



GOVERNMENT OFFICE  
FOR THE EAST OF ENGLAND

Messrs Merryman White  
3 Kings Bench Walk  
Inner Temple  
LONDON  
EC4Y 7DJ

**ANDREW N HAYES**  
**Planning & Transport Division**  
Heron House  
49-53 Goldington Road  
Bedford  
MK40 3LL

Tel: 01234 796235  
GTN: 3013 6235  
Fax: 01234 796341

**11 AUG 1999**

Our Ref: APP/M1900/A/98/301178

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**  
**APPEAL BY M & P MCCARTHY LIMITED**  
**LAND AT BOXTED FARM BOURNE END HEMEL HEMPSTEAD**  
**APPLICATION NO: 4/1679-97 (587)**

1. I am directed by the Secretary of State for the Environment, Transport and the Regions to say that consideration has been given to the report of the Inspector, Mr D Metcalfe, DipTP, MRTPI, who held a local inquiry into your clients' appeal against the decision of Hertfordshire County Council to refuse planning permission for the agricultural improvement and change of landform by the import of fill and soils on land at Boxted Farm, Bourne End, Hemel Hempstead, Hertfordshire.

2. The Inspector, whose conclusions are reproduced in the Annex to this letter, recommended that the appeal be dismissed. A copy of his report (IR) is enclosed.

3. The Secretary of State has given careful consideration to all the arguments for and against the appeal proposal and to the Inspector's conclusions and recommendation. In considering the Inspector's report, he has read "very special reasons why" in line 4 of subparagraph ii] of paragraph 2 as "very special circumstances to justify why".

**The Basis on which the Secretary of State has Determined the Appeal**

4. At the opening of the inquiry, a substantial change to the appeal proposal was agreed. This related to the amount of fill that would be required to achieve the proposed levels as shown on the plans forming part of the application. Your clients accepted that to achieve the proposed contours shown on the appeal plans some 720,000 c m of fill would be required, rather than the 480,000 c m identified in the application. In your clients' opinion, the works could still be undertaken within the three-year period advanced with the application. However, it was also acknowledged that that timetable was uncertain. A five-year period for completing the tipping operations was therefore now being sought. In addition, the parties at

the inquiry agreed that there could be up to 10% of material brought to the site that would be found to be unsuitable and which would have to be exported from the site. The average daily number of HGV movements to and from the site was agreed between the parties as 88 on the basis of a five and a half day working week (IR 6 & 7).

5. The Inspector was of the opinion that the change did not alter the nature of the proposal. The Secretary of State agrees and has determined your clients' appeal on the basis of the agreed changes outlined in paragraph 4 above.

### **Legal Agreement**

6. On 18 May 1999, after the inquiry had closed, the Council submitted an executed Legal Agreement under section 106 of the Act to the Planning Inspectorate. The Agreement provides, inter alia, that:

i) No waste materials would be brought to the appeal site except in accordance with the Routing Agreement.

ii) The Owner of the land and the Developer would use their best endeavours to ensure that all vehicles entered and left the appeal site in accordance with the Routing Agreement.

iii) The Owner and Developer would make a contribution towards the design and construction of highway improvement works, highway repairs and restoration works which the County Council determined would contribute to the improvement of highway conditions on that part of Little Heath Lane, and any other road in the vicinity of the proposed development, affected by traffic associated with the development.

The Routing Agreement provided that all vehicles connected with the proposed development would enter the appeal site only from the A4251 and that part of Little Heath Lane south of the site access. Vehicles would leave the appeal site via that part of Little Heath Lane south of the site access and the A4251 only. No other roads in the vicinity of the appeal site would be allowed to be used for access and/or egress from and to the site.

7. In determining your clients' appeal, the Secretary of State has had regard to the provisions contained within the Legal Agreement.

### **The Development Plan**

8. Under section 54A of the Town and Country Planning Act 1990, as introduced by section 26 of the Planning and Compensation Act 1991, the Secretary of State is required to determine your clients' appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the area consists of the adopted Hertfordshire Structure Plan Review 1991 – 2011, the adopted Hertfordshire Waste Local Plan 1999 – 2005 and the adopted Dacorum Borough Local Plan.

9. The appeal site lies within the Metropolitan Green Belt and a Landscape Conservation Area. Although the site lies outside the Chilterns Area of Outstanding Natural Beauty, it abuts its eastern boundary. In determining the appeal, the Secretary of State has had particular regard to (a) Structure Plan policies 5, 42, 43 and 55; (b) Local Plan policies 3, 90 and 91 and (c) Waste Local Plan policies 2, 24, 33, 34 and 43. Details of these policies are set out in paragraphs 17 – 24 of the Inspector's report.

### **Planning Policy Guidance Note 2: Green Belts**

10. Government policy on Green Belts is set out in Planning Policy Guidance Note 2 (PPG2). That policy, as reflected generally in the development plan, states that there is a general presumption against inappropriate development in the Green Belt and that such development should not be approved except in very special circumstances. Paragraph 3.12 of PPG2 advises that the making of material changes in the use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt. The five purposes of including land in Green Belts are:

- i) To check the unrestricted sprawl of large built-up areas;
- ii) To prevent neighbouring towns from merging into one another;
- iii) To assist in safeguarding the countryside from encroachment;
- iv) To preserve the setting and special character of historic towns; and
- v) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

11. At the inquiry your clients argued that landfill activity could be an appropriate development in the Green Belt. The proposal would not adversely affect the openness of the area and, being a temporary use of the land, the proposal would maintain the objectives of Green Belt designation. Accordingly, there was no conflict with Green Belt policy (IR 32). The Council argued, for the reasons given in paragraph 46 of the report, that the proposal was considered to be inappropriate development in the Green Belt.

12. The Secretary of State has considered whether the proposed development could be regarded as not inappropriate in the Green Belt. Bearing in mind the guidance in PPG2, he has considered first of all whether the appeal proposal would prejudice the openness of the Green Belt. He shares the Inspector's view that, in the longer-term, the proposal would not prejudice that objective of Green Belt designation. However, the Inspector was of the opinion that for the duration of tipping and restoration works, the land would take on the appearance of a waste tip and operate as such. In his judgement, the scale of the project, the extent and prominence of the site, together with the length of time that it would be operational meant that the openness of that area of Green Belt would be eroded and appreciably harmed for a significant period (IR 61). The Secretary of State agrees. The Inspector considered that the proposal would also conflict with two of the purposes of including land in the Green Belt. The tipping and associated activities would appear as an extension of the built up area, and it

would be wholly contrary to the purpose of assisting in safeguarding the countryside from encroachment (IR 62). In the Inspector's opinion the combination of those factors meant that the proposal conflicted with national, strategic and local policies that sought to protect areas of Green Belt from inappropriate development. The Secretary of State agrees. He has therefore determined your clients' appeal on the basis that the proposed development represented inappropriate development in the Green Belt.

#### **Planning Policy Guidance Note 7: The Countryside – Environmental Quality and Economic and Social Development**

13. As stated in paragraph 9 above, the appeal site abuts the eastern boundary of the Chilterns Area of Outstanding Natural Beauty (AONB). Although he appreciates that the appeal site is not within the AONB, the Secretary of State has had regard to the guidance set out in paragraphs 4.7 – 4.10 relating to AONBs and development control within them.

#### **The Main Issues in the Appeal**

14. The Secretary of State considers that the main issues in your clients' appeal are whether:

- a) Very special circumstances exist which would justify allowing the proposed inappropriate development in the Green Belt;
- b) The proposed development would have an adverse impact on the landscape character and appearance of the area; and
- c) The proposed development would prejudice traffic and road safety in the area, especially along Little Heath Lane.

#### **Issue (a) – Very Special Circumstances**

15. Very special circumstances to justify inappropriate development in the Green Belt would not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The degree of harm in respect of the Green Belt that would be caused by the appeal proposal has been established in paragraph 12 above. The very special circumstances put forward by your clients related entirely to the alleged agricultural improvement which would accrue from the reduction in slopes, soil erosion and the covering of flints (IR 63). The Inspector accepted that those conditions currently existed within the site but he considered that they could not be regarded as unusual in that area or matters that caused unreasonable conditions for working the land. Similar conditions abounded in the area but the land had been, and continued to be, well worked. It was clearly capable of producing worthwhile crops. The Secretary of State shares the Inspector's conclusions and is satisfied that the appeal site could not be regarded as degraded for the purposes of an assessment in respect of policy 24 of the Waste Local Plan.

16. The Secretary of State accepts that the safety aspects of working the appeal site would be increased as a result of the proposed development. However, he agrees with the Inspector

that the anticipated improvements to agricultural land quality and classification would be minimal and that the evidence presented relating to yields was wholly unconvincing and could not be given any great weight in the consideration of the appeal. The Secretary of State accepts that drainage of the site was unlikely to be improved and that the lack of sufficient suitable material to provide topsoil material was of major concern (IR 64). For the reasons given in paragraph 65 of the report, he has accorded little weight to your clients' offer to undertake additional hedgerow and tree planting as part of the restoration scheme.

17. The Secretary of State agrees with the Inspector's overall conclusion that the very special circumstances put forward in support of the appeal proposal are insufficient to outweigh the harm that would arise to Green Belt objectives (IR 65).

#### **Issue (b) – Landscape Character and Appearance**

18. The Inspector was of the opinion that the appeal proposal would undoubtedly harm the visual amenities of that area of Green Belt. He noted the appeal site's location adjacent to the AONB and inclusion within a landscape conservation area. He considered such a designation of the appeal site was wholly justified (IR 66). The Secretary of State agrees. He also agrees that the appeal proposal would be seen in conjunction with the landscape of the AONB and that it was proper that its impact on the AONB should form part of the assessment of the scheme (IR 67).

19. The Inspector found that the site itself was of outstanding character and appearance, it lay in a beautiful area and possessed topographical features that were most delightful, with the dry valley being outstandingly attractive. The Secretary of State accepts these findings and agrees, for the reasons given in paragraph 68 of the report, that the appeal proposal would degrade the overall character and appearance of that natural landscape. He also agrees that the impact would be unacceptably detrimental to both the local and the more extensive landscape of the area. The Inspector concluded that the scheme would have a major adverse effect on all the activities that were directly related to the quality of the local landscape. He also considered that bunding and other short term mitigation measures carried out on such a prominent and sloping site were unlikely to have anything but a very marginal effect in reducing the excepted impact (IR 69). The Secretary of State agrees.

20. The Secretary of State agrees with the Inspector's overall conclusion that the appeal proposal was inconsistent with those policies of the development plan which sought to protect and enhance that attractive landscape area.

#### **Issue (c) - Traffic and Road Safety**

21. The Inspector described the characteristics of Little Heath Lane in paragraph 70 of his report. He had no doubt that the width, alignment and general condition of the lane as the proposed means of access to the appeal site was a cause for concern. All the parties also agreed that it could not be used as it stood to serve the proposed development. Your clients sought to address those worries with a proposal to introduce a traffic light controlled arrangement. The Inspector considered that what was being proposed might well be possible in theory, but in practice would fail to provide for a satisfactory and safe use of the lane. He

concluded, for the reasons given in paragraph 72 of the report, that there would be considerable practical difficulties and inconvenience for drivers using Little Heath Lane and Pix Farm Lane. The Secretary of State agrees with the Inspector's assessment.

22. The Inspector considered that pedestrians and other slow movers could well find themselves caught between the lights when HGVs were accessing or leaving the site. Although the proposed traffic lights would serve the needs of the proposal, they would not address the safety implications of introducing that traffic into the wholly unsuitable highway. He concluded that that was a serious concern (IR 73). The Secretary of State agrees. He also agrees, for the reasons given in paragraph 74 of the report, that there was insufficient highway to provide for a satisfactory width of carriageway and passing bay. He accepts that construction of the bays would require additional land to allow for a shoulder to support the widened carriageway, which could only be achieved by obtaining more land and destroying at least one roadside hedgerow, removing the grass verge and further increasing the danger for other road users. He shares the Inspector's view that, despite the Legal Agreement, the proposed means of access pointed to a significant and unacceptable impact on traffic and road safety. He agrees that the proposed solution would be at a high cost to the convenience of other users of the lane and its environmental qualities and that the existing road safety problems within that section of highway would not be addressed and would be appreciably exacerbated.

23. The Secretary of State agrees with the Inspector that there are fundamental objections to the proposal on traffic and highway safety grounds which were not overcome by the proposed traffic control scheme. He also agrees that the concerns about traffic and road safety are of sufficient weight on their own to justify dismissing the appeal.

#### **The Secretary of State's Formal Decision**

24. For the reasons given above, the Secretary of State agrees with the Inspector's conclusions and accepts his recommendation. Accordingly, he hereby dismisses your clients' appeal

25. A separate note is enclosed setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by the making of an application to the High Court.

26. Copies of this letter have been sent to Hertfordshire County Council, Dacorum Borough Council, Geo-Plan Consultants Ltd, those parties who appeared at the inquiry and everyone who asked to be notified of the Secretary of State's decision.

Yours faithfully

*Andrew N Hayes*

ANDREW N HAYES

Authorised by the Secretary of State  
to sign in that behalf

## Inspector's Conclusions

The main issues

59. Bearing in mind the above I have come to the conclusion that the main issues raised by this appeal relate to: -

- a) whether the proposal would be inappropriate development within the green belt; and if so, whether there are any very special circumstances relating to the agricultural improvement of the land which might outweigh the strong presumption against inappropriate development;
- b) the impact of the proposal on the landscape character and appearance of the area; and,
- c) the implications of the proposal for traffic and road safety in the area, especially along Little Heath Lane.

### a) The Green Belt

60. The site occupies a position in an area of approved green belt. It is an extensive and prominent site and the proposal clearly constitutes an operation that involves a material change in the use of the land. PPG2 (at para. 3.12) advises that the carrying out of such operations is inappropriate development unless they maintain openness and do not conflict with the purpose of including the land in the green belt. [9, 17, 32, 46]

61. On the matter of openness the proposal would not, in the longer-term, prejudice this objective of green belt designation, as the intention is that the land would be restored to agricultural use. But for the duration of tipping and restoration works the land would take on the appearance of a waste tip and operate as such. In my judgement, the scale of the project, the extent and prominence of the site, together with the length of time that it would be operational mean that the openness of this area of green belt would be eroded and appreciably harmed for a significant period. [10-12, 33-35, 46-47]

62. The proposal would also conflict with two of the purposes of including land in the green belt. The tipping and associated activities would appear as an extension of the built up area, albeit not as one on which buildings would be erected. And it would be wholly contrary to the purpose of assisting in safeguarding the countryside from encroachment. The combination of these factors means that the proposal conflicts with national, strategic and local policies that seek to protect areas of green belt from inappropriate development. [46]

63. The very special circumstances which are put forward in this case, and which have to be considered to justify the scheme, relate entirely to the alleged agricultural improvement which would accrue from the reduction in slopes, soil erosion and the covering of flints. I accept that these conditions currently exist within the site and that they are matters that impact on the usefulness and convenience of agricultural operations. However, they cannot,

in my view, be regarded as unusual in this area or matters that cause unreasonable conditions for working the land. Indeed, similar conditions abound in this area but the land has been and continues to be well worked and is clearly capable of producing worth while crops. For these reasons I do not consider the land to be degraded for the purposes of an assessment in respect of policy 24 of the WLP.[22, 27-28, 41-43, 55]

64. The tipping would reduce the main slopes on the land, thus increasing the safety aspects of working the land. But the anticipated improvements to agricultural land quality and classification would be minimal. The evidence on the question of yields is so scanty that I find it wholly unconvincing. Indeed, given the period that the land would be out of production while tipping and restoration took place, and the time necessary to recoup the resultant loss to production, I do not believe that the issue of yields can be given any great weight in the consideration of this appeal. Drainage of the site is unlikely to be improved, as the natural drainage of the area is good, and in all probability artificial drainage would be required, but again information on this matter is not forthcoming. The lack of sufficient suitable material to provide topsoil material is of major concern. Waste schemes elsewhere in the County are finding it difficult to obtain suitable material for final restoration. Should similar circumstances arise at this site there may be delays to both the envisaged timetable and the final restoration of the site.[28-30, 55]

65. Similarly with regard to the offer that should tipping take place additional hedgerow and tree planting would form part of the restoration programme. That may well be so but no details are available on these important matters to enable a judgement to be made about any likely impact of such features. Moreover, I agree with the view that hedgerow and tree planting within the site are not dependant upon tipping taking place and could be undertaken under normal agricultural practice. Overall therefore, I consider that the very special circumstances put forward in support of this proposal are insufficient to outweigh the harm that would arise to green belt objectives.[28, 45, 55]

#### Landscape Character and Appearance

66. Even if a different view is taken about the inappropriateness of the development within the green belt there is, in my opinion, a very serious objection to this scheme as a consequence of its likely impact on the landscape of this area. PPG2 ( at para.3.15) indicates that the visual amenities of the green belt should not be injured by proposals for development. This proposal would undoubtedly harm the visual amenities of this area of green belt. Although not in the AONB the site immediately abuts this specially designated area and lies within a landscape conservation area as included in the adopted LP. In my view such a designation of the appeal site is wholly justified - the landscape quality of this part of the southern valley side of the River Bulbourne being quite exceptional.[9-12, 18-19, 34, 46,]

67. It is appreciated that the control of development outside the AONB is not as restrictive as within the area. But this proposal would be seen in conjunction with the landscape of the AONB. In these circumstances it is proper that the impact of the proposal on the AONB should form part of the assessment of the scheme. It cannot be the case that, whilst these adjoining areas can be separated in policy terms, they have a strong visual interrelationship in any assessment of the landscape which should not be ignored.[33, 47]



68. The site itself is of outstanding character and appearance. It lies in a beautiful area and possesses topographical features that are most delightful, with the dry valley being outstandingly attractive. The scheme would retain some semblance of a valley but the intrinsic qualities of the present valley and the contribution it makes to the landscape pattern of the area as a whole would be lost. Thus the proposal would degrade the overall character and appearance of this natural landscape and such an impact would be unacceptably detrimental to both the local and the more extensive landscape of the area.[35, 48]

69. The lack of public access to the site is acknowledged. But that does not detract from the quality of the area or the part it plays in the amenities of local residents, walkers, cyclists, horse riders and fishermen, all of whom use the general area for recreational refreshment and enjoyment of the landscape features. This scheme would have a major adverse effect on all those activities that are directly related to the quality of the local landscape. And in the absence of any details to the contrary, it is my experience that bunding and other short term mitigation measures, carried out on such a prominent and sloping site, are unlikely to have any thing but a very marginal effect in reducing this expected impact. For these reasons I consider that the proposal is inconsistent with those policies of the development plan which seek to protect and enhance this attractive landscape area.[11, 35, 49]

#### Access and Highway Considerations

70. Little Heath Lane is, for the most part, a narrow country lane. There are no footways and verges are limited and damaged in many places as a result of manoeuvring by existing users of the lane. The limited width means that it is not possible for two ordinary vehicles to pass over much of its length and the two bridges provide a significant obstacle to vehicles passing and to forward visibility for drivers. Only between London Road and the canal bridge is it possible for two ordinary vehicles to pass – but even here there are no facilities for pedestrians and the grass verges are very limited. The passing of two HGV's along this section of road would also be difficult and in recognition of this the appellants propose the provision of a passing bay.[13, 14, 38, 39, 51-54]

71. There is no doubt that the width, alignment and general condition of Little Heath Lane as the proposed means of access to the appeal site is a cause for concern. All the parties also agree that this lane could not be used as it stands to serve the proposed development. This is recognised by the appellants who seek to address these worries with a proposal to introduce a traffic light controlled arrangement. And much of the discussion at the Inquiry concentrated on the suitability of such a scheme.[38, 39, 52]

72. Irrespective of any legal requirements concerning distances in the provision of a traffic light controlled system, it seems to me that what is being proposed here may well be possible in theory, but in practice would fail to provide for a satisfactory and safe use of this lane. The distance between the longest arms of the lights would be around 240m. This, together with the lack of forward visibility and gradients, would mean that all drivers would have to wait a very significant period on a red light triggered by a vehicle leaving the site. During this period they would not be aware of what may be occurring elsewhere within the controlled area whilst an exiting vehicle negotiated the full length of that controlled area. This suggests to me that there would be considerable practical difficulties and inconvenience for drivers of all vehicles using this lane and Pix Farm Lane who would be equally affected by the scheme.[39, 53]

73. Also of concern would be the conflict between HGV's and other users of the lane. Pedestrians, who would not have to observe the traffic lights, and other slow movers such as horse

riders, could well find themselves caught between the lights when HGV's were accessing or leaving the site. As a consequence, the proposed traffic lights, whilst serving the needs of the proposal, would not address the safety implications of introducing this traffic into this wholly unsuitable highway. This is a serious concern.[39, 51, 52]

74. With regard to the proposed passing bays I undertook a measure of the available width between the centres of the roadside hedgerows at my site visit. Some 6m are available within the highway boundary. In my view this is insufficient to provide for a satisfactory width of carriageway and passing bay. If the full 6m was available for carriageway it would be possible to squeeze a passing bay into this width which would allow for two HGV's to pass. But it is not. Construction of the bays would require additional land to allow for a shoulder to support the widened carriageway. This could only be achieved by obtaining more land and destroying at least one roadside hedgerow. Moreover, such a solution would remove the grass verge and further increase the danger for other road users.[39, 54]

75. Despite the Section 106 agreement all the circumstances surrounding the proposed means of access in this case point to a significant and unacceptable impact on traffic and road safety. The proposed solution is an extreme one that may ensure that HGV's visiting and exiting the site can physically do so. But this would be at a high cost to the convenience of other users of this lane and its environmental qualities. Moreover, the problems that already exist for road safety within this section of highway overall would not be addressed and would be appreciably exacerbated.[13-15, 39, 54]

76. For all these reasons I believe that there are fundamental objections to the proposal on traffic and highway safety grounds which are not overcome by the traffic control scheme put forward. As such, the proposal conflicts with the wide range of policies that seek to ensure that development uses appropriate roads and does not adversely impact on road safety. Moreover, I believe that irrespective of my conclusions on the other issues raised by this proposal, the concerns about traffic and road safety are of sufficient weight on their own to justify recommending dismissing the appeal.[24]

#### Other matters

77. Should the Secretary of State disagree with my recommendation there is a need to consider a range of conditions that would be necessary in order to secure a satisfactory development and an acceptable restoration scheme and its aftercare. The Council provides a comprehensive list of suggested conditions (Documents 13A, 13B & 14) and there is general agreement about the bulk of these conditions. Provision for the control and attenuation of noise is included for but there would also be a need to include a condition addressing potential dust problems. There would be a need to make certain that conditions did not overlap with the Section 106 Agreement now sealed. An additional condition would be needed to guarantee the provision of a traffic control scheme within the appropriate section of Little Heath Lane and access to the site prior to any tipping taking place. But I see no reason to ask the appellants to undertake a study of HGV traffic on the local road network, as indicated in condition 1 of the Council's suggested conditions. It would serve no purpose at this stage.