



Appeal Decision

Site visit made on 22 May 2007

by **J Chance** BSc DipTP MRTPI

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

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Appeal Ref: APP/M2460/A/06/2028104

Land at Stanford Road, Lutterworth, Leicestershire

- 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 G W Burton Esq. against the decision of Leicestershire County Council.
- The application Ref 2005/1887/03, dated 10 May 2005, was refused by notice dated 25 April 2006.
- The development proposed is described as "tipping on ex railway line with inert materials".

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The appellants are now the Executors of G W Burton Esq. (deceased), as the applicant has since died.
2. Although the site address on the application form is as shown above, the agent has since confirmed that the address should refer to "Swinford Road" instead of "Stanford Road" and I have dealt with the appeal on this basis.

Main issues

3. The main issues are:
 - (a) whether the proposed development would comply with national and local policy objectives for the disposal of waste;
 - (b) whether the proposed development would accord with policies designed to protect the countryside;
 - (c) the effect of the proposed development on the living conditions of the occupiers of nearby properties, paying particular reference to noise;
 - (d) the effect of the proposed development on the character and appearance of the surrounding area, with particular reference to the loss of trees; and
 - (e) the effect of the proposed development on the public footpath adjacent to the site's southern boundary.

Planning Policy

4. The development plan includes the Regional Spatial Strategy for the East Midlands (RSS8), the Leicestershire, Leicester and Rutland Waste Local Plan 1995-2006 (WLP) (adopted 2002), the Leicestershire, Leicester and Rutland

Structure Plan 1996 to 2016 (SP) (adopted 2005) and the Harborough District Local Plan (LP) (adopted 2001).

5. Policy 38 of the RSS sets out principles on which a Regional Waste Strategy will be drawn up. These include working towards zero growth in waste by 2016, reducing the amount sent to landfill, exceeding Government targets for recycling and composting, and taking a flexible approach towards other forms of waste recovery.
6. As for the WLP, Policy WLP 7 lists factors which should, where appropriate, be taken into account when assessing proposals for waste management development. These include, amongst other things, the effect on sensitive nearby land uses; visual impact on the landscape and surrounding area; effect on woodlands; effect on public rights of way, sports, recreation and tourism facilities; contribution to the implementation of the waste hierarchy as set out in the national waste strategy; and contribution to an improvement in the efficiency of managing waste which is to be disposed of.
7. Policy WLP 18 covers proposals for new waste disposal sites for construction and demolition waste including soils. Such proposals will be permitted provided that they would not result in the delay of the final restoration of existing waste disposal sites; would not divert waste which is required for operational or restoration purposes at existing waste disposal sites; it can be demonstrated that the localised need for the facility cannot otherwise reasonably be met; and there would be no unacceptable harm caused in terms of the environmental impacts covered by Policy WLP 8.
8. Strategy Policy 8 of the SP generally seeks to protect the countryside for its own sake. Minerals extraction and waste management development are identified as uses which may be accommodated outside settlement limits provided it can be demonstrated that there is an overriding need for the development to be located in the countryside and mitigation works would be undertaken.
9. Policy EV/5 of the LP indicates that permission will be refused for development in the countryside unless it would, amongst other matters, sustain or improve the rural economy, not adversely affect the character and appearance of the countryside, not adversely affect the amenities of nearby residents and access can be provided without adversely affecting the character and appearance of the area.

Reasons

Compliance with National and Local Policy objectives for the disposal of waste

10. The appellants' agent indicates that the material to be tipped would mainly comprise inert subsoils from construction sites in the Rugby area, together with soils from the Milton Keynes, Market Harborough and Northampton areas. The Council assesses that the distance which the proposed fill would travel as being up to 40mls (64kms), and the agent does not dispute this.
11. The Council has identified existing landfill sites within the general area that have consent for the disposal of inert material. Not only do these have spare capacity but they have restoration requirements which depend on a steady

- supply of suitable material. The Council has also provided evidence that some of the local infill sites have experienced shortages of inert materials which has resulted in the submission of revised proposals for restoration works at several sites.
12. The agent makes the point that the sites at Ling Hall and Cotesbach are not suited to the intended contractor's logistics as the various loads would operate from and return to Croft via Lutterworth. The agent also indicates that the site at Slip Inn is only open in fine weather. Nevertheless, various existing sites identified by the Council are only 2, 4 or 7mils (3, 6, 11kms) from the appeal site and only slight detours would be needed to use those existing sites. Furthermore, even if there are restrictions on the acceptance of inert material at one of the sites in wet or inclement weather, alternative sites are available. I have taken account of the indicated interest from Witherley Services Ltd and the potential future arisings of inert material from the expansion of Magna Park. However, I see no reason why the existing nearby sites would not be able to meet any such localised need and I am not convinced that additional facilities would be required at the appeal site.
 13. Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) sets out key planning objectives that include helping to deliver sustainable development by driving waste management up the waste hierarchy and addressing waste as a resource, and helping to secure the recovery or disposal of waste without harming the environment and enabling waste to be disposed of in one of the nearest appropriate installations. Waste Strategy 2000 as amended refers to disposing of waste at the nearest appropriate installation, by means of the most appropriate methods and technologies.
 14. In this case, there are existing disposal sites, with spare capacity, closer to the identified sources of waste soils than the appeal site would be, and allowing this proposed development would be contrary to the objective of disposal in one of the nearest (or the nearest) appropriate installations. In addition, with the development of schemes to re-use surplus subsoils in preference to disposal, in line with objectives to drive waste management up the waste hierarchy, the supply of inert subsoil is likely to become increasingly limited in the future. With a finite supply of inert material, it would be reasonable to assume that existing sites with operational or restoration requirements for such material might experience shortages of supply that could delay their final restoration.
 15. The agent has not, in my view, put forward sufficient evidence to justify the need for an additional site for the disposal of inert material when there are already nearer sites which have capacity for such material and whose infilling or restoration would be delayed while material of this nature was diverted instead to the appeal site. Consequently, not only would the proposed development be out of line with national policy objectives and the principles in RSS Policy 38, but it would clearly be contrary to Policy WLP 18 of the WLP, with regard to delay of the final restoration and diversion of waste from existing waste disposal sites and in the lack of justification for a localised need that could not otherwise be met. As the proposal would not, in my opinion, contribute to an improvement in the efficiency of managing waste which is to be disposed of in landfill sites, it would also be contrary to Policy WLP 7 of the WLP.

Whether the proposed development would accord with policies designed to protect the Countryside

16. The agent indicates that landfill sites are usually located in the open countryside. SP Strategy Policy 8 and Policy EV/5 of the LP allow for certain uses to be accommodated outside settlement limits, subject to satisfying specified criteria. However, since no overriding need for the tipping has been demonstrated, I consider that the proposed development would conflict with Strategy Policy 8 of the SP. Furthermore, as the proposed tipping would, in my view, make little difference to the rural economy other than possibly on a very short term basis, and, as identified below, it would adversely affect the character and appearance of the wider countryside surroundings, the proposed development would be contrary to Policy EV/5 of the LP.

Effect on the living conditions of the occupiers of nearby properties

17. There are a number of dwellings adjacent to the Old Rugby Road, close to the junction with Swinford Road, as well as an office building on the opposite side of the road. The agent argues that the site is used illegally for motorbike scrambling and that there would be an improvement in the living conditions of local residents in the long term, although there would be increased noise and disturbance during the relatively short term tipping operations. However, I share the Council's view that the motorbike activities could be prevented, or at least significantly reduced, through use of different measures including boundary fencing. Moreover, I consider that the assessment of likely noise levels associated with the tipping activities carried out on behalf of the agent should disregard comparisons with motorbike use in the cutting.
18. Nevertheless, even though the Council points out that the noise survey does not appear to include plant/machinery for earth shifting purposes, predictions which include tipper lorries serving the site show a significant increase in daytime ambient noise level for occupiers of the nearest residential properties. Those occupiers already experience a substantial amount of road traffic noise from the nearby highway network. However, the survey predicts that the tipping operations would lead to a significant increase in noise levels compared with that normal daytime background level which would be noticeable to those residents and could well generate complaints. Moreover, even if the maximum level might be less than a noisy motorbike, the predicted level for the tipping operations, which would take place over a longer period and be more continuous in nature, would be well in excess of the WHO guideline value, above which significant community annoyance is likely.
19. The agent has indicated that earth bunding could be provided to help reduce noise levels during the proposed operations. However, no details have been provided and, even if a bund were to be constructed, I consider that it would be unlikely to reduce the noise and disturbance to levels which would be acceptable to local residents. Moreover, a bund would not have any effect on the noise of tipper wagons driving past the properties.
20. I therefore find that the proposed development would lead to levels of activity and noise which would, for the duration of the activities, be harmful to the living conditions of nearby residential occupiers. This would conflict with the intentions of Policies WLP7, 8 and 18 of the WLP and Policy EV/5 of the LP.

Effect on the character and appearance of the surrounding area

21. The agent makes the point that the cutting is a man-made feature and by infilling and restoring the land for woodland there would be an overall enhancement in visual terms. However notwithstanding that, the formation of an acceptable access from/onto Swinford Road would require removal of some sections of hedgerow on either side of the field access to provide the required visibility splays. This would be detrimental to the pleasant rural character of Swinford Road for the duration of the tipping activities and also until any replacement hedging was established.
22. Furthermore, there is an existing group of trees protected under the Leicestershire County Council Misterton (Rugby Road) Tree Preservation Order (TPO) 1972 and shown on the TPO map as group G1. This group, which includes Limes, Sycamores and a Birch is located between the Rugby Road (A426) and the disused railway line. Some of the protected trees, which appear to be healthy and attractive specimens which individually and as a group make a positive contribution to the character and appearance of the area, are within or adjoin the western boundary of the site.
23. The agent has not indicated whether it is intended to protect any of the trees or even whether some of the group would be lost. Since it would be likely that the majority of the trees within the site boundary would experience significant increases in the depths of soil over their roots and even their trunks, it would be reasonable to assume that the harm caused to the affected trees would lead to their loss. This would have an adverse impact on the character and appearance of the area. Even though the agent indicates that the filled site would be planted with woodland, it would be a substantial period of time before any new planting would become established and over the intervening period there would be a significant detrimental impact on the character and appearance of the area as a result of the loss of the present trees.
24. I therefore find that the proposed development would harm the character and appearance of the surrounding rural area, in conflict with Policies WLP 7, 8 and 18 of the WLP and Policy EV/5 of the LP.

Effect on the public footpath

25. The agent indicates that public footpath X18 does not cross the appeal site and that the intention is for the footpath to remain in use during the proposed works. However, no details have been put forward by the agent of any measures which would be necessary to ensure the health and safety of footpath users or the integrity of the footpath itself during the proposed works. As such, under the circumstances, I have serious concerns that the proposed scheme would threaten the continued safe use of the footpath and would have an adverse effect on it, which would conflict with the intentions of Policy WLP 7 of the WLP.

Other Matters

26. I have taken account of concerns raised by local residents and local organisations over traffic generation and highway safety, flytipping, effect on badgers and other wildlife, effect on air quality, dust, mud on adjacent roads, encouragement of gulls, tipping onto contaminated land, discharge of surface

water from the site, exacerbation of an existing sewage problem, devaluation of property, effect on legal agreement with Great Central Railways and alternative recreational use of the existing cutting. However, these do not affect my conclusions with regard to the main issues that the proposed development would be unacceptable for the reasons given.

Conclusion

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

28. I dismiss the appeal.

J Chance

INSPECTOR