

Appeal Decision

Inquiry held on 23 – 25 August 2016

Site visit made on 24 August 2016

by Katie Peerless Dip Arch RIBA

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

Decision date: 29 September 2016

Appeal Ref: APP/B5480/W/15/3023015

Ingrebourne Hill, Rainham Road, Rainham, Essex RM13 7YH

- 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 Ingrebourne Valley Ltd against the decision of the Council of the London Borough of Havering.
 - The application Ref P1066.14, dated 23 July 2014, was refused by notice dated 30 December 2014.
 - The development proposed is engineering earthworks to merge Ingrebourne Hill with Hornchurch Country Park using inert soils, including temporary soils treatment and recovery, internal haul road, ancillary buildings, overnight security and structures to provide a managed woodland with recreational and amenity after use.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since the appeal was lodged, the Council has confirmed that a review of further information received has led it to conclude that, subject to the imposition of relevant conditions, the original concerns relating to the ecological impacts on the Ingrebourne Marshes Site of Special Scientific Interest (SSSI) and harm to residential amenity, relating to noise, air quality and dust, would not be sufficiently adverse to warrant refusal of the application.
 3. The Council also accepts that any adverse highway impacts of the proposal would not be at a level that could substantiate a reason for refusal but it nevertheless maintains that there is some harm on these grounds that should be included in the planning balance. The objection to the proposal on Green Belt grounds is still maintained.
 4. Although it may be possible to import the materials needed for the proposal under the CL:AIRE Code of Practice route, by which a Qualifying Person certifies that the monitoring and management of the scheme is regulated voluntarily, thereby taking the proposal out of the remit of the waste permitting regulations, the appellants have confirmed that the appeal scheme as applied for, which includes facilities for treating at least some of the imported material, would amount to inappropriate development in the Green Belt. I have therefore considered the appeal on that basis.
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Main Issues

5. Consequently, I consider that the main issue in this case is whether there are any material considerations that outweigh the harm caused by inappropriate development within the Green Belt, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances.

Site and surroundings

6. The appeal site is open land situated between Ingrebourne Hill and Hornchurch Country Park and is owned by the London Borough of Havering. It was previously used for mineral extraction and has been restored to grassland and woodland. It comprises 2 areas of field separated by a hedge, part of the north east slope of the Hill on which young trees and shrubs have been planted and the area that would form the access road for the works, to the south-east. At present the fields are generally flat but with areas of dips and ponding where there has been differential settlement of the material used in the restoration.
7. It was confirmed at the Inquiry that there is permissive access across all the land, although in practice it seems that most people use the pathways rather than walking elsewhere across the site.
8. Ingrebourne Hill is a man-made feature and was also a restoration project carried out by the appellants on land previously used for mineral working. It is now managed by the Forestry Commission (FC) and is accessible to the public via a series of formal and informal pathways and a BMX bicycle track.
9. The Country Park is owned and managed by the Council and is on the site of a former airfield. It contains visitor facilities including Ingrebourne Valley Visitor Centre and a network of pathways and a lake. It also includes part of the Ingrebourne Marshes SSSI. At present it is possible to walk or cycle between the Park and the Hill along a surfaced track running to the north-west of the appeal site or on foot via an informal path to the south east. Both pathways connect to a surfaced access way to the north east, adjacent to the Park, and are linked by grassed tracks to the south west, along or adjacent to the Hill.

The appeal proposals

10. The appeal scheme is promoted as a collaboration between the appellants, the FC and the Council and is dependent upon a leasing agreement with the Council who, as noted above, own the land. It proposes a remodelling of the north east slope of the Hill and the fields to create a gentler and more varied gradient to link with the land in the Park. It would include planting of new woods and shrubland, the laying of access tracks and the creation of a balancing pond in the eastern corner to facilitate drainage.
11. The project would use 350,000 tonnes of inert material to create the raised landform and it is projected that, if the material needed to be graded and treated on site prior to spreading, a maximum total of 500,000 tonnes would have to be imported.
12. The timescale for the work is 30 months with additional time needed for planting once the ground modelling works are complete. The vehicles bringing the material to the site would be OGV2 tipper trucks and would be limited to 100 trips a day, a total of 200 movements in total. Temporary earth bunds would be created to screen the works from nearby residential properties and these would be removed on completion of the works.

Reasons

13. As noted above, it is agreed that the works would be inappropriate development in the Green Belt, as set out in paragraphs 87 – 92 of the National Planning Policy Framework (the Framework) and consequently very special circumstances would be needed to be demonstrated before planning permission could be granted for them.
14. In support of the proposal, the appellants point to the fact that the scheme is part of the wider Thames Chase Community Forest Plan and All London Green Grid and is intended to provide an enhanced landscape and greater public usability of the land. The previous standard of restoration of the land is said to be poor and the works would remediate this, using recycled inert waste material.
15. The Council is however, concerned that the scheme would impact on the openness of the Green Belt and encroach into the countryside, particularly during the construction phase, but also through the increased operational development on the site in the form of hard surfaced paths and a car park. It also considers that, whilst transport impacts could be made acceptable in highway safety terms through the redesign of the access junction and the limit on the number of trips, there would nevertheless be a perceived increase in the levels of fear and intimidation caused to other road users through the additional numbers of heavy goods vehicles using the local road network. The Council considers that this is another harm that should be added to the considerations when weighing the planning balance.
16. During the construction period, it is clear that there would be considerable disruption associated with the proposed works. The site would be unavailable to the general public and although the footpath to the north-west would remain open, this would be the only means of access between the Country Park and Ingrebourne Hill. The plant, machinery and offices on the site would harm openness as would the presence of the man-made bunds that would not reflect a natural land form. Permanent development in the form of the car park and hard surfaced paths would also have a small, but nevertheless perceptible, impact on the openness of the Green Belt.
17. I am satisfied from the evidence produced at the Inquiry, and from what I saw at a similar site operated by the appellants, that noise and dust from the works could be satisfactorily controlled by condition. However, the public using the network of pathways and trails on the Hill would nevertheless be aware of the ongoing construction project which would detract from the open, countryside nature of the surroundings.
18. In my view, the site as existing could not be classified as an eyesore, nor is it neglected or derelict, and thus there is no justification for the project similar to that used to support the creation of Ingrebourne Hill. While the site is unremarkable and contains depressions where the previous restoration has been less than successful, it is not unpleasant, nor to the untrained eye does it appear to need further work. I am sure that the finished scheme would be of a similar quality to the landscape of the Country Park and Hill but there is no pressing need, in my view, to carry out the remodelling on the scale proposed in order to improve the appearance of the fields and hillside.

19. Although the relatively recent planting on the Hill would be relocated, this would take some time to re-establish as would the new woodland planting across the remainder of the site. The landscaping benefits of the proposal would therefore take a number of years to be fully realised and would, in my opinion, in any event, be limited.
20. There would be better drainage of the site provided through the establishment of the drainage ditches and pond but there is little evidence that the site has had any significant flooding problems that would need to be addressed through the appeal scheme to allow the public to continue to use it.
21. Access between the 2 existing areas of public open space would be upgraded by the installation of surfaced path with a gentler gradient in place of the existing track. The fields would also have pathways across them and therefore be easier to traverse, but there would be no additional access points created between the Country Park and Ingrebourne Hill.
22. Relevant planning policy includes CP7 from the Havering Core Strategy and Development Control Policies Development Plan Document 2008 (DPD) and this supports the implementation of the Thames Chase Plan and Green Grid initiatives in order to, among other things, improve opportunities for informal recreation. The policy also seeks developer contributions towards improvements to the quality and quantity of open space, recreation and leisure facilities.
23. DPD policy DC18 seeks the retention and enhancement of all public open space and there is no dispute that the proposal would meet these requirements. Policy DC22 again seeks opportunities to increase informal recreation in the countryside by means that include ensuring that all developments located within the Thames Chase make a positive contribution to the implementation of the Thames Chase Plan. As with policy CP7, improvements are sought, for example, to access, recreation opportunities, the landscape and nature conservation, where appropriate seeking developer contributions towards implementation the Thames Chase, and the Green Grid. The project is one of those identified in the Thames Chase Plan 2014 and the support for this Plan in the DPD policies noted above is a positive factor in favour of the proposal.
24. The appellants argue that a 'developer contribution' could be through a scheme such as the appeal proposal, although the Council submits that it relates only to a financial contribution. It seems to me that a contribution could be made 'in kind' but would need to relate to a particular identified need. There is no specific policy identification that points to a requirement to improve the quality of this existing public open space in the DPD and, while there is support in general for the Thames Chase and Green Grid Plans, this would not necessarily override policy conflicts in other areas, such as those relating to development in the Green Belt. In fact, the Framework, in paragraph 92, specifically refers to Community Forests and notes that such proposals will be subject to normal Green Belt policies.
25. Similarly, while the area in which the site is located has been identified as part of the Berwick Link in the All London Green Grid (ALGG) Supplementary Planning Guidance (SPG) and is consequently part of the overall vision, this has not translated into local policy supporting the proposed development.

26. In this respect it differs from the project at Ingrebourne Hill, where the land was identified as derelict and a local plan policy was included to promote its restoration. Therefore, whilst the appeal scheme would not conflict with, and indeed draws support from, the above mentioned policies, it is not directly included as an aim or objective in the DPD.
27. There was debate at the Inquiry as to whether it has been demonstrated that the amount of material to be used in the project is the minimum needed to achieve its stated aims. I have no reason to dispute that the 350,000 tonnes of reclaimed soils and hardcore is the volume that would be needed to achieve the landform shown on the submitted plans. The scheme is also the one that is promoted by the FC as it meets their requirements for tree planting across the site.
28. I therefore accept that, in terms of providing the additional woodland sought by the FC, the amount of imported material would not be excessive. I am not, however, persuaded that the proposed landform is the only way the objectives of improving the quality of the land restoration and the links between the Hill and the Country Park could be achieved. I appreciate that the viability of the project may depend on the partnership between the appellants, the FC and the Council and each party will have their own specific requirements, but these are not necessarily matters that relate to planning considerations or can be considered a benefit that might be set against Green Belt concerns.
29. There is considerable local concern over matters that the Council now considers would not in themselves result in a reason for refusal. There were representations made about the possible impact on the ecology of the site and criticism of the reports included in the Environmental Statement and the later updates to them. However, the Council has considered the situation in the light of the additional information submitted by the appellants and concluded that there would be no unacceptable impact. I am not persuaded, from the submissions put forward by the objectors, that they have sufficient evidence to justify setting aside the finding that there would be no unacceptable impact on the SSSI or the wider countryside.
30. Objectors are also concerned that the traffic impacts during the construction phase would prove disruptive. The Highway Authority considers that the additional lorry movements would not exceed the capacity of Rainham Road and I have no reason to dispute this. However, the increase in heavy goods vehicles would, I consider, be bound to be noticeable to local residents, whether using the road or living alongside it and increase the perception of fear, intimidation and noise levels as a result. This factor would therefore have a detrimental impact on the amenities presently enjoyed by road users and residents, adding to the identified harm, albeit on a temporary basis.

The balancing exercise

31. The Framework requires substantial weight to be attributed to any harm to the Green Belt whether caused through inappropriate development or by any another means. In this case, the harm through inappropriateness would not exist if the material used was not classified as waste. If the scheme were to be carried out using non-waste materials, it would be an engineering operation that would not be inappropriate, provided it met the other criteria set out in paragraph 90 of the Framework.

32. I have taken this scenario into account, but there are no definite proposals included in the application before me to undertake the project on this basis¹. I am also mindful that it could, in any event, be considerably more expensive if the appellants had to purchase material that was already suitable for the scheme rather than being paid to dispose of waste. This lessens the likelihood of it proceeding as a non-waste development and as a consequence, the prospect of any fall-back situation existing is reduced.
33. Although the quality of the land restoration would be improved to a certain extent, it seems to me that any other benefits of the scheme would not be particularly weighty. In policy terms there is no conflict with the Thames Chase Plan, the ALGG SPG or the countryside and recreational policies in the DPD but policy compliance in other areas is not enough to contribute to the benefits in the Green Belt 'very special circumstances' balance. Very little, if any, support for the scheme has been expressed by the public users of the site; in contrast many local residents have said they see no need for the work and object to the length of time the scheme would take and the corresponding loss of the use of the site to the public during that period.
34. There would be harm to the openness of the Green Belt during the construction period and beyond and the scarring of the land would take further time to naturalise and return to the 'open countryside' appearance that is described in the appellant's statement. Until the planting scheme has settled and matured, the site would appear as a man-made landscape which, in my view, would also harm Green Belt openness and amount to encroachment into the countryside. I have also found that the increased traffic during construction would have a detrimental impact on amenity.
35. I have considered the conditions agreed between the parties and the Unilateral Undertaking submitted by the appellants and these would mitigate the concerns that include highway safety, noise and dust and would provide ecological protection. However, these are factors that would render the scheme policy compliant in these areas and are not positive benefits.
36. All the factors contributing to the Green Belt harm caused by the proposal, both temporary and permanent, must be accorded substantial weight, as noted above. When considering the benefits of the scheme, I find them to be limited and that there is nothing that, either individually or cumulatively, would outweigh this harm or amount to very special circumstance indicating that planning permission should be granted. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Katie Peerless

Inspector

¹ Under the CL:AIR Code of Practice

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Clutten	Of Counsel
She called	
Roland Craig BSc FCIHT MILT	Technical Director, Fairhurst
Tom McCarthy BSc (Hons) PG(Dip)	Principal Planning Officer, Minerals and Projects, London Borough of Havering

FOR THE APPELLANT:

Richard O'Sullivan	Of Counsel
He called	
Douglas Symes ARSM BSc (Hons) CENG FGS MIMM FIQ FRGS	D.K. Symes Associates
Steven Williamson BEng MICE MCIHT	Intermodal Transportation
Ged Duckworth	Chartered Waste Manager, Ged Duckworth Ltd.

INTERESTED PERSONS:

Cllr. Michael-Deon Burton	Ward Councillor, Havering Council
Cllr. David Durant	Ward Councillor, Havering Council
Cllr. Philip Martin	Ward Councillor, Havering Council
Cllr. Graham Williamson	Ward Councillor, Havering Council
Cllr. Stephanie Nunn	Ward Councillor, Havering Council
Danny Coyle	Urban Mud Events Ltd.
Geoff Stafford	Chair of Friends of Ingrebourne Valley and Hornchurch Country Park
Rosina Purnell	Friends of the Earth
Melanie Collins	

DOCUMENTS

- 1 List of suggested conditions
- 2 Notes of Mr O'Sullivan's opening statement for the appellants
- 3 Bundle of legal authorities submitted by the Council
- 4 Notes of Miss Clutten's opening for the Council
- 5 E mail and photos relating to vehicles at access point
- 6 Officer's report on application for Ingrebourne Hill scheme
- 7 Cabinet Report of 16/11/2011
- 8 Letter from Jean Lambert MEP
- 9 Notes of Cllr. Durant's statement
- 10 Statement from Cllr. Barry Mugglestone
- 11 Update on ECOSA survey
- 12 Planning Permission for Little Gerpins 2 site
- 13 Notes of Miss Clutten's closing statement for the Council
- 14 Legal authority – Langley Park School v LB Bromley
- 15 Notes of Mr O'Sullivan's closing statement for the appellants
- 16 Havering Friends of the Earth's response to ECOSA update
- 17 Completed Unilateral Undertaking

PLANS

A Swept path analysis for access onto Rainham Road