
Appeal Decision

Inquiry opened 5 September 2017

Site visit made on 5 September 2017

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 17 October 2017

Appeal Ref: APP/T0355/W/16/3160065

Oakfield Farm, Wells Lane, Ascot, Windsor and Maidenhead SL5 7DY

- 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 Rob Boulton of Altitude (Ascot) Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/02727, dated 28 August 2015, was refused by notice dated 15 April 2016.
 - The development proposed is the redevelopment of the waste transfer station to provide 12 dwellings, associated landscaping and car parking.
-

Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the waste transfer station to provide 12 dwellings, associated landscaping and car parking at Oakfield Farm, Wells Lane, Ascot, Windsor and Maidenhead SL5 7DY in accordance with the terms of the application, Ref 15/02727, dated 28 August 2015, subject to the conditions set out in Schedule 1 to this decision.

Procedural Matters

2. The Inquiry ran for four days and in addition to the accompanied site visit made on the first day, I made a further unaccompanied visit to the surrounding area and to locations considered by the parties involved in the Inquiry to be the relevant viewpoints.
3. A Unilateral Undertaking, signed and dated 15 September 2017, was submitted by the appellant under the provisions of the Town and Country Planning Act 1990. This was to address the provision of a Framework Management Plan, including a Woodland Management Plan, and appointment of a Management Company. A signed Agreement, dated 27 September 2017, under s111 of the Local Government Act 1972 was also submitted. This was to address the effect on the Thames Basin Heaths Special Protection Area (SPA). I have considered these later in my decision.
4. A draft and unsigned Statement of Common Ground (SoCG) was submitted just prior to the Inquiry. While the Council did not raise specific concerns with it and had been involved in its development, circumstances of the case moved on sufficiently such that I accepted there was no need to update and formally sign a revised document, and in closing statements the parties clearly set out their agreed positions.

5. At the time of their decision, the Council set out six reasons for refusal. During the processing of the appeal, the Council approved their Community Infrastructure Levy Charging Schedule. As a result, they confirmed at the Inquiry that reason for refusal 6, in relation to the provision of infrastructure, was withdrawn. I have not considered this matter any further.
6. In addition, as a result of the submission of information by the appellant in relation to the waste capacity in the Borough, the Council accepted that their initial reason for refusal 3 had been addressed, albeit they argued that there were qualitative matters going to the benefits associated with removal of the waste site that still needed to be addressed.
7. During the processing of the appeal, the appellant also consulted on an amendment to the scheme, specifically the removal of a proposed balancing pond, part of the surface water drainage measures, which was to be located within the adjoining woodland. I am satisfied that parties with an interest in the application and appeal were consulted on this amendment, and note that the Council gave clear indication of the acceptance of this proposed change in the draft SoCG and at the Inquiry. No change to the quantum or scale of the housing proposed would entail, and there were no in principle objections from statutory consultees to an alternative approach to the management of surface water from the site.
8. I am content therefore that no party would be prejudiced by my acceptance of this amendment to the scheme, which entailed the submission of a new plan with a revised site boundary¹. Furthermore, the Council confirmed that this amendment, subject also to adoption of a woodland management plan, addressed their specific concerns regarding harm to the priority habitat and trees, having also accepted that the local woodland, while containing some veteran trees, was not ancient woodland. Thus reasons for refusal 4 and 5 were also satisfied.
9. Accordingly, and with regard to all submitted evidence, both written and provided at the Inquiry, I consider the following to be the main issues in this case.

Main Issues

10. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework).
- The effect of the proposal on the openness of the Green Belt.
- The effect of the proposal on the character and appearance of the area, including the gap between settlements.
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

¹ LL502-000-001A

Reasons

11. The appeal site lies within the Metropolitan Green Belt a short distance outside of Ascot. It is accessed through a gate and short drive off Wells Lane. This is a predominantly wooded area with some sporadic development of large, detached dwellings. These are generally found along Wells Lane and Coombe Lane, off the London Road which connects Ascot and Sunninghill. The area is defined in the made Ascot, Sunninghill and Sunningdale Neighbourhood Plan (the NP) as being a gap between villages, addressed in Policy NP/EN1.
12. The immediate area surrounding part of the site is further identified as a Local Wildlife Site (LWS), comprising wet woodland, a Priority Habitat², with three Tree Preservation Orders (TPOs), two to the north and east (008/2009 and 087/2001), and one adjacent to the western and southern boundary of the site (024/2015).
13. The site would appear to have been used for various waste management activities, only some of which have been authorised, and in terminology, generally accepted by the main parties, can be divided into three parts, the Paddock, the Yard and the Mound. The Paddock is a small enclosed grassed area adjacent to Wells Lane with wooded boundaries, along the edge of which runs the existing access. The proposed realigned access would cross the grassed area. A derelict shed is visible, but other than the encroachment of some vehicles along the access there is no obvious waste activity on this part of the site.
14. The Yard forms the focus of the authorised waste activities. It comprises a partly surfaced area with two permanent buildings and a weighbridge to the edges of the site and a large, metal clad and partly open building to the centre. Various stockpiles of waste and containers surround this building. There are a number of sorting bays, but the edges of the Yard to the south and east comprise large earth embankments, likely to comprise or contain waste.
15. The Mound lies beyond the embankment with a gated path linking it to the Yard. Historically it appears to have been an area of further waste disposal or long term storage comprising two distinct phases. Currently, there are large piles of mixed, predominantly plastic or wood waste lying across the area, some close to and spilling over the edges of the earlier deposits.
16. Sufficient for the purposes of this appeal is to confirm the current status of waste activity on the site. In 2010 a linked enforcement appeal³ established a Certificate of Lawfulness for waste operations on the site of the Yard confirming its use for:

"the importation, depositing, storage and recycling of waste materials, and the storage of portacabins, skip lorries, skips, diggers and other vehicles associated with that use."
17. The operators at that time secured an Environmental Permit⁴, issued by the Environment Agency (the Agency) under Standard Rules procedures for waste transfer activities up to a maximum of 75,000 tonnes per annum⁵. There would

² Biodiversity Action Plan – Deciduous Woodland

³ APP/T0355/C/09/2108960 and 2108961

⁴ EPR/CP3593VU

⁵ SR2008 No3_75kte

appear to have been a number of breaches of permit conditions resulting in a successful prosecution in 2015 for operations contrary to those permitted. A Suspension Notice was then served on the operator at the end of 2015, specifically related to concerns regarding the risk of pollution arising from fires due to the external storage of non-specified waste types, including plastic, wood and general mixed waste. This notice prevented the further importation of combustible wastes and required resolution of the permit breaches in areas including the Yard and the Mound.

18. A voluntary Action Plan was agreed between operators and the Agency, which, from evidence on the site visit, would appear to be underway. This plan sets out the intention to remove the waste from the Mound down to the pre-2010 levels and then secure this area to prevent future deposits outside of the consented boundary. Also evident from the site visit is the continued and authorised operation relating to metals recycling.
19. In light of the agreement between the main parties that the Council could not, at present, identify a five year HLS, my assessment would normally address compliance with the development plan alongside material considerations, including the Framework's presumption in favour of sustainable development and the weight to give to relevant policies. However, it was an agreed matter also that a different approach needs to be taken regarding the effect on the Green Belt, as indicated by footnote 9 of paragraph 14 in the Framework, requiring resolution prior to consideration of the presumption set out in that paragraph.

Whether the proposal would be inappropriate development in the Green Belt

20. It was common ground between the main parties that the development plan policies for Green Belt were out of date in light of their inconsistency with the later Framework policies. I concur and have taken paragraphs 79 to 92 of the Framework as the basis for my assessment of the development in this regard.
21. The appellant argues that the proposal conforms with one of the exceptions to inappropriate development set out in paragraph 89, namely the sixth bullet being the complete redevelopment of previously developed (brownfield land) which would not have a greater impact on openness or the purposes of including land within the Green Belt.
22. The Framework provides a definition for previously developed land in its Annex 2: Glossary. Among other aspects, this definition states it to be land that is occupied by a permanent structure, including the curtilage of the developed land. Of land excluded from this definition is land that has been used for waste disposal by landfill purposes where provision for restoration has been made through development control procedures. To my mind, it is taking the interpretation of the Framework's definition too far to conclude that the authorised and unauthorised deposit of waste on this site, all intended to be part of a waste transfer operation, can be considered as landfilling without restoration provision, despite some of the wastes being stored for some considerable time. The material question therefore is whether there are permanent structures with associated curtilage covering the site.
23. It is common ground that the Yard has two permanent and one temporary building. The permanent buildings have provided weighbridge, office and

storage facilities and I concur with both main parties that the Yard area itself would represent curtilage included with the development associated with those permanent structures. While the existing access is clearly also included, the rest of the Paddock area would not appear to have had any associated waste activity, nor any functional relationship with the Yard area and would not, in my view be previously developed.

24. Turning to the Mound, it would appear that it was not in the same ownership when waste activities were initially taking place at the site. While it is now in the same ownership, this does raise initial concerns in respect of its direct relationship to the permanent structures and their associated curtilage. Furthermore, while it would appear that there was a period when there was waste storage on the site, resulting in the visible, but relatively consolidated land raising, the pre-2010 levels, there would also appear to have been periods when the Mound formed no part of the waste operations, authorised or unauthorised, for example reference is made in the 2010 appeal to this part of the site showing as an active deposition site in some aerial photographs but being covered by green vegetation in later images. Although definition of these two parts of the appeal site is not necessarily clear with intervening and overlapping waste deposits, a gate is referred to in earlier studies and a gate remains on site.
25. I therefore consider that the Mound does not form part of the curtilage of the waste transfer site associated with the two permanent structures, and the Yard is the only part of the site clearly defined as previously developed. To extend that definition more generally to the Mound due to the presence of deposited waste does not accord with the principle element of the stated definition, that of occupation by permanent structures. That there has been considerable deposit of unauthorised waste since 2010 is clear, but that material is to be addressed through the Action Plan and should not be taken as evidence of a functional link between the authorised transfer operation, associated with the permanent structures, and the Mound.
26. My position on the site is borne out in my colleague's findings in the 2010 appeal, where the Paddock was excluded from the enforcement area and indeed the area for which deemed planning permission was granted. Furthermore, that decision specifically excluded the Mound, noting that while it may have received materials from the transfer station, it had never been in the same ownership. That decision granted permission solely for the area set out in an attached plan, an area that excluded the Mound.
27. Finally, on this particular matter, I must consider whether acceptance of that part of the overall appeal site, the Yard, as being previously developed land is sufficient to provide such definition for the whole appeal site. While I note the appellant's argument that the exception to Green Belt restriction for previously developed land should extend to the wider site more generally to accord with perceived government intentions, the issue regarding Green Belt is not the quality of the land but fundamentally the permanent retention of openness.
28. The definition in the Framework itself establishes the limit of any previously developed land as being the curtilage of the permanent structures; I have found the Mound to lie outside that. The proposal therefore includes previously developed and undeveloped land. While I note that the Council have effectively indicated their acceptance that a development of housing restricted solely to the Yard area would meet the exception, that is not what is before me. Indeed there

is explicit viability evidence that states that the scheme is only deliverable with the development of further housing on the Mound. Accordingly, the proposed development should therefore be considered, in this particular case, as inappropriate development.

29. The appellant referred me to two appeals in support of their case⁶ on this matter. The South Okenden case drew on previous definitions of brownfield land, from PPS3, whereas the Valley View Farm case, which found the proposal in that case to be inappropriate development, is clear that the definition within the Framework glossary is explicitly linked to the presence of permanent structures. There is nothing within these decisions that would lead me to reconsider my conclusions on this matter.
30. Inappropriate development, as set out in paragraph 87 of the Framework, is, by definition, harmful to the Green Belt. Substantial weight must be given to any harm to the Green Belt and such development should not be approved except in very special circumstances (VSC).

Effect on openness

31. To understand the effect on openness it is necessary to seek to understand what effect the existing operations may have and then compare it to that proposed. There was conflicting evidence on this and a late submission of comparative figures from the appellant⁷. Were the site to continue to operate as a waste transfer station, I accept that there would be transient piles of waste in addition to the two permanent structures and the ongoing requirement for a large temporary building in which to carry out sorting and separation. The principle differences between the main parties related to the volumes of waste that could be on site.
32. The appellant, in their Revised Table 1, took the total waste volume allowed under a Standard Rules permit and estimated the storage volume based on two tonnes per cubic metre (cu m). I don't find particular concerns with the estimated conversion, although that would vary significantly depending on the waste types stored. However, I do have concerns with the concept of all of the waste being imported in any year being assumed to be stored on the site. This is not the purpose of a waste transfer station, where wastes should be sorted and separated with material subsequently transferred for recycling, re-use or disposal. In my experience such a large volume would represent considerable difficulties to be stored within the area available outside of any working area on the site.
33. However, a direct comparison of existing permanent buildings to those proposed would not be a representative assessment either, and I note the need to consider transient uses and temporary structures, if they are a central part of operational development on a site. In reality, the continuation of waste operations would result in the stockpiling of materials for periods, stocks that are likely to be visually relatively permanent as material is removed and replaced. The stockpiling would typically take place to the edges of the site to allow for working areas. There would also be the use of temporary buildings, potentially other storage and the presence of plant and machinery as well as parking and transiting HGVs. Changes associated with the proposal would include the

⁶ APP/P1940/W/3136138 and APP/M9565/2136176

⁷ INQ13 – Revised Table 1

levelling of the existing stockpiles post remediation, removal of machinery and of transient elements such as skips, vans, portacabins and other structures. In such circumstances, and recognising that there is both a spatial and a visual component to openness, I am satisfied that, with the levelling of the site and removal of operational elements, while the houses would be spread across a wider area, the actual impact on openness would be neutral, and the openness of the Green Belt here would be preserved.

Effect on Character and Appearance

34. The appeal site is set within a wooded area, identified in the NP as being a defined gap under Policy NP/EN1. In support of their case the appellant submitted a Townscape and Visual Impact Assessment, supported by further analysis in a landscape proof of evidence, with an accompanying Landscape and Visual Appraisal (LVA). I note the points raised regarding the Officer's report in this case, notably findings that the design would respect the character⁸ and that the relocation of the access would have 'little impact on the character or appearance of the area'⁹, possibly informed by an incorrect assumption on the height of the buildings¹⁰. Nonetheless, I am satisfied that the Council concerns remain in relation to the extension of built form into the defined gap and in the perception of increased urbanisation of the access within the Paddock area. Added to this, I am aware of the concerns of local residents and local Councillor that the development would lead to a visual intrusion into this wooded setting out of character with the prevailing built form, and that new housing, particularly on the Mound, would be prominent due to its scale.
35. The character of housing in the transitional areas and the defined gap between Ascot and Sunninghill is described in the Council's Townscape Assessment as being a Villas in Woodland Setting, notable for low density housing and a semi-rural character with large villas in large, irregular plots. Among other characteristics, this classification noted the 'sylvan' backdrop, with mature trees and hedges forming important boundary features with a tranquil, quiet and essentially private, 'closed' environment with little public access.
36. These characteristics are readily appreciated when visiting the area. Taking views from Wells Lane and Coombe Lane, the enclosed nature of the site itself was clear, with even the prominent waste piles, buildings and machinery being for the most part screened visually. This is borne out in the photo-viewpoints in the LVA, points which were agreed by all parties to be representative of the principle viewpoints. While I appreciate that this visibility may increase during times of leaf fall, these views reinforce the character of private lanes and the enclosing woodland setting.
37. The Council introduced some evidence indicating that the removal of trees under this proposal around the edge of the waste operation area may increase the site visibility. Trees around the edge of the waste site have been noticeably impacted by the build-up of stockpiled waste around the site. In some cases it is clear that there has been direct damage to the lower trunk and root systems, where waste has been pushed or slipped from the edges of the site. Evidence of dead or dying trees in these areas is clear. The proposal would remove a number of these and others around the site during the remediation process.

⁸ paragraph 5.16

⁹ paragraph 5.17

¹⁰ paragraph 1.13

This would be unavoidable; but I am satisfied that the majority of the trees would be lost in any case as a result of the gradual creep of the waste site into the woodland.

38. Accordingly, while there may be areas where the boundary trees at the moment are providing screening of the waste site, were the site to remain in operation it is likely that these trees would be lost in any case. Such an event would open up views of a significantly more harmful use than housing. The proposal would also provide landscaping and significant additional tree planting while removing the direct and potential indirect effects leading to the existing visible impacts on trees around the site. Accordingly, I give little weight to the loss of these trees in terms of additional harm in my assessment of the effects.
39. The removal of trees in the revised arboricultural proposals also addressed the Council's previous concerns regarding the potential for further pressure for the pruning or removal of trees due to shading of the garden areas of some of the plots.
40. The existing activities associated with the site are not compatible with the character of the area, and while the visual impact of the Yard area may be limited, there is likely to be noise and activity, as well as direct visual impacts from the rather haphazard vehicle storage along the access and the movement of trucks to and from the site. Such effects may be exacerbated through increased use were the waste operation to be retained, although this would be dependent upon its future use.
41. Dealing with the access first, I note the appellant's contention that the positioning of the access was in response to the protection of identified veteran trees, notably oak and hornbeam along the existing access route. However, the Paddock presents a small and currently undeveloped area which, while not characteristic of the wider woodland setting, does have a value in providing a buffer to the waste site and a small area of open land within the general woodland setting. The access would cross and divide this area, with some limited loss of trees to the roadside edge.
42. However, no housing is proposed for the access route and with sensitive boundary treatment, I find any harm would be limited and must be set against the beneficial effects that will arise in relation to the veteran trees and the consolidation of the woodland at the point of the existing access.
43. In terms of the housing proposed, I note the concerns that this would read rather as an estate of houses as opposed to the more general character of individual dwellings set in large plots. However, this would still be a development of low density, and while gardens in some cases may be of limited depth, they would integrate into the woodland, if developed with sensitive boundary treatments, an approach that has been promoted by the appellant. The mews style housing would typically be read as a single large unit, such that overall I consider the proposed housing would assimilate into the Villas in Woodland character. Furthermore, while the rooftops of housing on the Mound may project above the tree line in longer views, the sight of roofs within the trees remains a relatively characteristic feature of the area.
44. Cross sections, indicative of both before and after remediation and redistribution of material across the site, indicate that there would remain parts of the development which would present steep slopes to the surrounding woodland.

However, I am satisfied that with suitable boundary treatment, such features, while somewhat anomalous with the gentler topography generally in the area, would be in areas outside of public access and would not be open to views from principle public viewpoints. The provision of adequate and sensitive boundary treatments in all of these cases can be addressed through the imposition of suitable conditions.

45. However, it must also be assessed whether the limited visibility of the proposed new housing in this area would compromise the role of the gap in maintaining separation between the towns of Ascot and Sunninghill. In principle, it would appear that the Council, and indeed the local Councillor, would accept that development of the Yard area, in replacing the waste operation, would be an acceptable new element in relation to protecting the gap. In terms of the waste operations being a non-compatible use within this semi-rural residential character, I concur.
46. There are no clear open views across the gap in this area; the woodland cover precludes this. Nonetheless there is also no visual built form connecting between Wells Lane and Coombe Lane, and a clear separation, in these terms, is retained when passing between the settlements along London Road.
47. The evidence given to the Inquiry strongly supports that the pre-2010 levels of the Mound, while established by waste deposits, are likely to remain if no development occurs. Under the proposal this material would be remediated but retained in part and capped such that overall levels would remain similar to those existing and partly discernible under the significant piles of waste currently being addressed under the Action Plan. The principle concern regarding impact on the defined gap is therefore the seasonal, filtered views through the trees of housing and of views of the rooftops of those houses extending onto the Mound.
48. Nonetheless, I consider that, although appreciated in only limited publically accessible viewpoints, there would be a slight diminution of the gap between settlements due to the extension of built form from Wells Lane towards Coombe Lane and its partly visible roofscape. The level of visibility undoubtedly limits this and I note that Policy NP/EN1 of the NP does not preclude development but requires that development should maintain the separation of the villages and accord with five criteria related to the landscape characteristics of the gap. In light of my findings above, I am satisfied that the proposal could comply with the criteria and many of the design guidelines set out in Policy DG1 of the Royal Borough of Windsor and Maidenhead Local Plan, adopted 2003 (the Local Plan). However, the NP policy still requires that the separation be maintained and to that extent the proposal would not comply.
49. I understand and have some sympathy for the appellant's argument that housing would be visually beneficial in comparison to the existing waste operation, and particularly when compared to potential increased activity in the future. Nonetheless, there would be some harm to the character of the area, insofar as housing on the Mound, which would not be further developed for waste operations, would lead to some loss of definition in the gap between settlements. I afford this moderate weight against the proposal.

Other considerations

50. Six considerations are put forward in favour of the proposal by the appellant. These are in part reliant on comparison to the effects of the existing use of the

site or indeed of an alternate, more intensive use were it to continue in operation as a waste transfer station. It would be beneficial to set out my own views on these in order to inform the assessment of these considerations I set out below.

51. The existing waste operation is commonly accepted to have developed in part through the unauthorised importation of mixed wastes for sorting and, since 2010, the authorised importation, separation and transfer of wastes to subsequent recycling or disposal and unauthorised importation and storage on the Mound. A properly run waste transfer station equipped with facilities that accord with those stipulated in an Environment Permit should have no material impact on the local environment. In this case, a permit is in place for the Yard, albeit suspended at present. In light of ongoing works, as evident under the Action Plan, it is a reasonable conclusion that the site could, subject to completion of all non-compliance matters as regard the Permit, re-open to accept waste beyond the limited metals recovery process that is currently underway.
52. I also have no reason to significantly question the findings of the appellant that in absence of restrictive or constraining planning conditions regarding hours of operation or traffic movements for example, that the site would be an attractive option for an operator looking to develop a transfer business. In which case importation volumes and separation and sorting on the site could increase significantly.
53. Therefore, while the existing, or even a more intensive, transfer operation should not result in direct impacts on the local environment in relation to pollution, there will still be visual impacts and levels of activity incompatible with the character of the area.
54. Evidence to the Inquiry would suggest that consolidated waste across the site may not be removed were the proposal before me not to go ahead. There are two potential effects from this, visual impacts, which I have dealt with above, and the risk of contaminating materials leaching from the site affecting the local habitat. There is clearly no active containment of the wastes on either the Mound or the edges of the Yard, and the history of the site bears out that there can be no certainty as to the nature of wastes deposited. That these waste stockpiles have led to direct effects on the woodland is clear. The appellant further argues that there is contamination from the site affecting the surrounding habitat.
55. That the Council were concerned about this is suggested in the response of their Environment Protection Officer¹¹, but at the Inquiry it was argued that there was no direct evidence, and that the appellant's own Ground Investigation Report¹² bore that out. The Report found potentially harmful levels of Boron, Zinc and Copper in the wastes, but concluded that uncertainty about exceedance levels, which relate primarily to agricultural crop yields, and the lack of signs of physical distress in trees around the site meant that further considerations of harm to plant life was not required.

¹¹ 23 October 2015

¹² CD 1.74 – Hydrock February 2015

56. This sits at odds with the later evidence provided by witnesses in support of the appellant, who identify a high percentage of trees in U category¹³, when compared to typical woodland habitat, and evidence of further impacts on other trees and plant species positioned away from the immediate edge of the site. The fact that further tree damage is highlighted in the later, more detailed survey, and indeed evident when on site, in comparison to the level of effect indicated in the Ground Investigation Report is suggestive that there is developing and ongoing harm to trees around the edge of the site.
57. While much of this can be ascribed to physical smothering as the waste has spread, on balance I consider that there is likely to be further effects arising from contaminants within the stored waste leaching into the surrounding habitat. I note that there were two surveys carried out by the Thames Valley Environmental Record Centre, which show some species present in the later survey that were not recorded in the earlier 1989 survey; possibly indicative of improving habitat. However, it would appear that the parameters of the two surveys were different and they findings do not concur with the detailed ecological surveys carried out as part of the application and appeal. I give any assumption of enhancement or lack of impact from comparison of the two surveys little weight in my assessment of the effect of leachates from the stored wastes around the site.
58. It is not possible, on the basis of the evidence before me, to quantify the level of this effect now and particularly not the potential for further damage. Nonetheless, continuation of the storage of waste whose source is relatively unknown and whose constituents cannot be fully analysed does represent a current and ongoing risk to the adjacent woodland habitat.

Cessation of Use

59. The former active use as a waste transfer station was not compatible with the character of the area; this use may begin again or even intensify. I accept that while there were complaints about the activities, since the Agency has taken steps against the operators and improved facilities provided these complaints have reduced considerably, and with careful ongoing management issues such as noise, dust and vibration should all be controllable, subject to the provision of suitable buildings and machinery. However, the importing and exporting of wastes in skip and HGV lorries would continue, and, as set out above, may increase. There are harms to both to the character of the area and the living conditions of existing occupiers associated with this, particularly in absence of planning controls on the site operation.
60. As a result, while I must set this against the harm from the proposal to the character of the area, due to the extension of housing onto the Mound and into the gap, there are other impacts that would be removed by the cessation of the existing waste operations and in particular, any more intensive use that may arise.
61. While the Council have accepted that the site is not a necessary component of their own waste strategy, this does not mean that its continued use would not be beneficial to the management of waste in this and neighbouring authorities. This reduces somewhat the benefits of ceasing operations here and I give this consideration moderate weight in favour of the proposal.

¹³ Trees found to be untenable in viable condition

Remediation

62. As set out above, I consider that there is some impact from the waste stored, beyond the immediate physical smothering of trees around the site. This is likely to remain or potentially increase as leachate comes from this uncontained waste storage with no immediate options presented to the Inquiry for resolution if this scheme were not to go ahead. The proposal includes the full remediation of the wastes stored on site, which will remove the direct and indirect harm currently to the Wet Woodland, a Priority Habitat, and LWS. I give this consideration significant weight in favour of the proposal.

Ecological Benefits

63. The revision to the proposal and removal of the balancing pond was accepted by the Council. When coupled with the proposed woodland management, they confirmed that they considered this to represent a benefit to the biodiversity around the site. The appellant identified the area to come under management as being 3.9 Hectares, the majority being part of the LWS.
64. I note the Council considered that existing harmful effects are localised to the site, and the overall benefit would therefore be limited. However, I consider that the benefits of remediation, landscaping and replanting along with the direct management of an area of woodland to which access would be restricted, would result in very significant benefits for local ecology. I find this to represent a consideration of significant weight in favour of the proposal.

Woodland Benefits

65. There were criticisms from the Council as regards the extent of the initial tree survey information provided. At the Inquiry, arboricultural evidence was submitted by the appellant that was accepted to address those concerns. However, this also highlighted the need for additional tree removal. I have addressed the visual impacts of such removal above but note the Council's ongoing concerns that this additional level of tree removal would limit the overall benefits of the scheme.
66. Notwithstanding this, I am satisfied that the removal of the ongoing physical and potential contamination impacts of the waste storage, coupled with the benefit of additional planting and direct management of the woodland, would result in significant benefits to the Priority Habitat. Furthermore there are direct benefits to the woodland currently crossed by the existing access and specifically to the veteran trees alongside that access. I therefore accord this consideration significant weight in favour of the proposal.

Visual Benefits

67. The existing site and associated activities do not enhance the appearance of the area here, and its ongoing use as a waste transfer station accepting potentially larger volumes of waste would further impact on the area. Proper management could address environmental risks from this operation, but visually the activities, particularly the traffic movements would be an ongoing detractor to the area generally. Further loss of trees to the edge of the site through smothering or contamination could lead to increased visibility of operations, which would further exacerbate these impacts.

68. The proposal, while resulting in a development which extends into the gap and where the houses would have smaller plots and a closer relationship than some parts of the immediate area, nonetheless would represent an improvement visually over the continued use and particularly any intensified use of the site as a waste transfer station. I afford this consideration moderate weight.

Provision of Housing

69. As set out above, the Council cannot demonstrate a five year HLS. The Council further accepted that to meet their needs they would be reviewing and redrawing Green Belt boundaries. They confirmed that this would result in the provision of housing on such land through their emerging development plan, due to the exceptional circumstances of need in this area.

70. The lack of a five year HLS rarely results on its own in a consideration of sufficient weight to represent the very special circumstances needed to allow inappropriate development in the Green Belt. However, in the situation before me, where a Council accepts they will have to develop on current Green Belt land and the site for development already represents a use which does not further the purposes of the inclusion of that site in the Green Belt, I consider that this represents substantial weight in favour of the proposal.

Very Special Circumstances

71. I have identified that substantial weight arises against the proposal as a result of it being inappropriate development in the Green Belt. In addition, I have identified moderate harm to the character of the area through diminution of the gap.

72. Against these harms I have identified moderate benefits arising from the proposal in relation to the cessation of the use and visual benefits, significant benefits relating to remediation of the site, the woodland and ecology and substantial benefits in relation to housing provision. I consider that these collectively represent benefits that would clearly outweigh the totality of the harm I have identified. These then represent the very special circumstances, as set out in the Framework¹⁴, sufficient to justify a proposal for inappropriate development in the Green Belt.

73. Such a finding is dependent on a number of matters of detail and approach, which themselves are dependent on the proper application of conditions and legal undertakings.

Legal Undertakings

74. The s106 Unilateral Undertaking submitted by the appellant would establish a Management Company responsible for the development. Included within the aims and objectives of this company would be the delivery of woodland management. The undertaking sets out a Framework Management Plan, which would provide the basis for a more detailed Woodland Management Plan, to be submitted for approval.

75. I have considered this in light of the Framework, paragraph 204, and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.

¹⁴ Paragraph 88

76. I note the Council's acceptance of these provisions and confirm that I am satisfied that the undertaking would result in provision of a Woodland Management Plan and Management Company that would lead to the positive ecological benefits set out as part of my assessment above. Such a requirement is necessary and complies with the requisite tests and is therefore a material consideration to which I can afford weight.
77. The s111 agreement, signed with the Council, sets out an approach to address impacts on the nearby Thames Basin Heaths SPA, as the proposal lies within a zone identified as having the potential for in-combination effects. In accordance with the Habitats Regulations, I am required to give consideration to such effects. The agreement includes SAMM¹⁵ and SANG¹⁶ contributions.
78. I have considered whether the proposed contributions are secure in absence of the statutory provisions set out in s106(3). I note that an effective chain of covenants is included, containing requirements on the owner to not make any disposal without procuring a further executed Deed of Covenant and inclusion of restrictions against the owners title at HM Land Registry. The Council are content that this results in the agreement being enforceable against successors in title; I concur.
79. The agreement ensures that the contributions would be spent on SANGs and SAMMs directly related to the development, specifically Allen's Field or a suitable alternative. I am therefore satisfied that any effects, either alone or in combination on the SPA would be effectively mitigated.

Conditions

80. I have considered the conditions put forward by the Council in the light of the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition (1), I have imposed a condition requiring compliance with the submitted plans (2) to provide certainty, although as a result of the agreed amendment to the scheme, this condition explicitly excludes those elements of the plans associated with the balancing pond.
81. To protect the character and appearance of the area, I have imposed conditions regarding materials (3 and 4), lighting (5), hard and soft landscaping (6), landscape management (7) and levels (8). While limited evidence has been put to me of archaeological features likely to be within the area, the appellant has accepted the need for a scheme of investigation and archaeological works and I have therefore imposed a relevant condition (9).
82. To secure suitable remediation of the site in the interest of the woodland and biodiversity, submission of a Remediation Scheme is both reasonable and necessary (10), and to secure the protection and enhancement of the biodiversity around the site I have imposed conditions for a construction environmental management plan (11) and a biodiversity enhancement plan (12). The potential for protected species was recorded in the ecological appraisal and detailed surveys carried out. I note the appraisal identified the need for a later check of a disused badger set and have therefore imposed a condition to carry out a walkover survey prior to development (13); specific measures for reptiles are also addressed (23). In light of the setting, particular control is needed over tree protection and conditions are imposed to address this (14 and 15).

¹⁵ Strategic Access Management and Monitoring

¹⁶ Suitable Alternative Natural Greenspace

83. To ensure traffic and parking does not lead to increased risk to highway safety I have required provision of the new access (16), controls on construction traffic (17) and the provision of visibility splays, appropriate parking and turning areas and refuse management (18, 19 and 20).
84. To ensure the proper provision of foul and surface water management, including specifically addressing the line of any sewer to be laid across the woodland and LWS, I have imposed relevant conditions (21 and 22). Finally, to protect the character of the area and assimilate the housing into the surrounding woodland, the appellant has identified that boundary treatments would comprise soft landscaping; I have therefore exceptionally withdrawn permitted development in relation to boundary features (24).
85. It is essential that the requirements of conditions 2 to 11 are agreed prior to development commencing to ensure an acceptable form of development in respect of the detailed design of the scheme, landscaping, archaeology and the protection and enhancement of biodiversity in and around the site. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusions

86. Following my finding as regards the Green Belt, I must consider the proposal against the presumption set out in paragraph 14 of the Framework, in light of the fact that specific policies within the Framework do not indicate that the proposal should be resisted. Having considered the adverse impacts of the proposal, I find that these would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework. Accordingly, I consider this to be sustainable development, which accords with the development plan as a whole.
87. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

SCHEDULE 1 : CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 2, except in respect of any detail associated with the balancing pond now removed from the scheme.
- 3) No development shall take place until samples of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
- 4) No development shall take place until samples and/or a specification of all the finishing materials to be used in any hard surfacing on the application site have been submitted to and approved in writing by the Local Planning Authority and thereafter undertaken in accordance with the approved scheme.
- 5) No development shall take place until a lighting strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy should detail how any negative impacts of lighting will be minimised including the type of lighting to be used, timing of lights, avoidance of light spillage and the use of directional lighting away from sensitive areas such as individual trees and woodlands. The lighting strategy once approved will be implemented as agreed and retained as such thereafter.
- 6) No development shall take place until full details of both hard and soft landscaping works, including a programme of works, have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved following the completion of the development and retained thereafter in accordance with the approved details.
 - i) Hard landscaping - These details shall include a detailed hard landscape specification and supporting plan(s) to a recognised scale illustrating the proposed positions, dimensions, materials and finished levels of: means of enclosures (embankments, fences, walls and gate piers, etc.); vehicular and pedestrian access, driveways, car parking and footpaths layouts; areas of hard standing; minor structures (sheds, refuse and storage areas etc.); existing and proposed overhead and underground utility services including associated structures (manhole covers, meters, access points, vertical supports etc); ditches, drains and other earthworks (land profiling, excavations/soil mounding etc). Where proposed hard surfaces/structures/ground levels etc. are to be altered within, or introduced into the root protection areas of retained on/off site trees, technical profile drawings will be required to support the hard landscape plan/specifications.
 - ii) Soft landscaping — These details shall include; A) a detailed soft landscaping plan to a recognised scale clearly illustrating the location of all plants, shrubs, trees to be planted and areas of turf to be laid; B) a detailed written soft landscape specification detailing the quantity, density, size, species, position and the proposed time or programme of planting of all trees, shrubs, plants, hedges and grasses etc. This specification shall include details of ground preparation/cultivation within and adjacent to root protection areas of retained on/off site trees, and

other operations associated with plant, tree, shrub, hedge and grass establishment.

If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its written consent to any variation.

- 7) No development shall take place until a landscape management plan for the site, including long-term design objectives, management responsibilities and maintenance schedules for a minimum period of 5 years from completion of the scheme has been submitted to and approved in writing by the Local Planning Authority. The plan shall cover any areas of existing landscaping, including trees and all areas of proposed landscaping other than private domestic gardens, and shall be implemented in accordance with the approved details.
- 8) No development shall take place until a scheme detailing Finished Floor Levels (FFL) has been submitted to and approved in writing by the Local Planning Authority. The FFL shall be in accordance with and no higher than those shown on the approved plan 4870.407 (Drainage Strategy). The development shall be carried out in accordance with the approved levels.
- 9) No development shall take place within the application area until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority.
- 10) No development shall take place until a Remediation Scheme has been submitted to and approved in writing by the Local Planning Authority. The Remediation Scheme shall accord with those measures set out in the Hydrock Ground Investigation Report, dated February 2015. The development shall be carried out in full accordance with the approved scheme prior to occupation of any of the houses hereby permitted.
- 11) No development shall take place (including ground works and vegetation clearance) until a construction environmental management plan (CEMP Biodiversity) has been submitted to and approved by the local planning authority. The CEMP (Biodiversity) shall include the following:
 - i) Risk assessment of potentially damaging construction activities;
 - ii) identification of biodiversity protection zones;
 - iii) practical measures (both physical and sensitive working practices) to avoid or reduce impacts during construction;
 - iv) the location and timing of sensitive works to avoid harm to biodiversity;
 - v) the times during development when specialist ecologists need to be present on site to oversee works (specifically in relation to, reptiles, badgers and breeding birds);
 - vi) the role and responsibilities on site of an ecological clerk of works or similarly competent person;
 - vii) use of protective fenced, exclusion barriers and warning signs;

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 12) Prior to the commencement of any works of demolition or construction a Biodiversity Enhancement Plan shall be submitted to and approved in writing by the Local Planning Authority. The Biodiversity Enhancement Plan will include full details of all ecological enhancements to be provided as part of the development. The enhancement will be carried out as approved and retained as such thereafter.
- 13) Prior to the commencement of any works of demolition or construction the entire site and a 30m buffer around the site will be subject to a walkover survey to check for evidence of badgers. The results of the walkover survey for badgers and appropriate mitigation, if required, should be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development on site. Any mitigation, if required, shall be implemented in accordance with the approved details.
- 14) Prior to the commencement of any works of demolition or construction a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 15) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the housing permitted, other than in accordance with the approved plans, without the prior written approval of the local planning authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 16) Prior to the commencement of any works of demolition, construction or remediation the access shall have been constructed in accordance with the approved plans. The access shall thereafter be retained.
- 17) Prior to the commencement of any works of demolition, construction or remediation a management plan showing how remediation, demolition and construction traffic, (including cranes), materials storage, facilities for operatives and vehicle parking and manoeuvring will be accommodated during the works period shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved and retained for the duration of the works.
- 18) Prior to the commencement of any works of demolition, construction or remediation, visibility splays to the right of 2.4 metres by 40m to the junction with the A329 London Rd will be provided at the access road; the existing left visibility splay will be maintained. All dimensions are to be measured along the edge of the driveway and the back of footway / verge from their point of intersection. The areas within these splays shall be kept free of all obstructions to visibility over a height of 0.6 metres above carriageway level.

- 19) No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with a layout that has first been submitted to and approved in writing by the Local Planning Authority. The space approved shall be kept available for parking and turning in association with the development.
- 20) No part of the development shall be occupied until a refuse management plan has been submitted to and approved in writing by the Local Planning Authority. The approved refuse management plan shall then be implemented and retained for the duration of the development.
- 21) No part of the development shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
 - i) Drawings indicating full details of all components of the proposed drainage system, including dimensions, locations, gradients, invert and cover levels;
 - ii) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters, demonstrating the limiting discharge from the system to adjoining watercourses of 5.9 litres/second;
 - iii) include a timetable for its implementation; and,
 - iv) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 22) No part of the development shall be occupied until works for the disposal of sewage shall have been provided to serve the development hereby permitted. Development will be carried out in accordance with details, including full details of the proposed line of the sewer through the woodland, that have first been submitted to and approved in writing by the local planning authority.
- 23) The development shall be carried out in accordance with the mitigation and habitat management for reptiles detailed within the RPS Reptile Report (August 2015) which includes habitat clearance under ecological watching brief, timing of works to avoid sensitive periods for reptiles, grassland management and creation of hibernacula and log piles.
- 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected on the boundaries of any dwellinghouse other than those expressly authorised by this permission.

SCHEDULE 2 : PLANS

Drawing Number	Date	Description
A-L-010	12/7/15	Location
A-L-050	12/7/15	Existing Site Plan
A-L-100A	12/7/15	Proposed Site plan
A-L-101	14/8/15	Ground Floor Mews
A-L-102A	14/8/15	1 st Floor Mews
A-L-103	14/8/15	2 nd Floor Mews
A-L-104	14/8/15	Roof Mews
A-L-105A	14/8/15	Ground Floor Type A
A-L-106B	14/8/15	1 st Floor Type A
A-L-107A	14/8/15	2 nd Floor Type A
A-L-108A	14/8/15	Roof Type A
A-L-109A	14/8/15	Ground Floor Type B
A-L-110B	14/8/15	1 st Floor Type B
A-L-111A	14/8/15	2 nd Floor Type B
A-L-112A	14/8/15	Roof Type B
A-L-113B	14/8/15	Ground Floor Type C
A-L-114B	14/8/15	1 st Floor Type C
A-L-115B	14/8/15	2 nd Floor Type C
A-L-116A	14/8/15	Roof Type C
A-L-117B	14/8/15	Ground Floor Plot 7
A-L-118B	14/8/15	1 st Floor Plot 7
A-L-119A	14/8/15	2 nd Floor Plot 7
A-L-120	14/8/15	Roof Plot 7
A-L-200A	14/8/15	Front Elevation Mews
A-L-201	14/8/15	Rear Elevation Mews
A-L-202	14/8/15	Side 1 Mews
A-L-203B	14/8/15	Side 2 Mews
A-L-204B	14/8/15	Front Elevation Type A
A-L-205B	14/8/15	Rear Elevation Type A
A-L-206A	14/8/15	Side 1 Type A
A-L-207A	14/8/15	Side 2 Type A
A-L-208A	14/8/15	Front Elevation Type B
A-L-209A	14/8/15	Rear Elevation Type B
A-L-210A	14/8/15	Side 1 Type B
A-L-211B	14/8/15	Side 2 Type B
A-L-212A	14/8/15	Front Elevation Type C
A-L-213A	14/8/15	Rear Elevation Type C
A-L-214	14/8/15	Side 1 Type C
A-L-215B	14/8/15	Side 2 Type C
A-L-216B	14/8/15	Front Elevation Plot 7
A-L-217B	14/8/15	Rear Elevation Plot 7
A-L-218	14/8/15	Side 1 Plot 7
A-L-219C	14/8/15	Side 2 Plot 7
A-L-300	12/7/15	Mews Section A-A
A-L-301	12/7/15	Type A Section A-A
A-L-302	12/7/15	Type B Section C-C
A-L-303	12/7/15	Type C Section D-D
A-L-304	12/7/15	Plot 7 Section E-E

LL502-000-001 A	19/4/17	General Landscape Plan
LL502-000-002	13/8/15	Context Plan
LL502-000-004	13/8/15	Context Plan
LL502-000-005	13/8/15	Tree Constraints
LL502-000-006	13/8/15	Area Quantification
LL502-000-109	13/8/15	Section A-B
LL502-000-110	13/8/15	Section C-D
LL502-000-112	13/8/15	Section G-H
LL502-000-1301	13/8/15	Plot Sizes
LL502-000-1302	13/8/15	Drainage Areas
4870.407	Apr 17	Drainage Strategy

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Smith of Counsel	Instructed by Lyndsay Jennings Legal Department RBWM
He called:	
Antonia Liu BSc(Hons) MSc MRTPI	Principle Planning Officer RBWM
Paul Cross Tech Cert, M.Arbor.A, BSc(Hons), HND LAM, ND CRM	Arboricultural Officer RBWM
Rebecca Anderson BSc(Hons), MSc, MCIEEM	Ecologist RBWM

FOR THE APPELLANT:

Sasha White QC	Instructed by Mathew Stimson, Shoosmiths LLB
He called:	
Julian Forbes-Laird BA(Hons), MICFor, MRICS, MEWI, M.Arbor.A, Dip,Arb (RFS)	Arboricultural Consultant FLAC
Alistair Baxter BA(Hons), MA(Oxon), MSc, CEcol, CEnv, MCIEEM	Ecological Consultant Aspect Ecology
Clare Brockhurst FLI, BSc(Hons), Dip LA	Landscape Consultant Tyler Grange
Douglas Bond BA(Hons), MRTPI	Planning Consultant Woolf Bond Planning

INTERESTED PERSONS:

Councillor David Hilton	Ward Councillor for Ascot and Cheapside
Patrick Griffin	Local Resident and representative of Society for Protection of Ascot and Environs (SPAЕ)

DOCUMENTS

In addition to the Core Documents submitted in Volumes 1-4, the following Inquiry documents were submitted:

- INQ1 Comparative plot size ratio study
- INQ2 Photo/Plan of affected vegetation in woodland
- INQ3 Opening statement – Appellant
- INQ4 Opening Statement – Council
- INQ5 Court of Appeal decision C1/2010/2405
- INQ6 Secretary of State decision APP/K0425/W/16/3149747
- INQ7 Topographical Site Survey
- INQ8 Draft s106 Unilateral Undertaking
- INQ9 Draft s111 Agreement
- INQ10 Letter – Schyde Investments, dated 24 July 2017
- INQ11 Statement – Councillor Hilton
- INQ12 Letter - SPAE dated 6 August 2017
- INQ13 Revised Table 1
- INQ14 Extract of Viability Statement
- INQ15 Suggested conditions
- INQ16 Closing statement – Council
- INQ17 Drainage Plan – 4870.407
- INQ18 Closing statement - Appellant