



Appeal Decision

Site visit carried out on 7 August 2017

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 08 September 2017

Appeal Ref: APP/V4305/W/17/3171254

Coopers Moss, Perimeter Road, Kirkby Industrial Park, Knowsley L33 3AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by P Casey Enviro Limited against Knowsley Metropolitan Borough Council.
 - The application, No 16/00342/FUL, is dated 19 May 2016.
 - The development proposed is described on the application form as the reclamation of tipped contaminated and derelict land through the importation of soils and soil forming materials; formation of new access; temporary construction of internal road, site offices and storage structure; car park and infrastructure compound with restoration to agriculture use and woodland.
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Decision

1. For the reasons that follow, the appeal is dismissed and planning permission for the reclamation of tipped, contaminated and derelict land at Coopers Moss, Perimeter Road, Kirkby Industrial Park, Knowsley, through the importation of soils and soil forming materials; formation of new access; temporary construction of internal road, site offices and storage structure; car park and infrastructure compound with restoration to agriculture use and woodland, is refused.

Application for Costs

2. An application for costs was made by the appellant against Knowsley Metropolitan Borough Council. That application is the subject of a separate Decision.

Procedural Matters

3. A public footpath enters the site approximately midway along the road frontage, extending eastwards to roughly the centre of the site, where it meets with a bridleway that runs north/south, bisecting the site. The submitted plans indicate that it is proposed to relocate the footpath to run along the southern site boundary, to join with the bridleway which is shown as remaining on its current alignment. Were the appeal to succeed, any permission could not be implemented unless and until a successful application for diversion of the footpath was made. Should such an application be unsuccessful, that could have implications for implementation of the appeal scheme. I have, however, made my decision based only on the planning merits of the case.

Background

4. There is a long planning history to this site, which is set out in more detail in the Environmental Statement and in the Council's written statement. Coopers Moss was historically an area of peat extraction. During the 1960s and 1970s it was used as a landfill site operated by Liverpool City Council, the tipped materials including household waste, road sweepings, sludges and construction, demolition and excavated wastes. In the late 1980s the site was illegally tipped with a reported 185,000 cubic metres of construction, demolition and excavation waste. Following a number of unsuccessful applications for the tipping of waste material and soil on the site and reclamation for agricultural purposes, including an unsuccessful appeal,¹ an Enforcement Notice was served in the early 1990s to secure the removal of the illegally tipped waste and reinstatement of the previous level of openness. However, because of the timescale involved, it transpired that the development was immune from enforcement action.
5. More recently, an application was submitted for importation of materials including construction waste, and re-grading of the land in connection with its restoration, with the final landform to be landscaped to provide agricultural use and woodland.² That application was refused in May 2015. The reasons for refusal related to inappropriate development in the Green Belt - the development comprising engineering works which, it was held, adversely affected the openness of the Green Belt and the purposes of including land in it, and with temporary infrastructure etc not being a category of development allowed for in Green Belt policy; measures proposed being in excess of what was required to restore the land to agricultural use; concerns in relation to contamination; impact on existing tree cover; and the absence of any very special circumstances to outweigh the harms identified.

The Proposal

6. At present, the site has been partially restored for agriculture, albeit poorly, and is currently used for rough grazing of cattle. It is proposed to salvage topsoil from the site, stockpiling it for later use. Any unsuitable previously tipped materials would be removed, with suitable materials, such as hardcore, to be re-used on the site. The landform would be re-engineered to accept some 273,350 cubic metres of imported soils and soil forming materials (described in the Environmental Statement as largely construction, demolition and excavation waste) with the site to be re-graded with a view to the proposed end use, the intention being to create what is described by the appellant as a more sympathetic landform and to restore the site to beneficial use for agriculture and woodland, with the grassland to be either grazed or cropped.
7. A new vehicular access onto Perimeter Road would be formed and a pond would be created in the south-eastern corner of the site, with an area of ecological wetland created near to the road frontage beneath two existing overhead powerlines. Associated temporary works include securing of the site perimeter, the construction of internal haul roads, site offices and storage buildings, car parking, plant storage compound, CCTV towers and wheel cleaning facilities, together with screening mounds. Whilst there is some

¹ APP/V4305/A/91/181692

² Application No 14/00849/FUL

ambiguity about the intended duration of work, which would take place on a phased basis, it would appear that it is anticipated as taking around four years.³

Main Issues

8. The application the subject of this appeal is a re-submission of the earlier application, and was accompanied by additional environmental information that sought to address earlier concerns. In the light of that additional material and ongoing discussions, the Council's statement pursues no objection to matters relating to: highway safety; living conditions of nearby residents in terms of noise and disturbance and outlook; ecology and nature conservation considerations; the presence of invasive species; flooding and drainage considerations; air quality; contaminated land; and arboricultural implications. In the absence of any substantiated evidence to the contrary, I have no reason to take a different view on any of those matters.
9. In light of the forgoing, the main issues in this case relate to:
 - whether the proposal comprises inappropriate development having regard to the Green Belt policies of the development plan and the National Planning Policy Framework;
 - the effect of the development proposed on the character and appearance of the surrounding area; and,
 - if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons for the Decision

Whether Inappropriate Development

10. The appeal site lies within the Merseyside Green Belt. The Government attaches great importance to Green Belts, with paragraph 79 of the Framework confirming that one of the essential characteristics of Green Belts is their openness. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and, together with policy CS5 of the Knowsley Local Plan Core Strategy (January 2016) confirms that such development should not be approved except in very special circumstances.
11. New development in the Green Belt is to be regarded as inappropriate unless it comprises one of the exceptions listed under paragraphs 89 or 90 of the Framework. I am mindful that the intended post-development use of the land includes agriculture and woodland. However, whilst paragraph 89 of the Framework refers to agriculture and forestry as being an exception relative to inappropriate development in the Green Belt, the reference relates specifically to the construction of new buildings for such purposes. Rather, the proposed raising of ground levels comprises an engineering operation. Paragraph 90 of the Framework confirms that engineering operations are not inappropriate in

³ The submitted Environment Statement includes contradictory information as to the anticipated period of works, there being references to both maximum periods of four and six years. Paragraph 10.10.2 of the Environmental Assessment indicates that, following a review of the Technical Appendices, it is considered that the operations could be completed over four years as opposed to six.

the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.

12. Neither the Framework, nor the Core Strategy so far as I am aware, contains any definition for the term 'openness'. The appellant maintains that the term refers to *'the presence or absence of urban form ie built development. The shape or three dimensional landform of the landscape is not an aspect that should be considered in Green Belt policy.'* In coming to that view, the Environmental Statement relies on a judgement of the High Court from 2014.⁴ However, the law in this respect has moved on since then. In addition to the spatial/physical aspect to openness, a recent Court of Appeal judgement⁵ sets out that visual impact *is* implicitly part of the concept of openness of the Green Belt. I afforded both parties the opportunity to comment on that later judgement and have taken the comments received into account.
13. I fully recognise that absence of built form is often used to define openness. However, the Framework does not include any definition as to what the term engineering operations might encompass. Moreover, the reference to engineering operations appears in a separate paragraph to paragraph 89: as mentioned above, paragraph 89 relates specifically to the erection of buildings for stated purposes, none of which include engineering operations. On the basis that engineering operations merit a specific mention outwith paragraph 89, I see no reason why, in principle, such development should comprise only built form and, given that visual impact is to be considered as part of the concept of Green Belt openness, I see no reason why it could not include an assessment as to whether, for instance, an increase in ground levels might, in the terms of the Framework (and the Core Strategy) affect the openness of the Green Belt.
14. The appeal site comprises a roughly rectangular parcel of land extending to some 32 hectares on the eastern side of Perimeter Road, opposite to Knowsley Industrial Park. Land on the eastern side of the road here is predominantly in agricultural use, comprising a generally flat, open mossland landscape. The site can be divided into three distinct parts: the north-western part (bounded by the bridleway to the east, the footpath leading from Perimeter Road to the south, by Perimeter Road itself to the west and by adjoining fields to the north) is the subject of the majority of the unlawful tipping that took place in the 1980s. Heights across this part of the site range from some 48 metres Above Ordnance Datum (AOD) along the road frontage, to some 59 metres AOD close to the bridleway, over very uneven, sometimes steeply banked 'knolly' terrain; the south-western part (bounded by the bridleway to the east, the footpath leading from Perimeter Road to the north, by Perimeter Road itself to the west and by adjoining fields to the south) generally rises from 48 metres AOD along the boundary with the road and the southern field boundary, to a height of some 53 metres AOD closer to the existing junction of the footpath with the bridleway; the remainder of the site, to the east of the bridleway, has a general flattish appearance, though it rises gently to the centre to a height of around 54 metres AOD.
15. As confirmed in the appellant's Landscape and Visual Impact Assessment (LVIA) the scheme proposed would reduce the maximum height of the illegally tipped area. However, only a relatively small part of the site as existing is

⁴ *Timmins & Anor v Gedling Borough Council* [2014] EWHC 654 (Admin)

⁵ *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466

above 55 metres AOD (estimated by the Council as around 4 hectares). Whilst the overall height of the landform as proposed would be lower than the highest part of the site as existing, the proportion of the site as a whole that would be above 54 metres AOD would be more than doubled, estimated by the Council as increasing from approximately 5 hectares to around 12 hectares, taking the form of two flat topped domes, one to either side of the bridleway that cross the site. I am in no doubt in this regard, that the increase in the proportion of the site at a materially higher level than is currently the case, would mean that this part of the Green Belt would be physically less open than it is at present.

16. In addition, there is nothing in the Framework or the Core Strategy that indicates that temporary buildings etc should be treated any differently from permanent buildings, in terms of assessing impact on openness. Indeed, the courts have held that temporary elements of a development may be relevant to the impact on openness, depending on the circumstances of the case.⁶ In this instance, having regard to the currently anticipated timescale for development, a matter which I consider in more detail later, I am of the view that additional harm to openness would be caused by the buildings and storage compound proposed, albeit that that impact would be temporary, anticipated in this particular context as around four years.
17. In terms of visual impact as a part and parcel of the concept of openness (a quite separate matter to the issue of any effect on the character and appearance of the area, which I deal with later) I recognise that boundary planting currently screens views of the site from some longer range views, and that additional planting proposed would enhance that screening over time. However, the site is traversed by public rights of way, which routes have a much more intimate relationship with the site itself, affording views directly across the whole of the site and its surroundings.
18. As mentioned earlier, the submitted plans show the public footpath that leads eastwards from Perimeter Road being diverted. Although retained within the site it would, subject to the necessary consents, run close to the southern site boundary to join with the bridleway. On its current alignment, there are clear views from the footpath to either side across the site. On the proposed alignment, the footpath would be enclosed by enhanced boundary planting along its length to the south, and would be fenced off from the remainder of the site along the northern boundary. During construction works, the footpath would also be separated from the site by a temporary 2 metres high bund. During construction works, the presence of the bund would create a much less open feel to the route than is currently the case. In any event, on removal of the bund following completion of the works, the domed land form within the western part of the site would be clearly seen, rising up more than 6 metres above the level of the footpath, with a much greater visual impact on the openness of this part of the Green Belt than is currently the case.
19. Travelling south along the bridleway that bisects the site, the whole of the open less disturbed part of the site to the east is clearly seen until the point where the route is joined by the footpath, whereafter views to the east are screened by a small area of woodland. Whilst views to the west when heading south on the bridleway route are foreshortened initially, by the area of illegal tipping (the 'knolly' area) once past the junction with the footpath, there are longer

⁶ R (o.a.o. Samuel Smith Old Brewery & Anr v North Yorkshire County Council & Anr [2017] EWHC 442 (Admin)

range views across the site to Perimeter Road and beyond. The bridleway has a slight uphill gradient from the northern site boundary, rising from around 48 metres AOD to some 54 metres AOD at approximately the mid-way point, before descending to the southern site boundary. Whilst no operations are proposed along the route of the bridleway, it is intended that it would be enclosed by areas of planting along both sides for much of its length, thinning out near the middle where the route would pass between the two domes referred to above, which would be some 2 metres higher than the bridleway at this mid-point. The difference in height would be greater at other points along the bridleway route. At the mid-way point, if not before, the development proposed would intrude visually on the openness of this part of the Green Belt, notwithstanding that there would be reduction in the overall height of the 'knolly' area adjacent to the bridleway to the west.

20. The second aspect to considering whether the development proposed is inappropriate having regard to paragraph 90 of the Framework, is whether there would be any conflict with any of the purposes served by Green Belt. I agree with the appellant that the development would not result in the sprawl of a large built up area, would not result in the merging of neighbouring towns, and would not harm the setting or special character of any historic town. Inasmuch as the development is intended to improve the agricultural quality of the site, a site which has been the subject of poor restoration in the past and illegal tipping, it might also be considered as equating to the recycling of derelict land. However, to the extent that there would be buildings etc on the site, albeit for a temporary period, there would be some encroachment of the countryside. Moreover, whilst the intended end use, namely improved agricultural land and woodland, would not of itself amount to encroachment, the development for which permission is sought, namely the importation of almost 2 volume of material that would be imported to secure that use would, to my mind, represent encroachment.
21. To conclude on this issue, I find that there would be harm to the openness of the Green Belt having regard to both the spatial/physical aspect, as well as the visual aspect of openness. I have also found that there would be conflict, to some extent, with the purpose of safeguarding the countryside from encroachment. As a consequence, the development proposed would be inappropriate in the Green Belt.

Character and Appearance

22. The appeal site lies within the National Lancashire Plains Character Area.⁷ At a more local level, the Council's Landscape Character Assessment⁸ shows the appeal site as lying within the Simonswood Moss landscape character area. Both assessments identify key characteristics as including a flat, low-lying topography with wide views across a mainly agricultural landscape comprising a patchwork of large open fields with sparse tree cover, some deciduous woodland blocks and remnants of a complex of raised drainage ditches and dykes which divide and drain the landscape. The Council assessment also identifies the landscape character type here as urban fringe farming land, the

⁷ The Lancashire Plains Character Area includes land to the east of Perimeter Road, including the appeal site. Land on the opposite side of the road lies within the Mersey Conurbation Character Area, the road forming an abrupt boundary between the two areas.

⁸ UDP Landscape Character Assessment of Knowsley Metropolitan Borough - produced in 2007 to, among other things, inform planning policy and decisions on planning applications.

visual amenity of which is influenced by the proximity of the edge of the urban areas.

23. Formal pre-application advice provided by the Council in September 2013 confirmed that the consent for the original tipping operations contained conditions requiring the spread of topsoil over the surface of the tip to a depth of at least 18 inches, with the final level of the tip not to exceed the levels of the adjoining land. It would appear, however, that those conditions were never complied with or enforced against.
24. The LVIA refers to the completed landform comprising a raised rectangular platform up to 5 metres above the surrounding land. However, whilst the outer edges of the site do rise up from the site boundaries, the gradients at the edges are not especially steep, other than along the edge of the area of the later illegal tipping and, so far as I could see, the site does not appear as a raised rectangular land form. Moreover, over the process of time, the site has become vegetated, softening its visual impact to the extent that, in combination with existing trees and shrubs along some of the boundaries, it is starting to blend into the surrounding landscape. As a consequence, in longer range views, the site is largely indistinguishable from its surroundings. Nevertheless, I fully recognise that in closer range views, such as from Perimeter Road adjacent /close to the site and particularly from the public rights of way that cross the site, the mounding on the area of the site subject to the illegal tipping is noticeable as a discordant landform that is at odds with the flatter character of the land both within the remainder of the site itself and the surrounding fields.
25. Reducing the maximum height of the 'knolly' illegally tipped area from just over 59 metres AOD to some 56 metres AOD, and re-grading the northern side of that part of the site to a more gradual gradient than is the case at present, would improve the character and appearance of the site, particularly in closer range views. I am not persuaded, however, that the remainder of the site is necessarily a visual or landscape detractor in need of improvement in terms of the character and appearance of the area. I note, in this regard, that the LVIA concludes, overall, that the development proposed would have a neutral impact on landscape character and only a minor beneficial effect in terms of visual impact for local residents and users of the area.⁹
26. As mentioned earlier, it is anticipated that the proposed works would take some four years to complete. During that time, the site would have the appearance of a landfill site - in addition to the additional material that would be brought onto the site, there would also be security fencing, internal haul roads, site offices and storage buildings, car parking, plant storage compound, CCTV towers and wheel cleaning facilities. Notwithstanding the temporary screen bunding proposed, I am in no doubt that there would still be some harm to the character and appearance of the area during the construction process. Indeed, the LVIA predicts the overall visual impact during construction as ranging between neutral and minor adverse, depending on the nearness of receptors to the working activities on the site. I recognise that many building and engineering operations result in disruption during the construction phase. In this case, however, the appeal site would have the appearance of a landfill site for at least four years.

⁹ Paragraph 8.1.1 of the LVIA

27. Merseyside Environmental Advisory Service refers to the appellant being willing to accept a condition restricting the importation of waste to EWC 17 05 04 (other soil and stones) only. That overcomes concerns that were raised previously in relation to the potential for contamination of surrounding ditches and the subsequent links and pathways to nearby vulnerable areas. However, restricting the waste stream could, potentially, extend the construction period. There is no information for example, as to what (if any) existing demand there may be for such material from existing schemes requiring inert waste for land restoration. Neither is there any indication of the likely source of the waste material that could be accepted at the site. All in all, I have no way of assessing whether the four year construction period suggested in the evidence is realistic.
28. The Council indicates that a site remediation bond (in the form of a planning obligation) is required such that, should the developer fail to implement the development in accordance with approved details, the Council could use the bond to deliver the outstanding remediation works. However, no planning obligation is before me, the appellant indicating that, since the Council does not request such an arrangement it has no comments on the suggested arrangement. However, the Council's statement makes it clear that, whilst no agreement was requested, that was on the basis of its fundamental concerns about the suitability of the development in this location. That is very different from saying that one is not required. With no evidence as to where the fill material might be expected to come from, and with no mechanism before me to ensure completion within the indicated timeframe (which is not something that could be dealt with by condition) there is, it seems to me, some potential for construction to extend beyond the anticipated build period which would, in turn, extend the adverse impact on the character and appearance of the area pending completion of the development.
29. I recognise that the Environmental Statement indicates that the work would be carried out in phases, with each phase being brought back into agriculture use on completion. Phasing is something that, in principle, could be secured by condition. However, it still would not provide any security in terms of the completion of any phase.
30. To conclude on this issue whilst there would, on completion, be some localised benefit in terms of character and appearance there would also be material harm during works of construction over an extended period, with no guarantee of completion. There would be conflict, in this regard, with policies CS2, CS8, and CS21 of the Knowsley Local Plan Core Strategy (January 2016) which together and among other things seek to protect such interests.

Other Considerations

31. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
32. The site is currently capable of only low grade agricultural use, having been poorly restored following earlier lawful tipping and with part of the site subject to illegal tipping. The land is poorly drained, as evidenced by ponding in places with limited, if any, topsoil over much of the site. Absent any works of

amelioration, it would remain as such. The development proposed would increase the agricultural land quality on the site which would be a benefit.

33. However, whilst the Environmental Statement indicates that this could be achieved not only by adjusting surface contours but also increasing the depth of soil material to approximately one metre augmented if required, with the installation of land drainage, elsewhere it indicates that the imported materials would be spread over the re-spread illegally imported waste to a depth of up to two metres. I recognise that the more varied terrain around the illegal tipping might result in different depths of soil in order to achieve a more even landform. However, the remainder of the site is not so irregular and the evidence before me does not provide a robust demonstration of the need for the amount of material that would, for instance, be brought onto the site to create a mound of the size proposed within the eastern half of the site in order to secure the suggested agricultural improvements. As noted earlier, this part of the site has a general flattish appearance, notwithstanding that it rises gently towards the centre. Similar comments apply to that part of the site to the south of the public footpath. I am not persuaded, therefore, of the necessity to import some 273,350 cubic metres of material onto the site to secure the suggested improvements. On that basis, I afford the asserted benefit only limited weight.
34. As noted above, a landscape benefit would be secured by reducing the overall height of the incongruous mound of illegally tipped material and re-contouring. However, even when taken together with the other works proposed, including planting etc, the LVIA assesses the development as having only a neutral to minor beneficial effect on the landscape and visual impact over the longer term. Accordingly, I give this consideration little weight.
35. The Environmental Statement indicates that there are long term risks arising from current potential linkages to surface water and groundwater. I am in no doubt in this regard that surface water management and planting would be of benefit in reducing the leachate output from the site. As noted above, however, I am not persuaded that the need for the quantum of material that is proposed to be imported is necessary to secure this. I therefore afford this benefit only modest weight.

Conclusion

36. Inappropriate development is, by definition, harmful to the Green Belt. To be added to that harm is the harm to character and appearance that I have identified during the period of construction. Paragraph 88 of the Framework indicates that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist, unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
37. Even when taken together, the other considerations set out above do not clearly outweigh the harm that I have identified and thus, the very special circumstances necessary to justify the proposal do not exist in this case. Accordingly, for the reasons set out above, I conclude on balance that the appeal should not succeed.

Jennifer A Vyse
INSPECTOR