



Appeal Decisions

Site visit made on 29 October 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2025

Appeal A Ref: APP/M1005/W/24/3340773

Land to the west of Denby Hall Business Park, Derby Road, Denby DE5 8JY (National Grid Ref: Easting 438856, Northing 347601)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Garner Holdings Ltd against the decision of Amber Valley Borough Council.
- The application reference is AVA/2022/0240.
- The development proposed is the creation of a surface water attenuation pond.

Appeal B Ref: APP/M1005/W/24/3340778

Land to the west of Denby Hall Business Park, Derby Road, Denby DE5 8JY (National Grid Ref: Easting 438856, Northing 347601)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Garner Holdings Ltd against the decision of Amber Valley Borough Council.
- The application reference is AVA/2023/0202.
- The development proposed is the creation of landscaped bunds in connection with approved scheme for 3 new B1/B2/B8 use units.

Decision – Appeal A

1. The appeal is allowed and planning permission is granted for the creation of a surface water attenuation pond at Land to the west of Denby Hall Business Park, Derby Road, Denby DE5 8JY (National Grid Ref: Easting 438856, Northing 347601) in accordance with the terms of the application, reference AVA/2022/0240, subject to the conditions in Schedule 1.

Decision – Appeal B

2. The appeal is allowed and planning permission is granted for the creation of landscaped bunds in connection with approved scheme for 3 new B1/B2/B8 use units at Land to the west of Denby Hall Business Park, Derby Road, Denby DE5 8JY (National Grid Ref: Easting 438856, Northing 347601) in accordance with the terms of the application, reference AVA/2023/0202, subject to the conditions in Schedule 2.

Applications for costs

3. For both appeals, applications for costs were made by Garner Holdings Ltd against Amber Valley Borough Council. These applications are the subject of separate Decisions.

Preliminary and Procedural Matters

4. In September 2021 outline planning permission was granted on appeal for an extension to Denby Hall Business Park ("the business park extension"), comprising new units within Use Classes B1, B2 and B8, on land within the Green Belt¹. Various reserved matters applications have subsequently been made and approved.
5. These two appeals relate to further applications for planning permission for a surface water attenuation pond (Appeal A) and landscaped bunds (Appeal B) on land west of the units approved by the September 2021 permission. The Council refused planning permission for the two schemes in February 2024, giving the same reason in both cases:

"The proposal does not constitute a form of appropriate development within the green belt since it does not preserve its openness, by virtue of its siting, appearance and scale. No Very Special Circumstances have been demonstrated within the application to outweigh the harm. The proposal is therefore contrary to paragraph 155 of the National Planning Policy, which seeks only to allow 'appropriate' development in the Green Belt."

6. While I have of course considered each proposal on its own merits, the issues in the two appeals are essentially the same and, in order to avoid duplication, I have dealt with them together except where stated otherwise. Similarly, the "red line" boundary for the Appeal A scheme encompasses only a small part of the much larger Appeal B site, but for simplicity's sake I have used the singular "appeal site" here.
7. I have also been appointed to determine a third appeal relating to Denby Hall Business Park, in respect of a vehicle parking facility. However, that relates to a discrete site at the north-eastern edge of the business park and I have therefore dealt with that scheme in a separate Decision².
8. In December 2024 the Government published a revised National Planning Policy Framework ("the Framework"), replacing the December 2023 version extant at the time the planning applications were determined. However, while this made considerable changes to national Green Belt planning policy, the specific provisions most relevant to these appeals were not altered significantly. As a result I consider that there is no requirement for me to seek further submissions on this matter; I am satisfied that neither main party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the December 2024 version.

Main Issue

9. The main issues for both appeals are:
 - Whether the proposals would represent inappropriate development within the Green Belt having regard to the Framework and any relevant development plan policies, and their effects on the openness of the Green Belt; and

¹ PINS Ref: APP/M1005/W/20/3265602

² PINS Ref: APP/M1005/W/24/3340781

- If the developments are inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the developments.

Reasons

Inappropriate development

10. The appeal site is an area of land west and south-west of the existing Denby Hall Business Park. It was previously used for opencast coal mining, though the land has been restored and now comprises open fields with hedgerow boundaries, and small areas of woodland. The boundaries of the Green Belt have not been changed by the September 2021 grant of planning permission, and the entire site is within the Green Belt.
11. The proposed development in Appeal A is a surface water attenuation pond, with an attenuation volume of a little under 8,000 cubic metres. It has been explained that, because of the site's history of opencast mining, surface water run-off cannot be discharged into the ground because of the risk of contaminants in the soil polluting the Denby or Bottle Brooks in or near the site. The attenuation pond would have sufficient capacity to accommodate surface water run-off from the business park extension generated by heavy rain in 1 in 100 plus 40% events, which would then discharge to the Bottle Brook at a greenfield run-off rate. The attenuation pond would be on a part of the site where the land slopes down gently from north to south, and would be formed as a depression set within the existing slope. The proposal includes a comprehensive planting and landscaping scheme.
12. The proposed development in Appeal B is the creation of five bunds, which would be arranged approximately in an arc running around the western side of the business park extension. They would take the form of shallow mounds, rising to a maximum of 4.5m above the existing ground levels. The largest (described in the submitted evidence as "Bund A", to the north-west of the business park extension) would be around 371m long and 75m deep; the smallest ("Bund D", within the business park extension at its western edge) would be approximately 85m by 37m. The mounds would be formed of inert "overburden" moved during the construction of the business park extension. This proposal also includes a comprehensive planting and landscaping scheme.
13. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 states that certain forms of development, including engineering operations, are not inappropriate providing they preserve the openness of the Green Belt, and do not conflict with the purposes of including land within it. There is no disagreement between the main parties that the proposed developments would be engineering operations. Paragraph 142 of the Framework describes "the essential characteristics of Green Belts" as being "their openness and their permanence". In my experience, "openness" is generally accepted to mean the absence of development, and to have both spatial and visual aspects. The purposes of the Green Belt are set out at Paragraph 143 of the Framework.
14. The development plan for the area comprises the saved policies of the Amber Valley Borough Local Plan 2006 ("the AVLPL"). Saved Policy EN2 addresses

development in the Green Belt, but does not refer to engineering operations. The Council therefore acknowledges that, so far as these appeal proposals are concerned, that policy is out of date and carries limited weight, and it was not referred to in the decision notices issued. My assessment of the main issues in these appeals therefore relies on the Framework.

15. These two schemes would lead to a reshaping of the land across considerable parts of the appeal site. As the Inspector observed in the 2021 appeal decision which granted outline planning permission for the business park, "the countryside character and appearance of this sloping landscape is still maturing, being a product of a relatively recent restoration scheme relating to its mining legacy". While I cannot disagree with the Council's assessment that carrying out the proposed engineering works would "interfere with the continued maturing" of that landscape, as was noted in the 2021 appeal decision it is not a landscape which is protected for its value in its own right.
16. The appeal schemes include planting of native woodland, woodland edge and hedgerow species. After completion, the bunds and the area around the attenuation pond would, in due course, become assimilated into the landscape. While the form of the land would undeniably be changed as a result of the schemes, neither the bunds nor the attenuation pond would harm its essential openness in either visual or spatial terms. There would also not be any conflict with the five purposes of including land within the Green Belt.
17. The impact of the proposed extension of the business park, which had not been carried out at the time of my site visit, was frequently referred to in the Council's evidence. It would lead to the development of several large (and very large) buildings in what remains Green Belt land, causing some harm to openness as my colleague in 2021 acknowledged. However, that scheme, and its direct implications for the openness of the Green Belt, are not at issue in this appeal. It is even possible that the bunds and planting of the Appeal B scheme would make a modest contribution to screening the proposed business park extension in views from Station Road and Street Lane to the west, though given the likely size and scale of those buildings this cannot be relied on, and it is not a factor which carries significant weight in my overall conclusion.
18. The Council also commented that the proposed bunds are not "driven as a necessary engineering operation directly associated with the primary day-to-day function of a business", and that they "are not stand alone, non-material additions to the overall development and expansion plans of Denby Hall Business Park". However I have not been directed to any provisions, whether in the Framework or elsewhere, which indicate that necessity or self-containment are relevant considerations in my determining these appeals.
19. I conclude that the two appeal schemes are engineering operations which would preserve the openness of the Green Belt, and would not conflict with the purposes of including land within it. They would not therefore represent inappropriate development in the Green Belt, in the terms set out in Paragraph 154 of the Framework.

Very special circumstances

20. As I have found that the proposed developments would not be inappropriate development in the Green Belt in the terms set out in the Framework, it is not

necessary for me to consider whether there are very special circumstances which might otherwise justify the proposal.

Other Matters

21. I have had regard to comments submitted by interested parties during the appeal, some of which related to Green Belt matters addressed above.
22. I have been made aware of reports of the Bottle Brook flooding in Denby Bottles, Lower Kilburn, and Little Eaton downstream of the appeal site. Some local flooding was anecdotally attributed, at least in part, to the cutting down of trees in and around the business park extension site; the appeal schemes both include provisions for tree and other planting, which may help to slow down or reduce run-off from the site. The fundamental purpose of the proposed attenuation pond would be to collect surface water run-off from across the business park extension, holding water back during heavy rain events, and releasing it to the Bottle Brook at greenfield run-off rates. I note that both the Environment Agency and Lead Local Flood Authority were consulted on the planning applications and considered the proposals to be acceptable; in the light of that advice I am satisfied that the appeal schemes would be acceptable in respect of drainage and flood risk.
23. Comments were made about access to footpaths and other public rights of way across the site, in the context of the importance of access to the countryside for local residents. Such access would not be harmed as a result of these appeal schemes.
24. I note comments that changes had been made to the business park extension scheme allowed in 2021, for example to the proposed finished floor levels of buildings. However, the outline and reserved matters permissions for that scheme do not fall within scope of my consideration of these appeals.

Conditions

25. The Council's decision to refuse planning permission was made by its committee, contrary to its officers' recommendations that permission should be granted subject to appropriate conditions. That has had no bearing on my assessment of the main issues, but the Council did not separately suggest conditions in the event of my allowing the appeals. I have therefore relied on the conditions proposed in its officer reports; I infer from the evidence before me³ that these are acceptable to the appellant. I have considered the conditions having regard to the tests in the Framework and advice in the Planning Practice Guidance. Where necessary I have made changes to the wording or ordering of conditions in the interests of clarity and effectiveness.

Appeal A

26. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
27. A condition requiring the scheme to be carried out, maintained and managed in accordance with sustainable drainage principles (3) is necessary to ensure that

³ Paragraph 6.7 of Appeals Statement of Case

it does not increase flood risk, and that it is safely operational before and during use.

28. Conditions relating to land stability (4 and 5) are necessary in view of the appeal site's mining history, and to comply with Saved Policy EN18 of the AVLPL. A condition relating to the protection of existing trees and hedgerows (6) is necessary as they make a significant positive contribution to the character and appearance of the area, and to comply with Saved Policy EN7 of the AVLPL. A condition in respect of previously unidentified contamination (7) is necessary to ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution; this is in accordance with the provisions of Paragraphs 196 and 197 of the Framework.

Appeal B

29. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there are conditions requiring that the development is carried out in accordance with the approved plans and other documents (2 and 3).
30. A condition requiring the submission and approval of a construction management plan (4) is necessary in the interest of ecology, and to comply with Saved Policy EN13 of the AVLPL. A condition relating to imported soil or other fill materials (5) is necessary to ensure that the site is free from the risk of contamination, and to comply with Saved Policy EN18 of the AVLPL.

Conclusion

31. For the reasons given above I conclude that both appeals should be allowed and planning permission granted, subject to the conditions in the attached schedules.

M Cryan

Inspector

Schedule 1 – List of conditions for Appeal A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The hereby approved development shall be carried out in accordance with the following approved documents and drawings:
 - Application Form
 - Site Location Plan
 - 2022-07-04 5456 TN Final V1.0
 - 2022-07-22-5456 DofCTN Final V1.0
 - 8093 Suds Maintenance and Management Plan Dec 2021
 - 8093 Phase 2 Denby Hall Business Park- Drainage Statement- Aug 2022
 - 8093-C-110 P3 Drainage Strategy Sheet 1 of 3
 - 8093-C-111 P3 Drainage Strategy Sheet 2 of 3
 - 8093-C-112 P3 Drainage Strategy Sheet 3 of 3
 - 8093-C-113 P2 Ditch- Stream Diversion Strategy
 - 8093-C-114 P1 Attenuation Pond Sections
 - 8093- Surface Water Design Calculations- Network 1- 03-08-2022
 - 9784-L-02-D- Landscape Planting Plan- Key Plan
 - 9784-L-06-D- Landscape Planting Plan Sheet 4
 - 9784-L-07-D- Landscape Planting Plan Sheet 5
 - 9784-R-01-D Planting Schedule- Denby
 - Biodiversity Matrix 3.0- Denby Hall Business Park Extension
 - CD2.19 Revised Arboricultural Report
 - LP02
 - N8276 Coal Mining Risk Assessment
 - SP116A- Proposed Attenuation Pond
 - SP117A- Sections Through Proposed Attenuation Pond
- 3) The proposed attenuation pond shall not be brought into use until such a time as it is fully designed, constructed and located in line with CIRIA SuDS manual C753 and to the agreed specifications on documents:
 - CCE. (04.08.2022). Drainage Strategy Sheet 3 of 3, 8093-C-112, Rev P3; and
 - CCE. (04.08.2022). Attenuation Pond Indicative Sections, 8093-C-114, Rev P1

An associated management and maintenance plan, in line with CIRIA SuDS Manual C753, shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out, managed and maintained in accordance with the approved plan for its lifetime.
- 4) No development shall commence until:
 - i) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
 - ii) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 5) Prior to the development being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 6) No work shall commence on the site until such time as a scheme for protecting the existing trees and hedgerows on the site during the construction process has been submitted to and approved by the Local Planning Authority and implemented to its satisfaction. Such protection as is agreed shall be maintained during the course of development.
- 7) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved.

Schedule 2 – List of conditions for Appeal B

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The hereby approved development shall be carried out in accordance with the following approved documents and drawings:
 - Application Form
 - Site Location Plan
 - Plan Showing Bund Location Drawing Number DB01 Rev B
 - Plan Sections through Bunds Drawing Number DB03 Rev B
 - Plan Sections through Bunds Drawing Number DB02 Rev A
 - Planting Plans Key Plan Drawing Number 9784-L-02 Rev E
 - Planting Plans POS Sheet 1 of 6 Drawing Number 9784-L-03 Rev E
 - Planting Plans POS Sheet 2 of 6 Drawing Number 9784-L-04 Rev E
 - Planting Plans POS Sheet 3 of 6 Drawing Number 9784-L-05 Rev E
 - Planting Plans POS Sheet 4 of 6 Drawing Number 9784-L-06 Rev E
 - Planting Plans POS Sheet 5 of 6 Drawing Number 9784-L-07 Rev E
 - Planting Plans POS Sheet 6 of 6 Drawing Number 9784-L-08 Rev E
- 3) The bunds shall be created in accordance with the drawing High Lane Design (June 2023) *Plan Showing Bund Locations* L265-DB-01 Revision B.
- 4) No development shall take place (including, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full.
- 5) Prior to the import of soils or other fill materials from outside the application site, documentary evidence that the material is free from contamination shall be submitted to and agreed in writing by the Local Planning Authority. No such materials shall be imported without prior approval.