



Appeal Decision

Site visit made on 10 January 2023

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/T0355/W/21/3289347

Storage Land formerly known as Waste Transfer Station, Kimbers Lane, Maidenhead, SL6 2QP.

- 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 John Horwood Skips against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application, Ref 16/03056, dated 15 September 2016, was refused by notice dated 24 June 2021.
 - The development proposed is: Expansion of existing permitted capacity at Kimbers Lane from 5,000 tonnes per annum of inert waste to 25,000 tonnes per annum of inert, household, commercial and industrial waste, and the erection of a waste transfer building, office building, weighbridge and surrounding bund.
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Decision

1. The appeal is allowed and planning permission is granted for: Expansion of existing permitted capacity at Kimbers Lane from 5,000 tonnes per annum of inert waste to 25,000 tonnes per annum of inert, household, commercial and industrial waste, and the erection of a waste transfer building, office building, weighbridge and surrounding bund, at Storage Land formerly known as Waste Transfer Station, Kimbers Lane, Maidenhead, SL6 2QP, in accordance with the terms of the application, Ref 16/03056, dated 15 September 2016, subject to the conditions set out in the Schedule appended to this Decision.

Application for Costs

2. An application for costs was made by John Horwood Skips against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. The original description of the proposed development was amended before the application was refused by the Council and the site address and description of the development set out above are taken from the appeal form and decision notice with the additional amendment to clarify that the stated tonnages are per annum, as indicated in the written representations.
4. The application was refused in June 2021 with reference to policies of the former Borough Local Plan (BLP) of 1999 and contrary to an officer recommendation for approval. However, this appeal is determined on an entirely fresh and independent assessment of all factors for and against the

proposed development with reference to relevant policies of the BLP 2013-2033, subsequently adopted in February 2022.

5. At the time the appeal was made, the Central and Eastern Berkshire Joint Minerals and Waste Plan (JMWP) was under examination and has since been adopted. In view of this material change in prevailing adopted policy since the date of the appeal, the Council, at my request, provided a waste policy update and I take this into account, together with the comments of the Appellants upon it.
6. The Council put forward without prejudice a schedule of suggested planning conditions which the Appellants have reviewed and raised no specific comment. These suggested conditions are taken into account in the appraisal below.

Description

7. The main part of the appeal site of some 0.72ha is reached via an access track about 324m long running south east from Kimbers Lane alongside the A404(M). Kimbers Lane is stopped off at the A404(M) and access to the site is from the north east via Kimbers Lane and Harvest Hill Road. The operational area is thus separated from Kimbers Lane and residential properties fronting it and is situated close to the junction of the A404(M) and the A308(M).
8. The site enjoys extant permanent planning permission for the processing of 5,000 tonnes per annum of inert waste and is protected as a waste transfer station by the development plan. There are no buildings on the site. The site is largely enclosed by fencing and already surrounded a bund, save for about half of the north boundary. There are trees mainly around the periphery of the site, some of which are subject to protection by Tree Preservation Order (TPO).
9. The 546sqm, 12.76m high waste transfer building encompassing the tipping bay would be erected at the south eastern end of the site. Five HGV parking spaces would be located close to the north east boundary and the office and other facilities would be placed along the south west boundary. There would be three car parking spaces for staff near the site entrance at the south eastern end of the access. There would be open topsoil storage on the northern part of the site. The screen bund would be completed along the north eastern boundary.
10. The development would include off-site highway works to create a vehicle passing bay at a narrow point on Kimbers Lane close to its junction with Harvest Hill Road. A vehicle passing bay would also be constructed part way along the access lane, within the appeal site boundary. These facilities would be secured by agreed planning conditions and an agreement under Section 78 of the Highways Act.
11. The appeal site is immediately adjacent to Allocated Site AL13 of the Borough Local Plan, Desborough, Harvest Hill Road, for development of approximately 2,600 homes with schools and other community facilities. Allocation AL14 for strategic employment lies close by to the south east.

Planning Policy

12. The application was refused with reference to policies now replaced by the Royal Borough of Windsor and Maidenhead Local Plan 2013-2033 adopted in February 2022 (BLP). The first reason for refusal stated that the site was within

the Green Belt (GB) but that is no longer the case, following the revision of the GB boundary in the newly adopted BLP. Accordingly, the Council no longer pursues its objection on GB grounds within its first reason for refusal.

13. Policy IF2 of the BLP 2013-2033 of February 2022, regarding Sustainable Transport, refers to the Transport Strategy of the Local Transport Plan and states that development should help to create a safe and comfortable environment for pedestrians and cyclists, optimise traffic flows and circulation and minimise negative environmental impacts of travel including congestion, air pollution and noise. Policy IF2 is essentially consistent with the National Planning Policy Framework (NPPF) and the National Planning Policy for Waste (NPPF). However, at paragraph 111 the NPPF makes provides that development should only be refused if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
14. Policy DM9 of the JMWP, Protecting Health, Safety and Amenity, limits waste development to where it would not generate unacceptable adverse impacts on the health, safety and amenity of local communities and the environment and would not cause unacceptable impact on public strategic infrastructure. JMWP Policy DM12, Sustainable Transport Movements, permits waste development where good connectivity for the movement of minerals and waste can be demonstrated, requires demonstration that the movement of waste outside the site will not be detrimental to road safety and the highway network, and provides for highway improvements and routeing agreements to mitigate impacts.

Main Issue

15. The main issue in this appeal is the potential effect on traffic flows, highway safety and residential amenity due to additional heavy goods vehicle (HGV) traffic over and above that already generated by the existing protected waste development at the site. It is also necessary to consider a range of other environmental matters and planning benefits.

Reasons

Traffic and Highways

16. It is not disputed that the use of the appeal site as now proposed would generate between 30 and 50 movements by HGVs per day, about three to five per hour. That is compared with a current level of six to eight HGV movements per day, along the access route via Harvest Hill Road and Kimbers Lane.
17. Harvest Hill Road is identified as the main vehicle access to the new Desborough residential area. It is established that this is also the only feasible option for HGV access to the appeal development. The residential development alone is likely to generate traffic flows in the order of 11,000 vehicle movements per day.
18. Clearly, there is some potential for conflict between the increased HGV traffic to and from the appeal site and the increased traffic on Harvest Hill Road due to the Desborough development. If the risk of such adverse impact were to prove substantial, the proposed development would be in conflict with Policies IF2 and DM12, as well as the NPPF and NPPW. As is made clear in the

judgment in the case of *Satnam Millenium*¹, cited by the Council, there should be clear highway evidence that does not leave substantial risk that adverse impacts would occur.

19. The Traffic Assessments submitted by the Appellants dwell upon a comparison between an existing waste site at Green Lane and the proposed increase in the use of the appeal site. They make no attempt to quantify the existing and likely future traffic flows along Harvest Hill Road or the effect of the HGV movements that would be added to it by the development.
20. The assessments do, however, detail the varying width of Kimbers Lane between 3.4m and 5.5m, with most of the Lane being 5.5m wide, sufficient for two HGVs to pass each other. Three short sections are between 5.2m and 5.5m wide, sufficient for a car to pass a HGV. One 90m section close to the junction with Harvest Hill Road is below 4.8m wide. Here it is proposed that the passing bay be constructed as part of the development under a Section 78 agreement, secured by agreed Condition 3.
21. From inspection, Harvest Hill Road is a substantial two-lane highway which, in present circumstances, is evidently capable of accommodating the additional HGV movements that would arise from the development proposed in this appeal. Clearly, traffic flows on Harvest Hill Road are likely to increase substantially as the Desborough allocation is developed. However, that development will be of such a scale that highway improvements may be required to ensure that the local road network can accommodate the increased flows. By comparison, the number of HGVs associated with the appeal site would amount to a small percentage of the total traffic.
22. I therefore consider that Harvest Hill Road and the wider highway network are capable of accommodating the additional traffic generated by the appeal development in current circumstances and into the future.
23. With respect to Kimbers Lane itself, it is evident that the average three to five HGV movement per hour of the working day would not cause undue traffic delay or conflict, save over the narrow section close to Harvest Hill Road where dangerous reversing manoeuvres might occur if a HGV were to meet another vehicle head-on. However, that eventuality would be avoided by the construction of a passing bay, as proposed to the evident satisfaction of the highway authority.
24. Given that traffic flows on the partially residential Kimbers Lane cul-de-sac would be quite low, I would be more concerned about the effects of HGVs on amenity in terms of inconvenience or impact on highway verges. However, as most of the Lane is wide enough for vehicles to pass within the width of the carriageway and the dwellings are relatively well set back, I find no substantive objection in this respect.
25. As to a HGV routeing agreement sought by the Council to protect minor roads that could be used by additional HGVs travelling to or from the appeal site, I consider that such a measure could in principle be secured by way of a negative pre-commencement planning condition, as practiced elsewhere. However, the appeal operations would be of relatively small scale, limited in extent by other conditions, and no such routeing agreement was recommended

¹ *Satnam Millenium Ltd v SSHCLG* [2019] EWHC 2631 (Admin)

by the Highway Authority. In the circumstances, I do not consider such a condition or agreement to be necessary in this case.

26. I consider that the highway evidence is clear that there is no substantial risk of adverse impacts due to the additional traffic that would be generated by the development now proposed. Accordingly, I find that the proposed development would be in compliance with Policies IF2, DM9 and DM12, the NPPF and NPPW with respect its effects on traffic flows, and highway safety.

Other Matters and Planning Conditions

Waste Treatment Capacity Shortfall

27. It is beyond dispute that there is a shortfall in treatment capacity for inert, household, commercial and industrial waste in the Borough. Therefore, the benefit of an additional 20,000 tonnes per annum of treatment capacity that would be provided by the proposed development represents a benefit of substantial weight in this appeal,

Visual Impact

28. The appeal site is already in established and protected use for waste treatment and would be visually improved by the completion of the screening bund as proposed. However, the substantial waste transfer building would rise above the height of the bund and boundary vegetation and would be visible from the surrounding area as a discordant feature. Even though the semi-rural surroundings are not subject to any protective landscape designation, the development overall, including the increased HGV movements along the access track, would have an adverse visual impact of moderate weight, contrary to Policy DM9, to be taken into account.

General Amenity

29. I recognise concerns regarding noise, odour, litter or health issues associated with the proposed increased use of the site for waste processing.
30. However, the permitted inert and non-hazardous waste to be processed would not be expected to pose any threat of odour or harm to human health, given the site would be subject also to public health regulation under separate legislation. Further, agreed Condition 5 would secure appropriate storage measures to prevent emissions of odour, dust or litter.
31. A submitted noise assessment shows that, during the working day, there is a high background noise level due largely to the adjacent main road and that this is well in excess of the predicted sound levels likely to be experienced due to the proposed development. Agreed Condition 4 would ensure that site operations would be restricted to 07.30 to 18.00 hours on weekdays and 08.00 to 12.00 hours on Saturdays.
32. Much of the waste processing would be carried out inside the proposed waste transfer building and the site is itself enclosed by its bund and is comparatively well-separated from residential property on Kimbers Lane and elsewhere. Overall therefore, I do not consider that the proposed increase in the processing capacity of the appeal site would cause any significant harm with respect to general amenity. As for future housing development within the Desborough allocation, the site bund would obviate impact on privacy and the

layout and design of that future development would necessarily take account of the protected waste use of the appeal site, along with all other adjacent land uses.

33. With those conditions in place, I consider that the development would comply with Policy DM9 regarding general amenity.

Parking

34. Based upon the scale and nature of the appeal operation, the proposed five HGV and three car parking spaces, without cycle parking, are considered adequate by the Council and I see no reason to disagree with that assessment.

Trees and Ecology

35. A submitted arboricultural assessment shows that construction of the proposed on-site passing bay along the access track would remove a small group of hawthorns of low quality. The completion of the boundary bund would affect the root protection areas of some protected boundary trees, including butterfly bush species of hawthorn, blackthorn and pedunculate oak. These are also categorised as low quality. The proposed office building would also be within a root protection area of a group of maple, hazel, hawthorn, ash, elder and elm, again of low quality.
36. The office would be raised off the ground and construction techniques could be employed that would to minimise root damage. These, and any necessary replacement planting, would be secured by agreed Conditions 9 and 10.
37. Natural England submits that the proposed development would not damage any designated nature conservation site. Submitted ecology reports note the potential presence, along the existing screen bund, of reptiles and amphibians, including protected great crested newts, nesting birds, hedgehogs and badgers, as well as foraging and commuting bats. Subject to the implementation of a construction environmental management plan (CEMP), secured by agreed Condition 16, there is no evidence that these species would be unacceptably affected where the existing bund would remain undisturbed. Where trees or their root areas would be affected, the CEMP would ensure appropriate mitigation and monitoring.
38. Based on this evidence, I consider that the effect of the development on trees and ecology would be neutral overall, albeit with no provision for any biodiversity net gain, the latter strictly counting against the appeal.

Other Conditions

39. As well as the conditions mentioned above, a range of other conditions are necessary to control the effects of the development, as set out in the appended Schedule and for the reasons there stated. In short, these state the approved maximum annual waste treatment amount of 25,000 tonnes (Condition 2); require bunding to any oil or chemical storage area and prevent water pollution (6, 7); protect retained trees (8); control site levels, building finishes and weighbridge details (11-13); secure proper drainage (14); require an archaeological investigation (15); control external lighting (17); and require compliance with the approved plans (18).

Conclusions

40. On the main issue of traffic and highway safety and the amenity effect of HGVs on Kimbers Lane I have found that the proposed development would comply with the relevant development plan policies and that, with respect general amenity, parking, trees and ecology the effects of the development would neutral or insignificant.
41. I have found some harm due to visual impact that carries moderate planning weight and that the lack of any biodiversity net gain also weighs against the appeal.
42. However, the benefit of an additional 20,000 tonnes of waste processing capacity in the face of an acknowledged shortfall carries substantial weight in favour of the proposal.
43. On a simple planning balance, it is my overall judgement that the material benefit of the proposed development would outweigh any planning harm. If the tilted balance of the NPPF is applied in the manner of the Council and the Appellants, it is clear that the benefit would significantly and demonstrably outweigh the harms in the absence of any particular restrictive policies of the NPPF applying.
44. For these reasons, and having taken into account every matter raised in the written representations, I conclude that, subject to the agreed conditions, this appeal should succeed.

B J Sims

Inspector

APPENDIX

SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall be commenced within three years from the date of this permission.

Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. Waste accepted at the site shall not exceed 25,000 tonnes per calendar year. A date log shall be kept of the number of Heavy Goods Vehicles importing waste to the site. The date log shall be provided to the Local Planning Authority within one month of a written request from the Local Planning Authority.

Reason: To ensure that the development is in accordance with the application details and in the interest of protecting the amenities of nearby residents.

3. Prior to the commencement of development hereby approved, a Agreement pursuant to Section 278 of the Highways Act 1980 shall be completed for the construction of a passing bay on Kimbers Lane, and the full details of the passing bay submitted to the Local Planning Authority. The development hereby approved shall not be brought into use until the passing bay on Kimbers Lane has been constructed as approved.

*Reason: In the interests of highway safety and the free flow of traffic.
Relevant Policy – Borough Local Plan Policy IF2*

4. No HGVs or lorries shall enter or leave the site and no waste operations shall be undertaken within the site except between the following hours: Monday to Friday 07:30 to 18.00; Saturday 08:00 to 12.00. No HGVs or lorries shall enter or leave the site and no waste operations shall be undertaken outside these hours or on Public and Bank Holidays

Reason: To ensure that the development is in accordance with the application details and to minimise unacceptable environmental and amenity impacts.

5. Prior to the implementation of the development hereby approved, measures for the control of odours and dust emissions from site operations and a complaints procedure setting out how the operator will record, address and respond to complaints from local residents relating to environmental matters including odours and dust shall be submitted to and agreed in writing by the Local Planning Authority. The approved control measures and complaints procedure shall thereafter be implemented and maintained.

Reason: To protect the residential amenity of the area and for the prevention of nuisance to the occupiers of dwellings in the vicinity by

reason of odour and related nuisance and to accord with the Borough Local Plan Policy EP1.

6. Any oil or chemical storage tanks shall be surrounded by an impervious oil or watertight bund. The volume of the bund shall be at least 10 percent greater than the capacity of the largest tank or the combined capacity of interconnected tanks plus 10 percent. At filling points, vents, gauges and site glasses shall be located within the bund. The drainage system to the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To prevent pollution of the environment and to accord with the Borough Local Plan Policy EP1.

7. Prior to the first use of the development hereby approved, details of mitigation measures to prevent pollution of controlled waters from operations at the site including surface and groundwater through either direct or diffused pollution pathways shall be submitted to and approved in writing by the Local Planning Authority. The mitigation measures approved shall be implemented and maintained thereafter.

Reason: To prevent pollution of controlled waters. Relevant Policy – Borough Local Plan Policy EP1.

8. Prior to any equipment, machinery or materials being brought onto the site relating to the construction of the development hereby permitted, details of the measures to protect, during construction, the trees shown to be retained on the approved plans, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include but not limited to:

measures to protect existing trees and hedges during construction, demolition, and delivery of materials/machinery, including a Tree Protection Plan;

details of construction and installation methodologies for operations within root protection areas or operations that may impact on retained trees, including specification of no-dig operations and extent of the areas where no-dig operations are to be used;

location and installation of services, utilities and drainage;

all arboricultural site monitoring and supervision required for the duration of the development, and

fencing in accordance with British Standard 5837.

These measures shall be implemented in accordance with the approved details and maintained until all construction work has been completed and all equipment, machinery and surplus materials have been permanently removed from the site.

Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Reason: To protect trees which contribute to the visual amenity of the site and surrounding area. Relevant Policies - Borough Local Plan Policy NR3.

9. Details of tree and hedgerow planting to mitigate the effect of the removal of the trees and hedgerow as shown on drawing Ref D8525.002 within the Arboricultural Impact Assessment, dated April 2021, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include but are not limited to the number, species, size and location of the replacement trees. The trees must be planted within the first planting season from the removal of the original tree. If the replacement tree should die, is found dying or becomes diseased within 3 years of being planted, it must be replaced.

Reason: To ensure the continuation of the tree cover in the locality.

10. No tree or hedgerow shown to be retained on the approved plans shall be cut down, uprooted or destroyed, nor shall any retained tree be lopped or topped other than in accordance with the approved plans and particulars or until five years from the date of occupation of the building for its permitted use. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 Tree work. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted in the immediate vicinity and that tree shall be of the same size and species unless the Local Planning Authority give its prior written consent to any variation.

Reason: In the interests of the visual amenity of the area. Relevant Borough Local Plan Policies – QP3 and NR3.

11. Prior to the commencement of development hereby approved, details of proposed site levels in relation to existing ground level shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include the proposed final external site levels and proposed grading and mounding, indicating the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall be carried out in accordance with the approved details and the landform created retained thereafter..

Reason: In the interest of the visual amenities of the area. Relevant Borough Local Plan Policy – QP3.

12. The materials to be used on the external surfaces of the buildings hereby approved shall be in accordance with those specified in the application unless any different materials are first agreed in writing by the Local Planning Authority.

Reason: In the interests of the visual amenities of the area. Relevant Borough Local Plan Policy – QP3.

13. The weighbridge hereby approved shall be no larger than 4m in width, 15.8m in length and 0.4m in height above ground level.

Reason: To ensure that the development is in accordance with the application details.

14. Prior to the implementation of the development hereby approved, the surface water drainage system shall be completed in accordance with approved drawings Refs: L2486-DR-D-0921 P.04 and L2486-DR-D-0931 P.01, and details of the maintenance arrangements relating to the surface water drainage system, including confirmation of a maintenance regime and responsibility for maintenance shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage system shall be maintained in accordance with the approved details thereafter.

Reason: To ensure compliance with the National Planning Policy Framework and the Non-Statutory Technical Standards for Sustainable Drainage Systems, and to ensure the proposed development is safe from flooding and does not increase flood risk elsewhere.

15. Prior to the implementation of the development hereby approved, a written scheme of investigation securing a programme of archaeological works shall be submitted to and approved by the Local Planning Authority and the development shall be carried out in accordance with the approved scheme.

Reason: To ensure the mitigation of any impacts upon buried archaeological remains.

16. No development hereby approved shall take place (including demolition, groundworks, and vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing 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 measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements, including pre-commencement surveys for badgers);
- iv the location and timing of sensitive works to avoid harm to biodiversity features;
- v the times during construction when specialist ecologists need to be present on site to oversee works;
- vi responsible persons and lines of communication;
- vii the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- viii use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly by the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To minimise impacts on biodiversity.

17. No external lighting shall be installed until a report detailing the lighting scheme and how this will not adversely impact wildlife has been submitted to and approved in writing by the Local Planning Authority. The report shall include the following figures and appendices:

a layout plan with beam orientation;

a schedule of equipment;

measures to avoid glare;

an isolux contour map showing light spillage to 1 lux both vertically and horizontally and areas identified as being of ecological importance; and

hours of operation of any external lighting.

The lighting plan shall thereafter be implemented as approved.

Reason: To ensure that wildlife is not adversely affected by the proposed development.

18. The development hereby permitted shall be carried out in accordance with the following approved plans:

FE173/001	08-04-2020	Site Location
FE173/002/C	01-04-2021	Plan and Section Proposed
FE173/003/A	11-09-2020	Waste Transfer Building
FE173/005	11-08-2020	Vehicle Track and Passing Bay
FE173/006	14-01-2021	Site Office

Reason: To ensure that the development is carried out by the approved particulars and plans.