
Appeal Decision

Hearing held on 24 September 2014

Site visit made on 24 September 2014

by Jonathan G King BA(Hons) DipTP MRTPI

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

Decision date: 21 October 2014

Appeal Ref: APP/M1900/A/14/2218970

Land at Pynesfield, Maple Cross, Rickmansworth, Herts.

- 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 Harleyford Aggregates Ltd against the decision of Hertfordshire County Council.
 - The application Ref 8/0761-13, dated 21st March 2013, was refused by notice dated 29th January 2014.
 - The development proposed is mineral extraction, processing and importation of sand and gravel and reclamation materials from Denham Park Farm with restoration to agriculture and a small wetland area.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - (a) *the effect of the proposed development on groundwater quality and quantity; and*
 - (b) *Whether the proposed development would be inappropriate development in the Green Belt; and, if so, whether any very special circumstances exist to outweigh the harm to the Green Belt and any other harm.*

Preliminary matters

3. The application was accompanied by an Environmental Statement (ES).
4. *Further Information* was submitted by the appellant as the result of a request by the Council under para 22 of the Environmental Impact Regulations 2011. This addressed a number of matters: the impact on HS2 proposals; the nature and extent of waste from past tipping; noise; birds / biodiversity; and need.
5. A draft Statement of Common Ground (SoCG) was submitted prior to the Hearing. A completed version has subsequently been submitted.
6. The Council produced no evidence in relation to the first issue, but chose to rely on the Environment Agency (EA). The EA submitted a written statement and was represented at the Hearing on its own behalf.

7. Both the appellant and the EA made legal submissions at the Hearing primarily with respect to whether the proposed infilling should be regarded as a waste disposal operation.

Reasons

The proposed development

8. As reflected in the description given in the application form, the proposed development includes a number of elements. First, it involves the excavation of sand and gravel from the site. This would be undertaken "wet" – ie without dewatering. An integral part of this operation would be the stripping and storing of soils, and other associated operations and works. Second, the excavated material would be processed, requiring the erection of plant, and the provision of silt lagoons, fuel storage and other ancillary buildings and equipment. Third, the plant would also be used to process sand and gravel excavated from the nearby Denham Park Farm (DPF) quarry, located in Buckinghamshire, which already benefits from planning permission. Fourth, in order to restore the land approximately to its former level, the void excavated on the site would be filled with a clay type material excavated for the purpose from DPF, and re-covered by the stored soils. A new access would be constructed to the A412 to permit export of the processed material.
9. Before proceeding, I propose to set out certain conclusions as to the nature of the fourth of these elements: the filling of the void. I seek to clarify this because at the Hearing there was considerable debate on the subject and because my conclusions have a bearing on the consideration of the main issues. Of particular dispute was the question as to whether the fill material should be considered as "waste" in the context of applying the planning and environmental protection regimes; and consequently whether the infilling should be regarded as a waste disposal operation.
10. The EA takes the view that the material must be considered as waste; and the operation as waste disposal. This is based on the definitions contained in the European Waste Framework Directive 2008/98/EC (WFD) and on judgments in the Court of Justice of the European Union (ECJ), notably the *Arco* judgment (joined cases C-418/97 & C419/97). The EA acknowledges that its argument involves a degree of circularity. "Landfill" is defined in the WFD as a waste disposal site for the deposit of the waste onto or into land. But this is on the premise that what is being deposited is waste.
11. The WFD defines "waste" as any substance or object which the holder discards or intends or is required to discard. In *Arco*, the judgment self-evidently states that the scope of the term "waste" turns on the meaning of the term "discard". Unhelpfully, however, that term is not itself defined. While a number of judgments have addressed the nature of discarding, it is an understatement to say that considerable uncertainty still exists. The Supreme Court judgment in the *R(OSS) Group Limited* case (C1/2006/2545) states that, while the ordinary English meaning of the word is an imperfect guide to its significance in the definition of waste, the term "discard" is used in a broad sense equivalent to "get rid of". But it is later concluded that "a search for logical coherence in the Luxembourg case-law is probably doomed to failure"; and that the ECJ has consistently declined invitations to provide a definitive "end of waste test". The judges in that case also considered that it is not the function of a domestic court to fill the gap. Still less is it the function of a planning appeal decision.

12. I have, therefore, not sought to provide a definitive answer to all of the matters canvassed at the Hearing, but only to consider those matters which may have a bearing on the outcome of this appeal. I have taken into account the detailed submissions made to me at the Hearing but, in the absence of any definitive guidance in the WFD or in case law, I am obliged to take a pragmatic approach in the context of the appeal before me and the issues in this case.
13. First, having regard to the normal meaning of the word, I am satisfied that the proposed infilling of the void should be regarded as "landfill". This is consistent with the inclusion of landfill in the WFD definition of "disposal operations" as an example of "deposit into or on to land". Second, however, as that definition has been drawn up in the context of waste disposal, I do not believe that one must thereby consider all landfill as the disposal of waste; or that all material used for landfill must be considered as waste for the purposes of applying planning law. I appreciate that the EA may wish to take a different view when exercising its particular functions; and I support the desirability of operating environmental and planning controls consistently, but I do not feel constrained by that view.
14. In this case, the proposed fill material would be imported from outside the site, but that does not imply that it should be regarded as waste. Indeed, its geographical origin seems to me to be irrelevant. Of greater importance are its nature; the context of its production; the purpose for which it was produced; and the purpose for which it will be used. I reach this view largely on the basis of the appellant's submissions. They argue that the material would be procured specifically for the particular purpose of filling the land. It would be a natural primary material excavated from DPF. That is not in dispute. If it were not to be used for the purpose of filling the Pynesfield void, it would remain in the ground as there would be no imperative to excavate it. Having regard to the *Palin Granit Oy* case ([2002] 1 WLR 2644), it would not be "what falls away when one processes a material or an object". Although it would be got from a sand and gravel quarry, it would not be a by-product of the winning and working of the mineral; and it would not be processed or the product of processing. To my mind, when in the ground it is not a waste; and once excavated it would not become a waste; and nothing would be done to it in the way of processing that might render all or part of it as waste. Using the normal English use of the term, it would not be discarded; there would be no intention to discard; and no requirement to discard. Similarly, by reference to the *R(OSS) Group Limited* case, it would not be "got rid of"; and there is no intention and no requirement that it should be got rid of.
15. At Pynesfield, the material would clearly be "deposited into or on to land", constituting landfill. But the purpose of filling the land is not the disposal of the material: it is the reclamation of the land. The material would be disposed of only in the sense of being put in a different place. In this, the operation may be distinguished from the type of landfill where the purpose of filling has a dual purpose: the reclamation of the land and discarding or getting rid of waste. As concluded above, the material could not reasonably be described as waste when it has been excavated; and there is nothing intrinsic in the act of moving it and placing it in the ground that would transform it into waste.
16. I acknowledge that what is proposed has similarities with the use of material in the course of an engineering operation - such as the building of a road embankment - with the material having been chosen and procured for the

specific purpose. But I do not consider it to be directly comparable. Its purpose is to fill an excavation as part of a quarry restoration exercise rather than as part of an engineering construction.

17. I conclude that, in these specific circumstances, the proposed infill material would not be waste; and its deposit into and on to the ground, though landfill, would not be a waste disposal operation. For the purposes of its own legislation and applying its own controls, the EA may take a different view, but that is a decision for it to make.

The effect on groundwater

18. The site is situated on a Principal Aquifer within an Inner Source Protection Zone (SPZ1). Areas so designated by the EA are the most vulnerable and require the highest degree of protection. The site is also within a Water Framework Directive designated drinking water protected area in the Mid Chilterns Chalk. EA states that the Principal Aquifer is a significant resource capable of sustaining large abstractions, sustaining nearby rivers, lakes and wetlands and is an important source of drinking water. There are a total of 4 licensed abstraction points within a kilometre of the site, including the Northmoor boreholes, which are within 500m. EA formally objects to the proposed development.
19. The applicant considers that the perceived impacts of the proposal would be modest and could be mitigated during working by good site practice, and that at completion there would be no residual risk. But EA identify 4 main potential sources of contamination. I consider these in turn.

Excavation of the mineral and disturbance of the existing historic landfill

20. The appeal site includes within it a strip of land which has in the past been landfilled with waste. It has been suggested that this channel was a former canal or that it was a water-cress bed, or possibly the former converted to the latter. What is not in doubt is that, probably in the early 1970s, it was filled with waste, though no record exists of what particularly was placed in the ground. 6 test pits undertaken on behalf of the appellant and included in its *Further Information* has provided some information about the nature of the waste. 5 of the pits revealed the presence of asbestos. Also found in subsoil was scrap metal, plastic, rotten wood, concrete, and "general rubbish". In 2 pits a hydrocarbon odour was detected, one described as "strong". Discoloured soil was found in one pit. Regrettably, although samples of the asbestos were analysed and, from the material submitted, it was clearly the intention that further chemical analysis would take place, the appellant's agent was unable to say at the Hearing whether any such analysis had been undertaken. I have not been provided with any other information about the nature of the waste. Nonetheless, the limited information available suggests strongly that the waste includes, or is likely to include potentially contaminating or polluting material.
21. The intention would be to excavate the waste and to take it off-site for disposal elsewhere at a suitably licenced facility. I agree with the EA that digging out the waste "wet" in the same way as the mineral would disturb the material and could, potentially, mobilise or release contaminants into the groundwater. At the Hearing, alternatives were suggested: either leaving the material in situ or locally dewatering the affected area so that the waste could be dug out "dry". Although I acknowledge that the waste in its undisturbed state could in any

event pose a risk to groundwater, both approaches appear to raise additional risks. Leaving the waste in the ground but extracting mineral from beyond the affected area could locally alter groundwater flows during mineral extraction, as could the filling of the mineral void by clay material having significantly lower permeability. That could lead to the waste-filled channel becoming a permeable route for groundwater. On the other hand, local dewatering to enable more controlled excavation could also alter groundwater flows through the waste.

22. The channel leads from "The Dell", a former chalk pit which has also been filled historically, but again the nature of the fill is unknown. It is possible that digging out the channel could open up groundwater pathways, possibly with contamination from any waste in the Dell. However, I am reasonably satisfied that the appellant's suggestion of sealing any such pathways with clay would most likely be sufficient to prevent this happening; and that this could be assured by condition.
23. The trial pits have revealed material with the potential to cause groundwater contamination; and although the amount of waste is fairly limited, there must be a risk of causing such contamination either through disturbance of the waste or of groundwater flows. The nature or severity of the risk cannot be assessed in the absence of any proper analysis of the waste. Little can be inferred from the fact that presently there is no record of contamination, including at the borehole to the north. However, that borehole is upstream of the groundwater gradient. It cannot be assumed that any contamination has already been dissipated over the time that the waste has been in the ground; and it would be complacent to do so.
24. The EA has not proved that the proposed development would cause unacceptable pollution to groundwater. But neither has the appellant satisfactorily shown that the risks would be negligible, as claimed. Insufficient evidence is available to prove either case beyond doubt. The risk is therefore unquantifiable. However, on the basis that potentially-polluting waste exists and that the site is within an area having the highest level of groundwater protection, I consider that it would be highly imprudent to carry out the development without undertaking a considerably more detailed analysis of the nature of the waste and the detailed consequences for groundwater.

Processing activities

25. The processing of sand and gravel includes the use of water for washing the mineral and the production of silt, which would settle out in lagoons. The potential exists for silt to enter groundwater, but I am satisfied that, provided the management of processing water is undertaken appropriately and that the lagoons are lined, then there should be no significant risk of silt reaching groundwater in quantities likely to affect its value.

Storage of fuels & oils / use of vehicles

26. Storage of fuels and oils for use by site vehicles and plant is commonplace at minerals sites. The main risk of pollution to groundwater would be from spillages; and for this reason storage tanks and refuelling areas generally have impermeable bases and are surrounded by impermeable containment bunds. Site drainage may be fitted with oil traps. I see no reason to suppose that such

precautions, which could be required by condition, would be ineffective at this site.

27. There would also be the risk of spillage on the wider site in the event of a leakage from a fuel tank or a vehicle accident. Such accidents are likely to be very rare, localised, and would involve small quantities of pollutant. However, they cannot be ruled out. Procedures to minimise the effects of any spillage could be required to be put in place by condition, but in my view they would be largely ineffective owing to the porous nature of the ground. Spilled pollutants would disperse rapidly into the sand and gravel beds and some could make their way into groundwater.
28. Although I do not in any way underestimate the importance of seeking to protect vulnerable groundwater, I take the view that it would be unreasonable to oppose this development by reference to such an eventuality. It would amount to an effective embargo on all mineral extraction in groundwater protection zones. Yet these zones already include the use of land for purposes that could give rise to an equal if not greater risk of accidental spillage of fuels and oils. I have in mind commonplace activities such as agriculture and roads. In that context, I do not believe that the additional potential for spillage is sufficient reason to oppose the development.

Infill material

29. The material to be imported from DPF for infill purposes is described as clay or clay / silt, with low permeability. It presently lies beneath the sand and gravel which it is proposed to excavate commercially. There is no evidence that it is anything other than entirely naturally-occurring and hitherto-undisturbed; or that it is contaminated. However, no analysis has been undertaken of its chemical composition to show that it would be suitable for placing in and above sensitive groundwater. At the Hearing I heard from the EA about the potential for commonly-occurring chemicals, for example iron, to affect groundwater adversely. I have no reason to believe that the material would harm groundwater by reference to quality or quantity though, in the absence of analysis, adverse consequences cannot be ruled out.

Effect on groundwater - conclusion

30. I believe that the potential exists for groundwater to be polluted or contaminated by any of the routes identified by the Environment Agency. For some: the spillage of fuels and oils, and the handling of processing water and silt, I am reasonably satisfied that the risks are minor and largely capable of being mitigated by the imposition of conditions.
31. I acknowledge that, as a naturally-occurring material with low permeability, the clay that it is intended to use as backfill material probably poses little threat to the quality of the groundwater. However, in view of the large quantity involved and, as it has not been tested for suitability, I have some sympathy with EA's caution. The backfilling operation has the potential to contaminate groundwater, but the level of risk is unquantifiable.
32. The greatest risk would appear to come from the disturbance of the pre-existing waste within the channel and any associated excavation of sand and gravel. There is clear evidence that the waste contains potentially-polluting material, but no analysis has been made available of its composition.

Moreover, there is no evidence that any potential for contamination has been dissipated over time. In the absence of such information I am unable to reach an informed conclusion as to the level of risk that would be posed or the severity of the impact resulting from disturbance. In that context and in view of the sensitivity of the groundwater resource, I consider that it would be highly imprudent to disturb the waste, either directly through removal or indirectly by altering groundwater flows.

33. I conclude that the excavation and disturbance of pre-existing waste on the site and the associated excavation of mineral has the potential to harm groundwater quality. In view of the sensitivity of, and the level of protection afforded to groundwater within the SPZ, I consider that unacceptable, and contrary to Mineral Policies 17(iv) and 18(ix) of the Hertfordshire Minerals Local Plan Review 2003-2016. The potential for the imported fill material to affect the quality of the groundwater, though probably lower, adds some limited weight to this conclusion.

Green Belt

Legal position

34. The site lies within the Green Belt. Green Belt policy at the national level is set out in the National Planning Policy Framework (NPPF). In considering planning applications, substantial weight should be given to any harm to the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Certain forms of development are not considered inappropriate, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. Amongst these are mineral extraction and engineering operations.
35. The Council's decision was issued and the statements for the appeal were prepared prior to the High Court judgment ([2014] EWHC 2476 Admin) in the *Redhill Aerodrome* case which, in short, limited the "any other harm" in the NPPF balancing exercise to harm to the Green Belt. That was the position at the time of the Hearing. Subsequently, that judgment has been overturned by the Court of Appeal ([2014] EWHC Civ 612). As a consequence, "any other harm" is presently held to encompass any harm, whether to the Green Belt or otherwise. I have approached this decision on that basis.

Inappropriate development

36. With respect to the development plan the Council relies on Policy CP11 of the Three Rivers Core Strategy. Although adopted prior to the publication of the NPPF, its provisions remain in line with national Green Belt policy.
37. There is no doubt that the proposed mineral extraction should not be regarded as inappropriate. The openness of the Green Belt would be unaffected and there would be no conflict with the purposes of including land in it.
38. Having regard to my earlier identification of the various elements which make up this application, the creation of haul roads, hard standings, silt ponds and the vehicular access would also not be inappropriate as I consider they would either form an integral part of the mineral extraction or be engineering

operations that preserve openness and have no conflict with the purposes of the Green Belt.

39. It could be argued that the stocking of stripped soils in bunds should also be regarded as engineering works, or simply as an integral and necessary part of the mineral extraction. But, albeit modestly and for a limited period, the openness of the Green Belt would not be preserved.
40. Processing plant, although commonly associated with mineral extraction, cannot be regarded as an integral part of it. Some quarries operate without on-site plant, for example. In any event, it would fail to preserve openness, owing to its size, height and industrial appearance. I am less certain that this aspect of the development would conflict with the purpose of assisting in safeguarding the countryside from encroachment, as argued by the Council, but that does not affect my conclusion that they would be inappropriate.
41. Finally, I regard the infilling of the mineral void as inappropriate. I take this view irrespective of whether it should be regarded as landfill or some other operation, or whether the material should be categorised as waste, and notwithstanding that the openness of the Green Belt would be preserved. I do not consider it to fall within the category of engineering operations, even though it may share some characteristics. Neither is it an integral part of mineral extraction. Though clearly consequent upon the extraction, the operation would be necessitated by the chosen restoration strategy rather than the extraction itself.
42. Taken as a whole, and notwithstanding that mineral extraction alone is not inappropriate in the Green Belt, I take the view that the application includes inappropriate development.

Other matters

Flooding

43. I have heard from a number of local residents about serious flooding, including by sewage, that has taken place on, and in the vicinity of the site in recent years. A sewer in Old Uxbridge Road, which carries both foul and surface water drainage, is presently being pumped out continuously in an attempt to reduce the possibility of a recurrence, though the cause of its failure to handle the present flow is uncertain. I do not doubt that the consequences of the flooding have been unpleasant, but there is no evidence to suggest that this has been as a result of any activities by the site owner or the appellant.
44. The infill material, would be of a clay, or clay-like substance with much lower permeability than the present ground surface. This would be likely to lead to greater, and quicker run-off of rainwater from the land; and it is understandable that there should be concern about the potential for increased surface water flood risk. However, this has been taken into account in the design of the site, and I have no reason to believe that the development would make matters worse.

Traffic

45. There is considerable local concern at the potential for the development to lead to a greater number of vehicles using the A412, with consequential adverse effects on road safety, and the use of the unsuitable Old Uxbridge Road as an

alternative route. The A412 in the vicinity of the site is a lit, straight, single carriageway road with a 50mph speed limit. I did not observe it at the busiest times, but I noted that traffic speeds were generally high. At the Hearing I was told about a number of serious accidents that have taken place on this stretch in recent years.

46. The appellant's intention is to import sand and gravel into the appeal site "as dug" from the DPF quarry and for the proposed plant to process the mineral from both sites. One beneficial consequence of this compared to the permitted DPF extraction alone would be that it would not be necessary for the unprocessed DPF mineral to be transported by road to another processing site (Harefield) to the south, via Denham Green. Moreover, as the market for the mineral is estimated to extend roughly equally to both north and south, the distance travelled by vehicles carrying processed material to the market area to the north would be reduced; and the use of the A412 to the south of the site by north-bound mineral-carrying vehicles would be avoided, together with the impact on Denham Green in both directions. These benefits would last for as long as the proposed plant was operational.
47. Set against that would be the increase in the overall number of heavy vehicles using and turning on and off the A412 as a result of the overall greater quantity of mineral produced. Further, the extraction of the clay material from DPF to provide fill for the Pynesfield void would give rise to a need for compensating fill material to be imported to, with consequent additional heavy vehicle movement and turning on the main road, albeit spread over a longer period, when mineral extraction at Pynesfield had ceased.
48. The Highway Authority has not raised any objections to the proposed development. Although it will give rise to more heavy traffic on what is already a busy road, the proportional increase would not be substantial compared to the DPF site being worked alone. I have some sympathy with the concerns of local residents, but I agree with the Council that there is no strong basis on which to reject the proposal on highway safety or amenity grounds.

Other environmental matters

49. I am satisfied from the evidence available that, other than operations of short duration including soil stripping and the creation of perimeter bunds, the proposed development would not lead to unacceptable noise being experienced by residents living closest to the site. Conditions have been put forward by the Council, and agreed by the appellant, that would place reasonable limits on noise.
50. Representations have been made following the Hearing regarding the noise assessment in relation to "The Bungalow", Old Uxbridge Road. It has been confirmed on behalf of the appellant that noise readings were not taken directly at the Bungalow, but they were taken elsewhere on Old Uxbridge Road at an equivalent distance from the site. I do not believe that the occupier of The Bungalow has been disadvantaged thereby.
51. The plant site would be illuminated when required during operational hours. But the lighting would be of fairly short duration and for only part of the year. A condition has been agreed by the appellant to limit the hours of illumination and light spillage. The light would have some adverse impact on the rural

character of the locality, but it would be limited and experienced in the context of an illuminated main road running alongside.

52. A condition has been agreed by the appellant for schemes to limit the production of dust on the site and the taking of mud and dirt on to the highway. I have no reason to conclude that these would not be effective.
53. The site is largely screened by mature trees along the A412, though their effectiveness would diminish in the winter time. The creation of screening bunds and planting of hedging would go a substantial way towards limiting its visual impact. However, the appellant acknowledges that the top of the plant, some 7 metres in height, would be visible, notably from the north.
54. The site is an arable field with little ecological value. The proposed restoration, incorporating a small wetland area and additional hedging, would be likely to have greater value. No mature trees would be lost as a result of the development. Subject to the agreed conditions concerning landscaping; tree replacement; and the provision of an ecological and wildlife habitat management plan, I am satisfied overall that there would be little or no harm to nature conservation interests, with the potential for some gain.
55. I have considered all other matters raised by interested persons, but I do not find any, individually or collectively, to be of sufficient weight to justify refusing planning permission, especially in view of the temporary nature of the development.

The balancing exercise and Very Special Circumstances

56. The site lies within the limits of land subject to the adopted HS2 Safeguarding Direction (Phase One) for a new high speed railway line. The development which is the subject of the appeal takes account of the railway proposals, the line of which passes to the west of the site. The HS2 promoters wish to use some of the appeal site for the deposit of spoil from tunnelling operations. Under latest available projections, they are seeking to use the land from 2022, but will need to take occupation beforehand. However, petitions have been made against the hybrid bill that is before Parliament and these are currently being heard. As things stand, there is no certainty that the rail project will go ahead or, if it does, that the appeal site will be required for that purpose.
57. If HS2 proceeds as planned and if the appeal site is required in connection with it, the presently proposed development would permit the extraction of a quantity of mineral that otherwise would be sterilised. Hertfordshire presently possesses an adequate landbank of sand and gravel; and there is no pressing need to release new sites. However, the landbank is bound up in only a few sites operated by even fewer companies, which is contrary to the aim of the NPPF that competition should not thereby be stifled. The quantity of mineral that would be extracted, some 300,000 tonnes, or possibly less if the extraction were to be curtailed by the needs of HS2, is not substantial, amounting to only a few months' supply for the county. Its extraction would have little impact on the availability of aggregates or on commercial competition. Nonetheless, the avoidable sterilisation of mineral is inherently unsustainable and contrary to national policy. The NPPF specifically encourages the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place.

58. The NPPF says that substantial weight should be given to harm to the Green Belt. In this case the duration of the harm would be limited. Nonetheless, there is harm by reason of inappropriateness; and there is no general exception to the policy for temporary uses.
59. In addition, and by far the greatest area of concern to me, is the potential for the development to give rise to pollution or contamination of highly sensitive groundwater. It should also be noted that in setting out the balancing exercise, the NPPF does not refer simply to harm to the Green Belt and any other harm, but to "potential harm ...". There is potential harm arising from this proposed development; and it is potentially serious.
60. The appellant has not provided sufficient information to demonstrate that harm to groundwater would not be caused, or that it could be mitigated. This is not a case where it would be acceptable to grant permission effectively "in principle" confident that unresolved issues such as this could be addressed satisfactorily by the imposition of conditions. Rather it is a case where caution should be exercised having regard to the potential seriousness of the consequences. In so saying, I note the statement of the EA at the Hearing that it would have no powers to control the excavation or disturbance of the existing waste on the site. Protection of the groundwater relative to the excavation would therefore be entirely the responsibility of planning.
61. In its favour, the development has some sustainability credentials. The NPPF includes a presumption in favour of sustainable development, but this is not unconstrained. For example, some elements of renewable energy projects will comprise inappropriate development in the Green Belt and developers are required to demonstrate very special circumstances even though the development may be considered intrinsically sustainable. The proposed extraction of mineral from the site would be sustainable development because it would avoid its sterilisation. However, the quantity is fairly small and would make negligible contribution to the supply of mineral. Also sustainable would be the avoidance of traffic from DPF to the Harefield processing site but, to my mind, any benefits would be largely outweighed by the additional traffic which the development would generate. The restoration might, in time, provide additional wildlife interest. But again, the benefit would not be great. The restoration by infill, without significant open water, would avoid the potential for birdstrike for aircraft. But that does not represent a benefit, simply the avoidance of a problem.
62. I conclude on the second issue that these other considerations do not outweigh the potential harm to the Green Belt by reason of inappropriateness, and any other harm. Very special circumstances do not exist.

Overall conclusion

Having regard to my conclusions on the main issues, I conclude that the proposed development is unacceptable; and consequently the appeal is dismissed.

Jonathan G King

Inspector

APPEARANCES

FOR THE APPELLANT:

Douglas K Symes ARSM BSc DK Symes Associates.
FGS MIMM FIQ FRGS

Heather MacLeod BSc MSc FGS Hafren Water.

Richard O'Sullivan, of Counsel 1215 Chambers, London.

FOR THE LOCAL PLANNING AUTHORITY:

Brian Owen Team leader, Development Management,
Environment Department, Herts County Council.

Peter Griffiths Planning Assistant, Herts County Council.

FOR THE ENVIRONMENT AGENCY:

Robert Devonshire Regulation Specialist.

Kai Mitchell Sustainable Places Planning Advisor.

Jenny Thomas Groundwater Quality Specialist.

Jonathan Hofton Solicitor.

INTERESTED PERSONS:

County Cllr Ralph Sangster Herts County Council.
Sylvia Ball Resident of West Hyde.
David Griffin Resident of West Hyde.
Michael Fosbury Resident of Tilehouse Lane.

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Email dated 22.09.14 from Paul Bryant, via 3 Rivers District Council.
- 2 Conditions suggested by the Environment Agency.
- 3 Appellant's submissions re the legal definition of waste: R O'Sullivan and attachment.
- 4 Revised draft schedule of conditions (further amend by Mr Symes 23.09.14).
- 5 Plan showing main rivers; authorised and historic landfill sites; & SSSIs, submitted by the Environment Agency.