Out' to ensure the area is not entered during the development works.
- 5.70 There are no proposals submitted for lighting on the application site during the development, however, as the hedgerow boundaries and trees are suitable for commuting, foraging and possibly roosting bats , it is recommended that works take place in daylight hours only, and if any artificial lighting is required it would be low level and directed away from important foraging habitats for protected species such as bats, and lighting will be part of a CEMP. A condition is recommended that there should be no lighting on the site without approval (condition 25).
- 5.71 Following careful consideration of all the ecological issues relating to the site, subject to the imposition of suitably worded conditions the

development can be carried out in accordance with the requirements of the NPPF.

Heritage

- 5.72 The application is supported by an Historic Environment Assessment. There is evidence of prehistoric activity in the area from the late Neolithic period, extending through into the Roman Period. The statutory monument of the Tripontium Roman settlement is located 350 m to the south-east of the application site. However, quarrying and associated activity in the past has changed the profile of the application site, lowering the ground levels with the result that there is considered to be low potential for the survival of any as yet unknown heritage assets of archaeological significance on the site.
- 5.73 The closest Listed building is the Grade II* Coton House a late 18th century house located 800 m to the south-west of the application site. The application site is not seen in the context of the Listed building and there is considered to be no material harm to heritage.
- 5.74 The County Archaeologist stated that there were no archaeological comments to make on this application.

Flood Risk, Drainage & Water Quality

- 5.75 The Flood Risk Assessment (FRA) submitted with the application details that the site is located within Flood Zone 1 where the risk of fluvial flooding is low. The site is underlain by slowly permeable, seasonally wet, loamy and clayey soil. The infiltration of the soils is likely to be low, as a result drainage is predominantly via overland flow, following the topography towards the watercourse along the northern boundary of the site. The site currently falls with an average gradient of 1:26 which after regrading would be altered to a predominantly west to east fall of between 1:25 and 1:35 and a fall of 1:500 in a south to north direction. Along the north-west, northern and north-western boundaries the regraded land would tie back into existing ground levels with a 1:3 embankment.
- 5.76 The FRA advises that the proposed land re-grading would not decrease the permeability of the site as a result of the deposition of topsoil, since the existing clayey soils and underlying geology already have low permeability. Following regrading of the site, surface water would continue to shed overland towards the watercourse along the northern boundary. An interception ditch / swale is also proposed along the eastern boundary of the site, running south to north to intercept runoff from the site and direct the flow north to the watercourse along the northern edge of the site. The proposed swale which would comprise a grass bed, underlain by gravel fill and perforated pipe, would prevent runoff shedding onto Newton Lane.

5.77 The Lead Local Flood Authority (LLFA) in their consultation response advised that the publicly available surface water flood risk map shows the land to the east of the application site to be at high risk of surface water flooding. Additional surface water drainage details were submitted, and the hydraulic modelling report was independently validated. The LLFA stated no objection to the proposed scheme and accepted the additional details of the swale along the eastern side of the application site to ensure surface water from the re-graded site flows to the watercourse on the northern boundary to prevent discharge onto adjoining land. A condition is recommended to ensure the agreed surface water drainage is implemented as agreed (condition 30).

6. Conclusion

- 6.1 It is understood that the application site is the location of historic sand and gravel extraction. The site appears to have been poorly restored or with little or no restoration on completion with the result that the land is of poor agricultural quality. The proposed re-grading of the site would alter the currently steeply sloping field to create a relatively flat finished surface level providing the benefit of a more productive use of the site for agriculture. The landraising and regrading would import inert topsoil, recycled on and currently in storage at The Fisheries site located less than 2 kilometres to the south-east. The proposed re-grading would take place over a two-year period. The proposed development is considered to accord with the requirements of policies CS7 and DM1 of the Warwickshire Waste Core Strategy and policy NE1 of the Rugby Local Plan, providing biodiversity gains by the provision of set aside areas on the field boundaries in addition to the increased agricultural productivity.
- 6.2 The proposed operation would have an impact on the appearance of the local landscape for a temporary period until the importation and distribution of topsoil had been completed. The landscape would however be restored to a field in agricultural use bounded by hedgerow.
- 6.3 The application site is located one and a half kilometres to the north of Newton village. The closest residential property is The Homestead, 100 metres to the east of the proposed access to the site. The proposed operation has the potential to cause adverse environmental impacts as a result of vehicle movements, and noise and dust generated by the delivery and distribution of soils across the site. However, conditions recommended by statutory consultees and the controls that could be imposed would ensure that the impact of the development on residential amenity, on the built and natural environment would be controlled to an acceptable level.

6.4 It is concluded that on balance the proposed development accords with the policies of the development plan and is recommended for approval subject to the recommended planning conditions.

7. Supporting Documents

7.1 Submitted Planning Application – Planning reference RBC/20CM014

7.2 Appendix A – Map of site and location.

7.3 Appendix B – Planning Conditions.

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