



Appeal Decisions

Inquiry held on 29 and 30 January 2008

Site visit made on 30 January 2008

by **Brian Cook** BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
19th February 2008

Appeal Ref: APP/M2460/C/07/2042629

Land comprising the Scrapyard, Lynden Lea, Leicester Road, Hinckley LE10 3DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ellis Taylor against an enforcement notice issued by Leicestershire County Council.
- The Council's reference is 2007/2042629/04A.
- The notice was issued on 19 March 2007.
- The breach of planning control as alleged in the notice is without planning permission:
 - i) The construction of the block concrete bays within the Site close to its western boundary;
 - ii) The extension of the operational area into land outside but adjoining the northern boundary of the Site ("the Extension Area");
 - iii) The erection of a building within the Extension Area;
 - iv) The erection of a building on the Site in a location other than that authorised by planning permission 2002/0600/04all such matters being depicted on the Plan marked with the notation "EN" which is attached to this Notice.
- The requirements of the notice are:
 - i) Demolish the concrete bays and replace them with a screening bund, constructed solely of natural soil materials, in accordance with Condition 4 of Planning Permission 2002/0600/04. The screening bund shall be located in accordance with Drawing Ref: ET/HL/WRC/2B, to the specification and design in accordance with the approved plan, Ref: ET/HL/WRC/5A and planted in accordance with Drawing Ref: ET/HL/WRC/2B.
 - ii) Use the northern hard surfaced area for car parking only.
 - iii) Demolish the green coloured building, located on the northern extension area, and remove all resulting materials from the Site.
 - iv) Re-instate the screening bund, adjacent to the western boundary, detailed in Drawing Ref: ET/HL/WRC/2B, on either side of the Waste Transfer building and plant the Bund as required by Condition 4 (ii) of Planning Permission 2002/0600/04.
 - v) Submit to the Director of Community Services for his approval, proposals for the planting and 5 year aftercare of a 10 metres wide landscape buffer on the adjoining field (FID No. 100002074883153) adjacent to and running parallel to the western boundary of the Site.
 - vi) This scheme shall be implemented as approved and be maintained for the lifetime of waste operations on the Site.
- The periods for compliance with the requirements above are:
 - i) 3 months
 - ii) 1 month

- iii) 1 month
 - iv) 12 months
 - v) 3 months
 - vi) 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/M2460/A/07/2048253

E Taylor Skip Hire & Recycling Ltd, Leicester Road, Hinckley LE10 3DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by E Taylor Skip Hire & Recycling Ltd. against the decision of Leicestershire County Council.
 - The application Ref 2006/0413/04, dated 29 March 2006, was refused by notice dated 20 December 2006.
 - The development proposed is an extension of existing building for recycling reception building.
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Decisions

Appeal Ref: APP/M2460/C/07/2042629

1. I direct that the enforcement notice be quashed.

Appeal Ref: APP/M2460/A/07/2048253

2. I dismiss the appeal.

The S174 Appeal

Application for costs

3. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

4. Requirement (v) does not, in my view, clearly specify for the appellant what he has to do to remedy the breach of planning control alleged in the notice. The notice does not therefore comply with the requirements of S173 (3) of the Town and Country Planning Act 1990, as amended. The Court has held in the judgement on *Clive Payne v the National Assembly for Wales and Caerphilly County BC [2007] JPL 117* that in such circumstances the notice is a nullity. As such, the powers of correction given under S176 (1) of the Act are not available to me and, after I had opened the Inquiry, it was agreed and accepted that no further action could be taken on the S174 appeal. That part of the Inquiry was closed and it continued into the S78 appeal only.

Conclusions

5. For the reasons given above I conclude that the appeal should succeed. Although it is not strictly necessary to quash an enforcement notice which is found to be a nullity, I shall do so to avoid any possible doubt. In these circumstances the appeal under the grounds (a) and (f) set out in section 174
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(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177 (5) of the 1990 Act as amended do not need to be considered.

The Section 78 Appeal

Procedural matter

6. During the Inquiry the appellant submitted a signed and completed Agreement under S106 of the Act. This relates to the landscaping of land to the west of the appeal site and I have taken this Agreement into account in reaching my decision.

Background

7. The appeal site and land adjacent to it have been in use as a scrap yard since 1968 and a Certificate of Lawful Existing Use (Ref 93/0098/4) was issued to that effect by Hinckley and Bosworth Borough Council on 2 April 1993. Ownership of the land has since changed. Planning permissions were granted to D Taylor on 29 August 2007 (Ref 2007/0099/04) in respect of the adjacent land and to E Taylor Recycling on 21 May 2003 (Ref 2002/0600/04) in respect of a large part of the appeal site. In my view, establishing a degree of planning control through conditions and a planning agreement were important objectives of the Council in granting these two planning permissions.
8. Part of the appeal site is now used by Abitibi-Consolidated Recycling Europe (Abitibi) in connection with the contracts that it has with Hinckley and Bosworth and North Warwickshire Borough Councils for the kerbside collection of recyclable materials. As part of this operation, collected cans and glass are tipped for storage into some of the concrete bays that are sited near to the site's western boundary prior to their transfer for further processing off-site. The Council confirmed that the May 2003 planning permission does not include provision for the construction of these bunkers and the appellant did not challenge this. My understanding of the proposal before me is that it would allow the unloading, sorting and bulking of the collected recyclable materials to take place inside the building proposed prior to the outside storage of the baled material in the concrete panelled storage bunkers indicated on drawing ETR/LR/WTS/RB/2. The appellant states that both the environmental performance and the efficiency of the operation would thereby be enhanced.

Main issues

9. The main issues are:
 - (a) The effect that the proposed development would have on the openness of the green wedge and the character and appearance of the area;
 - (b) The effect that the proposed development would have on protected species and nature conservation interests;
 - (c) The effect that the proposed development would have on the living conditions of users of nearby properties with regard to disturbance from noise and dust;
 - (d) The effect that the proposed development would have on the safety of users of the local highways; and

- (e) The contribution that the development proposed would make to the waste management requirements of the area.

Reasons

The effect the proposed development would have on the openness of the green wedge and the character and appearance of the area

10. The land between Hinckley and Barwell/Earl Shilton is largely undeveloped with only a few dwellings evident. There are a number of recreational uses, including rugby and football grounds and a golf course (and their associated built facilities) and Burbage Common, which I saw was popular with dog walkers. The area is designated as a green wedge in policy NE3 of the Hinckley and Bosworth Local Plan (LP), adopted in February 2001. This policy was saved by a direction issued by the Secretary of State in September 2007 and continues to have effect. The four purposes of such designation are set out in Strategy Policy 5 of the Leicestershire, Leicester and Rutland Structure Plan 1996 to 2016 (SP), which was adopted in March 2005, and there are clear similarities between these and four of the purposes of Green Belt designation listed in paragraph 1.5 of *Planning Policy Guidance 2, Green Belts* (PPG2).
11. The appellant accepts that the proposed development would conflict with each of the four purposes of green wedge designation set out in SP Strategy Policy 5 and that it would not be in keeping with the undeveloped character of this area. Furthermore, the appellant agreed that the proposed development was not included among those listed in the policy as being, in principle, generally acceptable uses of land in the green wedge. I agree with these views entirely.
12. The existing waste transfer building is very prominent in views from Leicester Road, the public right of way to the west of the appeal site and from parts of Burbage Common. The proposed building would have a substantially greater footprint, would be of the same height and would, in my view, appear even more prominent. Moreover, I believe that the 6m green composite fence proposed along the length of the new western site boundary would be obtrusive in its own right. The hedges that now exist along some of the boundaries are generally thin and do not provide any significant screening during those periods of the year when the trees are not in leaf. While I acknowledge that a belt of woodland planting would be secured through the planning agreement tendered, I do not consider that, even when established, this would provide effective screening for all views into the site. In addition, the development would entail a further encroachment into the open land of the green wedge.
13. I therefore consider that the development proposed would harm the open and undeveloped character of the green wedge, would be out of keeping with the scale and character of development in the surrounding area and would conflict with the purposes of green wedge designation. The proposal would therefore conflict with SP Strategy Policy 5 and LP policy NE3.

The effect the proposed development would have on protected species and nature conservation interests

14. There is a watercourse running between the appeal site and Burbage Common and, on the basis of field surveys (Core Document 14), the Common itself is

identified by the Council as a site of District level ecological significance. A number of protected species have been recorded on the Common and the potential for them to be present in the watercourse is noted in Document 7. The presence of a pond within 500m of the appeal site is also noted in the report on the appeal proposal to the Development Control and Regulatory Board on 14 December 2006.

15. I acknowledge that English Nature (as it then was) raised no objection to the proposed development in its consultation response (Core Document 13) but this relates only to any effects on the Burbage Wood and Aston Firs Site of Special Scientific Interest. Furthermore, there is no evidence (Core Document 12) that the Council specifically drew their concerns about the potential effect on protected species and their habitats to the attention of the appellants.
16. Nevertheless, having regard to the general policy and guidance found in *Planning Policy Statement 9, Biodiversity and Geological Conservation* (PPS9) and Circular 06/2005, *Biodiversity and Geological Conservation-Statutory obligations and their impact within the planning system*, these potential effects are a material consideration to which I attach substantial weight in reaching my decision on the appeal proposal. Although conditions precedent have been suggested to address this issue, my understanding of Circular 06/2005, and paragraph 99 in particular, is that this is not the correct approach where, as in this case, there is a reasonable likelihood of protected species being present and affected by the proposed development. I therefore conclude that the appellants has not shown that there would be no adverse effect on the site of District level ecological interest from the development proposed. The appeal proposal therefore conflicts with policy WLP8 (xi) of the Leicestershire, Leicester and Rutland Waste Local Plan 1995-2006 (WLP) which was adopted in September 2002. This policy was saved by a direction issued by the Secretary of State in September 2007 and continues to have effect.

The effect the proposed development would have on the living conditions of users of nearby properties with regard to disturbance from noise and dust

17. It was apparent to me during my visit that the authorised uses at the two sites generate a level of noise, over and above that of the traffic using Leicester Road, which is at odds with the generally tranquil character of the area. Both of the planning permissions referred to above are subject to conditions requiring the submission of schemes to control noise. I also note that, in respect of the permission relating to the large part of the appeal site, a Breach of Condition Notice has been issued which sets a revised submission date of 12 March 2008 for the scheme.
18. In my opinion the MoirHands report (2887/63/06) submitted with the planning application is deficient since, in the assessment, it does not isolate the authorised from the existing activities. In my view, the additional effect, if any, that the proposed development would have on the noise environment that arises from the authorised activities has not been established. I note too, that the Council have a different view about which is the nearest noise sensitive receptor.
19. However, Mr McBride accepted that the development proposed would improve the noise climate at the site and agreed that appropriate acoustic specifications

for the building could be established. The appellant indicated a willingness to accept the suggested condition preventing any activities at the appeal site after 18.30 on any day which would remove any concerns about noise and disturbance during the night-time period.

20. No evidence was submitted that either of the noise schemes required by the extant planning permissions referred to above had been approved. I note also the appellant's concern that the noise level to be achieved by mitigation measures in the suggested condition is below the background levels in any event and therefore not practicable. While it would be possible to impose the suggested condition requiring the submission and approval of a scheme to control noise, I am not convinced on all the evidence that the appropriate level to be achieved could be specified or that such a scheme of mitigation could be designed. I therefore conclude that there would be the potential for conflict with WLP policy WLP8 (xviii) in this regard which adds to my concern.
21. Turning now to any dust that might arise from the appeal proposal, there are well established measures available to control its escape from the site and I am confident that an appropriate scheme of mitigation measures could be achieved by way of the suggested condition. I do not consider that there would be any conflict with WLP policy WLP8 (xviii) in this regard.

The effect the proposed development would have on the safety of users of the local highways

22. Near the appeal site, Leicester Road is a single carriageway road subject to the national speed limit and is identified by the Council as a class 2 county road. I saw that there was a steady flow of traffic and the Council, on the basis of survey data, describes it as heavily trafficked. Access from the appeal site is not directly to the road but through what is described as a lay-by which is situated on a slight bend. This also provides access to the adjacent site and to Burbage Common Road which itself gives access to a number of properties and the large car park for Burbage Common and its visitor centre. The lay-by also provides parking facilities, restricted to maximum of 12 hours, and a bus stop.
23. The updated accident information provided by the Council (Document 5) indicates that there is some highway safety risk associated with right turn movements on to and off of Leicester Road between the access to the golf course and the Normandy Way roundabout, with a cluster of accidents near to the lay-by. The appellant accepted that any increase in vehicle movements associated with the development proposed would increase the risk to highway safety.
24. The Council agreed that there were no restrictions on vehicle movements in the May 2003 planning permission under which the site now operates and an uncontrolled increase in traffic turning into and out of the site could be the fallback position in the event of the appeal being dismissed. Mr Ambrose was unable to be definitive about traffic movements associated with the development proposed arguing that it would depend on the future award of contracts. Nevertheless, the appellant was prepared to accept a condition which would limit vehicle movements associated with the use of the appeal site as a whole to 126 per day. In the light of this, it seems to me that allowing the appeal with the suggested condition would enable some control over vehicle

movements to be established for the first time. This would allow the understandable highway safety concerns of the Council to be addressed and I therefore do not consider that withholding the grant of planning permission on this ground alone would be justified.

The contribution that the development proposed would make to the waste management requirements of the area

25. The Council's evidence is that the national 2010 recycling and composting target was being exceeded in the County during the year ended 31 March 2007 (Core Document 7). The kerbside collection contracts now managed at the appeal site contributed to this performance and Mr Ambrose confirmed that, although the sought after improvements in environmental performance and efficiency would not be achieved, all the current activities at the site could continue in the event of the appeal being dismissed. Both contracts are already into their five year period and each has a possible two year extension. Mr Ambrose also confirmed that a further contract on which the planning application had, in part, been based had been awarded to another contractor. It seems to me therefore that the evidence does not show that the development proposed is essential to meet existing waste management requirements.
26. Going forward, the appellant also argues that, in line with a step change necessary to meet national waste management policy requirements, the appeal proposal would play an important part within the county, whether or not the Abitibi contracts continue to be managed at the site. It seems to me that in this respect the proposal has a speculative element and, since the source of any waste to be managed would be unknown, any argument that the appeal site would be closer to waste sources than those being considered by the Council through the emerging Leicestershire and Leicester Waste Development Framework Site Allocations (Preferred Options) up to 2021 (Core Document 5), cannot be justified by the evidence. The site selection process, which included the consideration and rejection of the appeal site, has led to the identification of 18 sites with a potential waste management capacity that the Council says exceeds that required by the East Midlands Regional Waste Management Strategy. Mr Ambrose did not challenge this evidence. As it is at an early stage in the process towards adoption, I can give Core Document 5 very little weight. However, I am not persuaded by the evidence before me that the granting of planning permission for the appeal proposal is essential for the waste management needs of the county to 2021 to be met.

Conclusions

27. For the reasons set out above, I have found that the appeal proposal would harm the character and appearance of the area and conflict with the purposes of green wedge designation. I have also found that the potential for harm to protected species has not been fully investigated and that there is a potential for harm to the living conditions of those nearby from noise. I do not believe that either of these harms could be alleviated by appropriate measures secured by conditions. I therefore consider that the proposal would conflict with WLP policy WLP8 (ii), (xi) and (xviii). I have not identified any overriding need for the development proposed and conclude therefore that it would conflict with WLP policy WLP8 as a whole.

28. I appreciate the highway safety concerns of the Council arising from the possible intensification of the use of the access but consider that this, together with the control of parking, dust and pollution of watercourses from surface water run-off, could be secured by appropriate conditions. However, these considerations do not outweigh the policy conflict that I have identified and, for the reasons given above I conclude that the appeal should be dismissed.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Ambrose RICS, Chartered Environmentalist Principal, A L P Ambrose Minerals Consultancy, Asfare Business Park, Hinkley Road, Wolvey, Hinckley, Leicestershire LE10 3HQ

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Kimblin of Counsel Instructed by Elizabeth McCalla, County Solicitor

He called

Mr Ken McBride BSc (Hons) Senior Environmental Health Officer, Hinckley and Bosworth Borough Council

Mr Matt Lennon Assistant Engineer

Mr Dan Szymanski BSc (Hons) MA Planning Officer

INTERESTED PERSONS:

Mr David Bill County and Borough Councillor, 8a, Thornfield Way, Hinckley, Leicestershire LE10 1BE

Mr Don Wright County and Borough Councillor, 83, Butt Lane, Hinckley, Leicestershire LE10 1LB

Mrs Mary Sherwin County Councillor, 8, Ashburton Close, Burbage Hinckley, Leicestershire LE10 2EW

Mrs Wendy Moore Borough Councillor, 45, Stoneygate Drive, Hinckley, Leicestershire LE10 1TB

Mr Stuart Pemberton Leicester Road Residents Group, 125, Leicester Road, Hinckley, Leicestershire LE10 1LR

DOCUMENTS

- 1 Copy of appeal decisions Refs APP/Q4245/C/06/2030060 & APP/Q4245/A/06/2022472 submitted by the appellant
- 2 Agreement pursuant to S106 of the Town and Country Planning Act dated 29 January 2008 submitted by the appellant
- 3 Site notice submitted by the appellant
- 4 Letter of notification of the Inquiry and local advertisement submitted by the Council
- 5 Replacement Appendix MJL11 to Mr Lennon's proof of evidence submitted by the Council

- 6 Extract from the Hinckley and Bosworth Local Plan adopted February 2001 showing the extent of policy NE3 in the vicinity of the appeal site submitted by the Council
- 7 Copy of an email from Kirsty Gamble to Dan Szymanski dated 17 September 2007 submitted by the Council
- 8 Replacement page 11 (Conditions) of Mr Lennon's proof of evidence submitted by the Council
- 9 Statement by Mr David Bill
- 10 Statement by Mr Don Wright
- 11 Statement by Mrs Mary Sherwin
- 12 Statement by Mr Stuart Pemberton
- 13 Statement of Common Ground dated 28 December 2007