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Your reference

Our reference

Date APP/M1900/A/89/I35510
/12/000004/000009

15 APR 1991

1) JMC
2) CB
3) JK

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990- SECTION 78 (1)
TOWN AND COUNTRY PLANNING ACT 1990- SECTION 174
APPEALS BY JMC LTD. AND MJ & M MASH LTD.
APPLICATIONS NOS. CH/1099/89 & 4/0585/89
3

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector Mr. R.H. Town CEng, MISTructE, MIHT, who held a local inquiry into the following appeals:

A) JMC Ltd. against the decision of Buckinghamshire County Council to refuse planning permission for a landscaped land-raising scheme involving the importation of excavated spoil and broad-leaved tree planting, on land at Bovingdon Airfield, Bovingdon.

B) JMC Ltd. against the decision of Hertfordshire County Council to refuse planning permission for the same development.

C) JMC Ltd. against an enforcement notice issued by Buckinghamshire County Council and dated 16 February 1989 relating to the tipping of refuse and or waste materials on land at Bovingdon Airfield, Bovingdon.

D) MJ & M Mash Ltd. against the same enforcement notice.

2. The appeals against the enforcement notice were made on grounds (a), (g) and (h) in section 174 (2) of the Town and Country Planning Act 1990.

3. The Inspector whose conclusions are reproduced in the annex to this letter, recommends that all four appeals be dismissed and that the enforcement notice be upheld subject to variation. A copy of his report is enclosed.

SUMMARY AND DECISION

4. The formal decision is set out in paragraphs 12 and 13 below. All the appeals fail. The enforcement notice is being varied, but



otherwise upheld, and planning permission is not being granted on the deemed application. The planning appeals are being dismissed.

REASONS FOR THE DECISION

The section 78 appeal, the appeal on ground (a) against the enforcement notice and the deemed planning application

5. The Secretary of State has given careful consideration to all the arguments for and against the proposed development and to the Inspector's report. He considers the main issue in this case to be whether the proposed development represents appropriate development in the Green Belt.

6. The Secretary of State notes that the appeal site lies within the Green Belt and he is mindful that the disposal of inert waste landraising is not included in Planning Policy Guidance Note 2 (PPG2) or the Buckinghamshire Structure Plan, as being appropriate development in the Green Belt. He agrees, therefore, with the Inspector that the proposed scheme is not an appropriate development in the Green belt.

7. Turning to the question of whether there are very special circumstances which should override the strong presumption against this type of development in the Green Belt, it is agreed by the parties that on a county-wide basis both Buckinghamshire and Hertfordshire have sufficient void space to disperse of the inert waste, but that there is a local shortage of void-space. The Secretary of State is not satisfied, however, that this consideration represents a very special circumstance which is necessary to justify the scheme as an exception to Green Belt Policy.

8. The Inspector holds the view that the appeal site has no particular scenic merit. Whilst agreeing with this, the Secretary of State notes that PPG2 advises that Green Belts often contain areas of attractive landscape but the quality of the rural landscape is not a material factor in their designation or in their continued protection.

9. The Secretary of State agrees with the Inspector that the impact of the level of HGV traffic on the B4505 road through Bovington would not be unacceptable and that, subject to the access to the site being improved, the scheme would not be seriously harmful to the interests of highway safety. As to the value of the proposed mound in screening the adjacent HM Youth Custody Centre the Secretary of State agrees with the Inspector's assessment that the earth bunds which have already been permitted and constructed perform that function adequately.

10. All other matters relevant to the planning merits of the development have been taken into account, but, for the reasons given above, the Secretary of State accepts the Inspector's recommendation that planning permission should not be granted.

The appeal grounds (g) and (h) against the enforcement notice

11. Your client's submissions on these grounds are stated in paragraphs 54 to 58 of the report and the Council's views at paragraphs 89 to 93. The Inspector's conclusions are at paragraphs

119 and 120. His view, that the sheer quantity of the waste material on the site makes its removal within 12 months economically impracticable, is accepted. The Secretary of State also agrees that the injury to amenity caused by the development would be alleviated by regrading the mound to a maximum height of 4 metres, and executing landscaping works, including tree planting. For the reasons given by the Inspector, the Secretary of State does not consider that extension of the period for compliance with the requirements of the notice to six, or even three, years, in order that the waste might be reprocessed to produce marketable products, is justified. He proposes, therefore, to vary the notice so as to require a restoration scheme to be submitted to the County Council for approval.

FORMAL DECISION

The enforcement appeal

12. For the reasons given in paragraphs 5 to 11 above, the Secretary of State, in exercise of the power in section 176(2) of the 1990 Act, directs that the enforcement notice be varied in Schedule 3 to the notice, by the deletion of all the words after "forthwith;" and the substitution therefore of the following:-

"(2) Restoration works shall be carried out in accordance with a scheme to be agreed with the Local Planning Authority, or, in default of such agreement, as shall be determined by the Secretary of State. The scheme shall include the following:-

i) regrading to a maximum height not exceeding 4 metres of the material already tipped;

ii) restoration of soils including the laying of at least 300mm of subsoil, a final layer of at least 300mm of topsoil and the removal of any extraneous materials such as rocks, stones and other solid objects;

iii) the landscaping of the final landform including details of grass seeding, the number of species of trees and shrubs to be planted, the timing and spacing of such planting and measures to be taken for the protection of the plants from animal damage, and the encroachment of weeds;

iv) measures to be taken to maintain the planting including drainage and the replacement in the first, second, third, fourth and fifth subsequent planting seasons of any stock which fails to thrive.

(3) The above scheme shall be submitted for the consideration of the County Planning Authority within three months of the coming into force of the notice.

(4) The above scheme shall be implemented and completed to the satisfaction of the County Planning Authority within twelve months of the date of approval by the County Planning Authority or, in default of such agreement, of the date of determination by the Secretary of State".

Subject thereto, the Secretary of State upholds the notice. On the

deemed planning application arising under section 177(5) of the 1990 Act, he refuses to grant planning permission for the continuation of the use enforced against.

The section 78 appeal

13. For the reasons given in paragraphs 5 to 10 above, the Secretary of State dismisses the appeal under section 78 of the Town and Country Planning Act 1990 and refuses to grant planning permission for the submitted landscaped landraising scheme at Bovingdon Airfield, Bovingdon, involving the importation of excavation spoil and broad-leaved tree-planting.

RIGHT OF APPEAL AGAINST THE DECISION

14. This letter is issued as the Secretary of State's determination of the appeal. Leaflet C, enclosed for those concerned, sets out the right of appeal to the High Court against the decision and the arrangements for inspection of the documents appended to the Inspector's report.

15. A copy of this letter has been sent to Buckinghamshire and Hertfordshire County Councils.

I am Gentlemen
Your obedient Servant

G A FARRIES

Authorised by the Secretary of State
to sign in that behalf.

CONCLUSIONS

Bearing in mind the above facts:-

105. Since the appeal site lies within the Green Belt a key issue is whether the landraising scheme represents appropriate or inappropriate development in green belt terms. The enforcement notice alleges the material change of use of land and as no appeal on grounds (b) and (c) has been made it may be concluded that the allegation is not denied. In that the landraising scheme as proposed is finite, and a time for completion is envisaged by the appellants, it may also be concluded that the material change of use of the land is a temporary one. Countryside for its own sake, grazing for animals and recreation are possible purposes or uses of the completed scheme but the appellants have no firm proposals for an end use.

106. Inert waste disposal by landraising is not referred to in the fairly short list of uses referred to in paragraph 13 of Planning Policy Guidance Note No. 2 as being appropriate in the Green Belt. Neither is it referred to in the comprehensive list of developments which are considered to be acceptable in principle in the Green Belt by the Buckinghamshire Structure Plan. Although Planning Policy Guidance Note No. 2 and the Hertfordshire Structure Plan expressly allow for "other uses appropriate to a rural area" to be permitted in the Green Belt the Buckinghamshire Structure Plan does not. In my opinion inert waste disposal by landraising is not, of itself, a use of a rural character or a use that one might naturally expect to see in the countryside. Waste disposal carried out in order to satisfy specific agricultural or other rural purposes might be acceptable in the Green Belt but that is not the

case here. The principal purpose of the landraising scheme is to dispose of inert waste. My view is that the landraising scheme is not an appropriate development in the Green Belt.

107. If the landraising scheme is inappropriate in the Green Belt the issue arises as to whether or not there are very special circumstances necessary to justify it as an exception. Need for waste disposal sites and the conditions prevailing at the appeal site are, in combination, claimed to represent very special circumstances.

108. It is agreed by the parties that on a county-wide basis both Buckinghamshire and Hertfordshire have sufficient voidspace to dispose of inert waste. A local shortage of tips in the south east Buckinghamshire/south west Hertfordshire area is however acknowledged by Council officers. The appellants have analysed the demand for inert waste voidspace on the basis of per capita demand and a catchment area centred on the appeal site. Although I am doubtful about centring the catchment on the appeal site (I consider that the availability of reasonably conveniently located tips would be better considered by analysing a catchment or catchments centred on the major centres where the waste is produced) it appears to me that a serious local shortage of tips does exist. No difficulty was apparently found by the appellants in attracting waste to the appeal site and this is demonstrated by the letters from contractors and other tip operators.

109. Subject to the tip on the appeal site being well run there would not appear to be any conflict with the waste disposal policies and objectives of the 2 Counties (which relate to the detailed conduct of the waste disposal operation), as distinct from their planning policies and objectives.

110. As to site conditions, the appeal site represents a fairly small part of the overall airfield site. Flat and devoid of trees the airfield is open and featureless apart from the old concrete runways which cross it and a few derelict airforce buildings. The airfield has no particular scenic merit in my view.

111. The mound that has been created so far is a considerable distance (750 m) from the B4505, which lies at the southern and south-western edge of the airfield, and is barely visible from that quarter. However as proposed the mound would be up to 7 m high and eventually extend to within 250 m of the B4505 and consequently its prominence from the B4505 would be substantially greater. Within the airfield the mound is very conspicuous and lies close or adjacent to a public footpath and the area used by the Saturday market. In its present state the mound appears as a very large spoil heap rising from the flat land surrounding it. Its shape is even and regular. While I acknowledge that the judgement of visual appearance is subjective I consider that the mound has an unnatural appearance and is out of character with the surrounding landscape. The mound is not in accordance with the planning application and clearly it could be shaped to present a more natural and attractive appearance. The proposed shrub and tree planting, given time to become established, would also improve its appearance. I am not convinced however that the mound would be likely to result in enhancement of the landscape which policy 23 of the Hertfordshire Structure Plan says is necessary in order to override the general presumption against the tipping of waste materials on open land.

112. As to the value of the mound in screening the YCC buildings from the airfield and the south-west, I consider that the 3 earth bunds which have already been permitted and constructed perform that function adequately. While I consider that the landraising scheme would be beneficial from the standpoint of inert waste disposal in the area I do not find that this consideration, in combination with the site conditions, represents the very special circumstances necessary to justify the scheme as an exception to Green Belt policy.

113. Turning to highway considerations I recognise the Hertfordshire County Council policy of discouraging traffic from using a secondary distributor road if it could use a main distributor or a primary road instead. In this case however there are no main distributor or primary roads that could be used as an alternative to the B4505 for traffic travelling to and from the appeal site. Moreover the County Council of Hertfordshire's waste disposal criteria advises that heavy goods vehicles are acceptable in principle on secondary distributor roads as well as on strategic roads and main distributor roads. I find that in policy terms there is no objection in principle to the appeal site being accessed by a secondary distributor road like the B4505.

114. As to conditions on the B4505 between Hemel Hempstead and Chesham I find that although there are some bends and narrow sections, notably through Bovington, there are other sections which are good in terms of alignment and width. Overall I take the view that the B4505 is a reasonable standard to cope with the traffic it carries. On the basis of the daily flow of tipping lorries envisaged by the appellants the increase in total vehicle flows resulting from the landraising scheme would be insignificant in my view. If one just considers the flow of heavy commercial vehicles the landraising scheme would give rise to a significant increase especially of the 4-axle rigid vehicle and 3-axle and bigger categories. Notwithstanding that tipping lorries are fairly easy to recognise it appears to me that the increase in the numbers of heavy commercial vehicles passing through Bovington would be noticeable and would have an impact on the environment of the village. However the appellants are willing to accept a condition that tipping should only take place on Mondays to Fridays and this would be beneficial as far as the impact of heavy lorry traffic in Bovington is concerned. Bearing in mind that the duration of the tipping still to be carried out would not be much more than a year at the rate of tipping envisaged by the appellants I do not consider that the impact of tipping lorry traffic on the B4505 through Bovington would be unacceptable.

115. With regard to the access to the airfield site used by the tipping lorries, this is located on a narrow stretch of B4505. Vehicles waiting to turn right into the airfield site may therefore on occasions impede following vehicles. The access junction is also deficient in terms of visibility and geometry. The appellants recognise that the junction is currently unsuitable for use by tipping lorries and have agreed in principle with Hertfordshire County Council a scheme for its improvement to a satisfactory standard. The appellants are willing to enter a Section 106 agreement with the County Council to facilitate the provision of the improved junction. In my view the proposed improved junction would overcome the problems at the existing junction. I also share the appellants' and the Councils' view that it would be beneficial in respect of the traffic turning movements associated with the Saturday market.

116. With regard to the figures of personal injury accidents on the B4505 it appears that none involved tipping lorries visiting the appeal site. Subject to the access being improved as the appellants propose I consider that the landraising scheme would not be seriously harmful to the interests of highway safety.

117. As to the proposed Bovington bypass, although this scheme is not firmly programmed and its future is uncertain, nevertheless it has been safeguarded for planning purposes. It seems to me that the landraising scheme, if permitted, should take account of the proposed bypass. On the basis of the safeguarded route the bypass would pass through the middle of the mound whereas if the bypass route were modified as suggested by the appellants the bypass would cut across the corner of the mound. No detailed design or costings have yet been made of the effects of

routing the bypass through the mound or constructing it on the route suggested by the appellants. While I do not consider that the existence of the bypass proposal should rule out the landraising scheme I think that if planning permission is to be granted it would be advisable for some detailed design and costings to be done. This would allow any additional costs to be identified and also enable any alteration to the shape of the mound to be implemented in order to avoid incurring unnecessary expense when the bypass is eventually constructed.

118. Most of the conditions suggested by the Council are acceptable to the appellants and I consider that they are reasonable and necessary. If the Secretary of State is minded to grant planning permission on either or both of the appeals I recommend that they are imposed. Of the 3 disputed conditions I consider that No. 5 is necessary in order to safeguard the bypass. Condition 7 is not justified; in my view it is unnecessarily restrictive. I consider the restrictions imposed by condition 6 are sufficient on their own to control the operation, including the movements of lorries, in the interests of keeping the adverse effects on local amenity to a minimum. Condition 40 is imprecise in my view. I share the appellants' view that it would be difficult to apply. In that the appellants would seek to prevent unauthorised access to the site and therefore observe the spirit of the condition I consider that the condition should not be imposed.

119. With regard to the appeal on ground (g), it appears to me that the sheer quantity of the waste material on the appeal site makes its removal in 12 months as required by the notice impracticable in economic terms. The estimated cost of the removal clearly demonstrates this to my mind. I consider that the injury to amenity caused by the landraising could be adequately ameliorated by regrading the mound and carrying out landscape works, including tree planting. I recommend the variation to the notice suggested by the Council and I consider that a maximum height of mound of 4 m is justified in order to diminish its intrusiveness. At 4 m the mound would be of a similar height to the existing screening bunds.

120. Finally I refer to the appeal on ground (h). An extension of the period for compliance is sought in order that the waste may be screened thereby making it a marketable commodity. Bearing in mind the large quantity of waste I am doubtful of the economics of such a venture. In my view the extension of the period of compliance to 6 years, or even 3 years, is not justified in that it would unnecessarily delay the restoration of the site.

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RECOMMENDATION

Section 174 appeals

121. I recommend that the appeals be dismissed and the notice upheld subject to the variation outlined in paragraph 119 hereof.

Section 78 appeals

122. I recommend that the appeals be dismissed.

I have the honour to be
Sir
Your obedient Servant

R H TOWN

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No.

~~THE DISTRICT COUNCIL OF~~~~IN~~ THE COUNTY OF HERTFORD

To JMC Ltd
 Rossway Drive
 Bushey
 Herts

.... A. LANDSCAPED LANDRAISING SCHEME INVOLVING THE
 IMPORTATION OF EXCAVATED SPOIL AND BROAD LEAVED TREE
 PLANTING
 at LAND TO THE WEST OF HM PRISON, BOVINGDON AIRFIELD,
 BOVINGDON, HERTS.

Brief
 description
 and location
 of proposed
 development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 22nd March 1989, and received with sufficient particulars on 27th April 1989, and shown on the plan(s) accompanying such application..

The reasons for the Council's decision to refuse permission for the development are:—

See attached Schedule of Reasons for Refusal numbered 1 - 4.

Dated 25th day of July 1989

Signed T.J. Belts

Designation ... Head of Planning

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Whitehall, London, S.W.1.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

BOVINGDON AIRFIELD, BOVINGDON
LANDRAISING SCHEME INVOLVING IMPORTATION OF EXCAVATION
SPOIL AND BROAD LEAVED TREE PLANTING

APPLICATION NO: 4/0583-89

REASONS FOR REFUSAL

1. The County Council's approved Structure Plan Policy No.23 states that there will be a general presumption against the tipping of waste materials on all open land except where the local planning authority is satisfied that significant agricultural or land drainage improvements or landscape enhancement will result. The local planning authority is not satisfied that a significant landscape enhancement will be achieved.
2. The proposal would create an alien and intrusive feature in the landscape.
3. The proposal is likely to materially increase the number of heavy goods vehicles using the B4505 through Bovington which would be detrimental to the amenity of the houses fronting that road.
4. The proposal conflicts with the proposed line of the Bovington by-pass.