



Appeal Decision

Inquiry held on 16 and 17 January 2007

Site visit made on 18 January 2007

by **John Woolcock** BNatRes(Hons) MURP DipLaw
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an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 21 February 2007

Appeal Ref: APP/M2460/A/06/2013640

Lounge Disposal Point, A512 Ashby Road, Ashby-de-la-Zouch LE65 1DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by UK Coal Mining Limited against the decision of Leicestershire County Council.
- The application No.2005/1147/07, dated 13 July 2005, was refused by notice dated 17 October 2005.
- The application sought planning permission to undertake the approved restoration scheme without complying with the requirements of planning permission No.95/0868/7, dated 26 July 1996, and conditions Nos.1 and 2 as set out in the Director of Planning and Transportation's letter, dated 23 October 1998, and condition No.3 of planning permission No.99/0225/7, dated 16 December 1999.
- The conditions in dispute concern the timing of restoration and are set out in more detail below.
- The reasons given for condition No.3 of planning permission No.99/0225/7 are: To ensure the satisfactory restoration of the site with the earliest reasonable timescale following the cessation of its permitted use.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. At the Inquiry applications were made by UK Coal Mining Limited and by Leicestershire County Council (LCC) for awards of costs against each other. These applications are the subject of separate Decisions.
2. Notwithstanding the description of the proposed development on the application form and the decision notice, it became apparent at the Inquiry that the application is the latest in a series of section 73 applications concerning restoration. However, the resultant permissions granted by LCC do not in all instances specifically refer to the original permission. It was agreed by the parties that the section 73 consents relate to planning permission granted in 1992.¹ This was for the winning and working of coal by opencast methods, including the provision of water treatment areas, septic tank facilities, the relocation of the existing site office and car parking facilities, the continued use of the lounge coal preparation and disposal point and the restoration of the site to agricultural and woodland uses. This was subject to 55 conditions, including provisions for site restoration. The permission relates to an area of land shown on Drawing No.92/0108/7/M1, which includes the Lounge Disposal Point (DP), which is about 33ha in area, along with an adjoining larger area of land to the

¹ No.92/0108/7.

north of the A512. However, the evidence adduced at this Inquiry concerned only the land to the south of the A512 and known as the Lounge DP.

3. A restoration scheme was approved in accordance with the provisions of planning permission No.95/0868/7 in 1998.² This includes the removal of rail infrastructure and bunds, to largely reinstate the landform, drainage and vegetation to the predevelopment situation. Planning permission was granted for a section 73 application in 1999 which effectively extended the use of the rail facility at the Lounge DP until 31 July 2004, and required restoration in accordance with the approved scheme within 12 months of this date.³
4. The appeal application is for a 3-year relaxation of the requirement to undertake the approved restoration scheme at Lounge DP to allow sufficient time to engage in a full and careful consideration of the site's re-development opportunities. The Appellant indicated at the Inquiry that the relaxation sought would extend from the date restoration was to be completed, namely 31 July 2005. It proposes restoration in accordance with the approved scheme by 31 July 2008.
5. I have, therefore, dealt with the appeal on the basis of a section 73 application for the winning and working of coal by opencast methods, including the provision of water treatment areas, septic tank facilities, the relocation of the existing site office and car parking facilities, the continued use of the lounge coal preparation and disposal point and the restoration of the site to agricultural and woodland uses without complying with conditions Nos.1 and 2 as set out in the Director of Planning and Transportation's letter, dated 23 October 1998, and condition No.3 of planning permission No.99/0225/7, dated 16 December 1999.

Main Issue

6. I consider the main issue in this appeal to be the effects of non-compliance with conditions and approvals concerning restoration on the character and appearance of the area, having regard to relevant policy.

Planning Policy

7. The development plan for the area includes Regional Spatial Strategy for the East Midlands (RSS8), the Leicestershire, Leicester and Rutland Structure Plan 1996-2016 (SP), the North West Leicestershire Local Plan 2002 (LP), and the Leicestershire Minerals Local Plan Review 1995 (MLP).
8. RSS8 Policy 1 promotes, amongst other things, prudent use of resources and the effective use of existing infrastructure. Policy 43 includes provisions which aim to develop opportunities for modal switch away from road based transport in the freight distribution sector.
9. SP Strategic Policy 8 aims to protect the countryside. Strategic Policy 13 concerns The National Forest. Resource Management Policy 13 establishes that when granting planning permission for mineral working or related development restoration to an acceptable use would be required at the earliest opportunity. Environment Policy 3 deals with biodiversity and seeks to maintain and enhance the ecological value of the environment. Accessibility

² Letter from The Director of Planning and Transportation, dated 23 October 1998.

³ Application No.99/0225/7, permission dated 16 December 1999.

- and Transport Policy 6 provides that land with potential for rail freight connections should be protected.
10. LP Policy S3 sets out criteria for development in the countryside. Policy E26 concerns sites of ecological interest. Policy E32 gives particular emphasis to landscape improvements, including reclamation of derelict land.
 11. MLP Policy 11 concerns restoration and aftercare conditions and has a similar aim to SP Resource Management Policy 13.
 12. Minerals Policy Statement 1: *Planning and Minerals* (MPS1) provides that land should be reclaimed at the earliest opportunity in order to avoid the possibility of mineral working resulting in dereliction. Minerals Planning Guidance Note 3: *Coal Mining and Colliery Spoil Disposal* (MPG3) states that the Government believes that there should normally be a presumption against development unless a proposal met a number of tests, including whether it would be environmentally acceptable, or could be made so by planning conditions. Minerals Planning Guidance Note 7: *The Reclamation of Mineral Workings* (MPG7) seeks to minimise the adverse environmental consequences of mineral extraction, by amongst other things, ensuring that land taken for minerals is reclaimed at the earliest opportunity, and to a standard suitable for the intended use. Planning Policy Guidance Note 13 *Transport* (PPG13) advises that, where appropriate, sites which could be critical in developing infrastructure for the movement of freight (such as major freight interchanges including facilities allowing road to rail transfers) should be protected.

Reasons

Character and appearance

13. The appeal site lies to the east of the A42 in an area of countryside that is characterised by agricultural land and copses/woodland set within rolling hills. The large buildings on the other side of the A42, which lie within Ashby-del-a-Zouch, are visible in the distance from some vantage points, but these do not detract substantially from what is an attractive rural landscape.
14. That part of the appeal site which comprises the Lounge DP is bisected by the A511, which is bridged over the rail shunt. The site is visible from this major road. It was evident from my site inspection that the impression gained by those passing along this part of the A511, even in short glimpses when travelling at speed, is one of gross dereliction on a substantial scale.
15. The partially demolished buildings and associated rubble are striking and inappropriate features in this location. The bund visible from the road has an engineered and unnatural landform, which is out of keeping with the local topography. In addition, the large areas of hard standing are prominent in the wider landscape. These appear as intrusive and alien features in this countryside setting. I agree with the views of the planning officer from North West Leicestershire District Council that the site is an eye-sore, and note that there are few other areas of dereliction left in the District. I consider that the site, in its current state, has a substantial adverse impact on the character and appearance of the area. The Appellant proposes removal of the buildings in the short term. However, I do not consider that this would ameliorate the harm I have identified to the locality. The nature and extent of the derelict site is fundamentally at odds with its attractive rural context.

16. Deferring appropriate restoration of the site would prolong the harm to the landscape. I acknowledge that, due to the required preliminary investigations and practicalities of restoration here, the actual difference between allowing and dismissing the appeal in achieving restoration in accordance with the approved scheme would be likely to be a matter of months. Nevertheless, I consider that such a delay would, given the severity of the impact in this case, result in significant harm.
17. On the main issue, I consider that allowing the appeal would delay restoration of a derelict site and that this would harm the character and appearance of the area. I find that the proposal would conflict with the aims of SP Resource Management Policy 13, LP Policy E32 and MLP Policy 11. It would also be at odds with the advice in MPS1 and MPG7 concerning restoration.

Other matters

18. I heard considerable evidence at the Inquiry about the likely prospects of a future rail facility for the site, having regard to strategic rail freight interchange policy as set out by the SRA and in the East Midlands Strategic Distribution Study. I have no reason to doubt Gazeley's intentions, but if and when an application is submitted for use of the site as a rail facility that would, in the first instance, be a matter for consideration by the District Council.
19. It was apparent at the Inquiry that the Appellant seeks to retain the rail and other infrastructure which might be useful for a future rail facility, and to prevent any restoration works which would need to be 'undone' in the event that a rail facility was subsequently constructed. On the other hand, LCC seeks a revised restoration scheme which would take into account the ecological significance of parts of the site, but is content, in the interim, to retain the rail infrastructure. It seems to me that the difference between the parties comes down to specific details about what restoration works, and their phasing, would be appropriate in this context. Again, this is not a matter before me.
20. I have taken into account all other matters raised in evidence, including the third party representations in support of the proposal, but have found nothing to outweigh the main considerations that lead to my conclusions.

Conclusions

21. I have found that delaying restoration, even for a short period, would result in significant harm to the character and appearance of the area. Protecting sites which could be critical in developing infrastructure for the movement of freight is a relevant consideration here. However, I consider that more weight should be given, in the circumstances which apply in this case, to appropriate restoration of the site at the earliest opportunity. In any event, the evidence before this Inquiry is that dismissing this appeal would not inevitably result in the restoration of the site in accordance with the approved scheme, as it is clear that this outcome is not in the interests of either party. On this basis, I do not consider that rejecting the proposal would conflict with the objective of SP Accessibility and Transport Policy 6, or with the guidance in PPG13 about protecting sites for the movement of freight, or the aims of RSS8 with respect to the effective use of existing infrastructure. In my judgement, minimising the on-going harm to this part of the countryside is more likely to be achieved by dismissing the appeal. I consider that allowing the appeal would, even if this secured

early demolition of the buildings, delay appropriate restoration of the site and so would prolong harm and conflict with relevant policy.

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

Formal Decision

23. I dismiss the appeal.

John Woolcock

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Kimblin
of Counsel

Instructed by
Elizabeth McCalla, Head of Department and County
Solicitor.

He called

Michael Garratt BA MTD MCIT
Colin Chapman BA MRTPI

Managing Director, MDS Transmodal Ltd.
Planning Policy and Regeneration Manager, North
West Leicestershire District Council.

William Blackledge BA DipLA MLI
Georg Urban BA BTP MA MRTPI

Managing Director, 2B landscape Consultancy Ltd.
Senior Planning Officer, Leicestershire County
Council.

FOR THE APPELLANT:

Ian Ponter
of Counsel

Instructed by Atisreal Ltd.

He called

Stephen Heward Dip LA MLI
Dorian Baker MSc MCIT MCIOB
John Dunshea LLB MTP Dip Surv
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Director, H2 Landscape Planning Partnership Ltd.
Principal, Servant Transport Consultants.
Director, Atisreal Ltd.

INTERESTED PERSONS:

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7AQ.

DOCUMENTS SUBMITTED AT THE INQUIRY

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| Document | 1 | Council's letter of notification about the Inquiry and list of persons notified. |
| Document | 2 | Agreed Statement on Rail Matters. |
| Document | 3 | Opening submissions on behalf of the Appellant. |
| Document | 4 | Extract from Potter Group webpage re Selby multi-modal facility. |
| Document | 5 | Revised proof of evidence by Dorian Baker with amended references. |
| Document | 6 | Revised set of photographs by Stephen Heward at correct size. |
| Document | 7 | Application form, legal agreement and planning permission for Application No.92/0108/7, including Plan No.92/0108/7/M1. [Requested by Inspector] |
| Document | 8 | Application form for Application No.95/0868/7. [Requested by Inspector] |
| Document | 9 | CD29 <i>Character Area 71 Leicestershire and South Derbyshire Coalfield.</i> |
| Document | 10 | CD30 <i>Leicester Leicestershire and Rutland Landscape and Woodland Strategy.</i> |
| Document | 11 | CD31 <i>The Strategy The National Forest 2004-2014.</i> |

- Document 12 CD32 *East Midlands Strategic Distribution Study* Final Report, November 2006.
- Document 13 CD33 *Strategic Rail Freight Interchange Policy*, SRA, March 2004.
- Document 14 *East Midlands Regional Freight Strategy*, East Midlands Regional Assembly, July 2005.
- Document 15 Draft Planning Conditions.
- Document 16 Skeleton Closing on behalf of LCC.
- Document 17 Closing Submissions on behalf of the Appellant.
- Document 18 Recommended route for site inspection.