



Appeal Decision

inquiry held on 28th-30th March 2000

by B C Wilkinson BEng(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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8 MAY 2000

The Appeals : T/APP/J0350/C/99/1029704-5

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeals are brought by Mr C Wiggins and Wiggins Transport Ltd against Slough Borough Council.
- The site is located at Poyle Manor Farm, Poyle Road, Poyle.
- The Council's reference is P/10076/001.
- The Notice was issued on 25th August 1999.
- The breach of planning control as alleged in the Notice is the unauthorised use of land for the depositing, stockpiling, recycling and processing of waste materials, and the storage of waste materials and processed materials; the unauthorised part erection of a plant and maintenance building; the unauthorised retention of buildings, bunds and access to the site.
- The requirements of the Notice and the period for compliance with those requirements are set out in Schedule 1 to this decision.
- The appeal was made on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the 1990 Act.

Decision: The appeals are dismissed and the enforcement notice, corrected and varied in accordance with Schedule 2, is upheld.

The Appeal Site and the Planning History

1. The appeal site is located south of the adjoining villages of Poyle and Colnbrook, on fairly flat countryside east of the Colne Brook. To the east of the site is Poyle Road and beyond that an industrial estate; to the south and west is open countryside with scattered development; to the north is a wooded area and then a small number of houses. The flight path to one of the main runways at Heathrow Airport passes almost immediately over the site. Access to the land is via a hard-surfaced track leading to Poyle Rd and the appellants own considerable tracts of land in the area. Adjacent to the appeal site are sites used for industrial or commercial purposes. The appeal site itself includes, as well as buildings, a weighbridge, access and working areas, and a sizeable area containing heaps of materials, some unprocessed and others comprising the various products of processing.
2. The site has a long and complex planning history and enforcement notices, some still valid, have been served in respect of various parts of it. In 1995 planning permission was granted, on a temporary basis, for the use of a substantial part of the appeal site for the importation, crushing, storage and export of concrete. This permission expired on 1st April 1998 and the

Council refused an application for the continued use of the land for such purposes on 1st July 1998. It is common ground that this use is essentially the same as that which is the subject of the present appeals. I have also taken special note of a permission to use a sizeable area of the appeal site as a filter media plant in 1952, the refusal of permission for a maintenance building in 1997, and permission in December 1994 for a golf course and related facilities on land to the west of the appeal site. The materials in a number of large mounds of soil and subsoil on the western part of the appeal site are stored awaiting use in the construction of this golf course.

The Appeals on Grounds (b) and (d)

3. Although, initially, there were substantial differences on these grounds between the main parties, discussion before and during the inquiry led to a convergence of their positions. The appeal on Ground (d) concerns the access road to the site. At the inquiry the Council accepted that the road, as it now exists, is immune from enforcement action and indicated their acquiescence to the appellants' suggestion that requirement 5(vii) be deleted from the Notice. I consider that this suggestion would effectively resolve the position and I shall therefore delete that requirement. To that extent, but to that extent only, the appeal on Ground (d) succeeds.
4. The appeal on Ground (b) concerns the mounds of soil and subsoil intended for use in the golf course. Initially the appellants suggested that the materials were there lawfully, being required for operational development in connection with the golf course, and should be omitted from the Enforcement Notice. However, they now accept that the development of the golf course has not begun, that the permission for it has expired, and that some details pursuant to conditions of the permission were not submitted for approval prior to the permission expiring. They accept, therefore, that the presence of the mounds of soil is not lawful and I see no reason to take a different view. Under such circumstances the appeal on Ground (b) fails.

The Appeals on Ground (c)

5. The appeal on this ground is based upon the appellants' contention that a substantial area of the appeal site can lawfully be used for the purposes referred to the Notice. They base this view upon their interpretation of Section 57(iv) of the Act and the perception that the breach of control that has occurred is a material change of use. This perception is plainly shared by the Council since the Notice they served alleges this as the breach of control, but I consider this view to be erroneous. Both parties accepted at the inquiry that, during the years 1995 to 1998, the site was lawfully used for the same purposes as those alleged in the Notice, and there is no evidence that the use changed in any significant way on 1st April 1998. What did change was that the continuing use was from that time in breach of Condition 2 of the permission granted on 31st March 1995. I consider that the Enforcement Notice should have reflected that fact by alleging a breach of condition. However, I am satisfied that I can, in this case, correct the Notice to reflect my view on this point without causing injustice to any of the parties, a course of action which has support from case law.¹ In the

¹ REGINA v TOWER HAMLETS LBC, EX PARTE P F AHERN (LONDON) LTD

corrected wording I see no reason to refer specifically to the partially completed building or to bunds, access road etc because it is not in dispute that they are there as adjuncts to the alleged use and their removal can, if appropriate, still be required under the wording as corrected.

6. Section 57(iv) relates to enforcement notices in respect of the development of land and development, as defined by Section 55 of the Act, does not include breaches of condition. Consequently the arguments adduced by the parties based upon that Sub-section are not applicable. I take the view that I should, instead, look to Sub-section 57(ii), which makes somewhat similar provisions. It states that "*Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted*". Subsection 57(v) implies that, in interpreting Subsection (ii), no account should be taken of unlawful uses. Section 57 is relevant in assessing the appellants' rights in considering Ground (a), and I return to it again in that context. However, whatever the position may be in regard to rights of reversion, it does not alter the fact that a condition has, by general assent, been breached. That is the case irrespective of whether other conditions or the terms of the Section 106 agreement have been observed.
7. To summarise, a planning permission was granted subject to conditions, that permission was implemented, and Condition 2 was not complied with in that the use did not cease by the specified date. These facts, each undisputed, lead me to conclude that the appellants have failed to demonstrate that there has been no breach of planning control, and the appeal on Ground (c) fails.

The Appeals on Ground (a)

Preliminary Matters

8. The area around the appeal site has been subject to local government boundary changes in recent years and this is reflected by the components of the local development plan. Thus, whilst the formal local plan covering this area is the Spelthorne Borough Local Plan, it will in due course be succeeded by the Local Plan for Slough (SLP). The latter has reached the deposit stage and a local plan inquiry into objections to it has been held, but the Inspector's report has not yet been received. The weight I attach to its provisions reflects the stage it has reached. The other formal components of the local development plan are the Berkshire Structure Plan (BSP) and the Waste Local Plan for Berkshire (WLP). The former was adopted in 1995 and the latter in 1998.
9. It is not in dispute between the parties that the development involved here constitutes inappropriate development within the Metropolitan Green belt. Such development is, by virtue of PPG2², harmful and there is a presumption against its acceptance unless it is justified by very special circumstances. Such circumstances will not exist unless the harm by reason of appropriateness or other harm is clearly outweighed by other considerations. The site is also within the Colne Valley Park, the strategy for which includes the aims of resisting urbanisation and the safeguarding of existing areas of countryside from

² Planning Policy Guidance Note 2 - Green Belts

inappropriate development. Policies relating to such matters in all of the local plans reflect national guidelines.

10. Bearing these matters in mind, and from what I have seen, heard and read, I consider that there are two main issues in determining these appeals. The first is the degree of harm that the continuance of the development would cause. The second is the extent to which there is a need for a recycling facility in this area to set against such harm.
11. In considering these issues it is necessary for me to take into account the implications of my conclusions as to the appeals on legal grounds. The first two of these are straightforward, namely that, irrespective of my determination of the ground (a) appeal, the access road will remain and the mounds of materials intended for the golf course will be removed, either to the golf course or away from the site entirely. The third implication is less straightforward and stems from my conclusion regarding the appeal on Ground (c).
12. Prior to the use of the site for concrete crushing its main use was as a plant for crushing power station clinker to convert it to a filter medium for drainage and other construction purposes. When the change from the latter use to the former was made, at some time during the 1970's, it was a material change of use requiring planning permission. Since that time the site's use has not changed significantly, but in 1995 changes to the Use Classes Order meant that the two uses would from then on be in the same Use Class (B2), so that permission would no longer be required to change from one to the other. Applying subsection 57(ii) of the Act to what I know of the site's planning history I conclude that the use to which the site could revert without further permission is its use as a filter media plant.
13. The appellants argue that the right to revert extends to all uses within Class B2 but I do not accept their view in this regard. Neither party has drawn my attention to any case law directly relevant to this matter so I rely on what I perceive to be the normal meaning of the words used. For instance, Subsection 57(ii) employs the term "use" rather than "uses", "class of uses" or other similar terms, and this indicates to me that the reference is to one specific use. I recognise that if the site was taken into use as a filter media plant than there could be a change of use to concrete crushing without the need for further planning permission. However, I have no evidence that the appellants would contemplate this course of action and, given the rather specialised nature of use as a filter media plant and the fact that it was discontinued many years ago, I consider its resumption very unlikely, even as a device to secure eventual use for concrete crushing. Consequently, whilst I have taken the possibility into account, I have attached relatively little weight to it in considering the appeal on Ground (a).

The Harm Arising from the Development

14. Whilst the processes taking place on the appeal site can be noisy, this area is already subject to a high and intrusive noise level because of aircraft landing or taking off from Heathrow Airport. The subject was not raised as an issue by the Council or Colnbrook with Poyle Parish Council, and although Colnbrook Residents Association and individual local residents objected on such grounds their evidence was anecdotal. The impression I gained from my site visit was that any additional noise from the proposed development would scarcely be perceptible to local residents so long as it was restricted to normal working

hours. This could be achieved by the imposition of appropriate conditions on any permission granted.

15. Objectors to the development have also complained about dust and smoke connected with the operations. Whilst I accept that smoke has been a problem in the past, a condition preventing burning on site would be effective and readily enforceable, and I do not see this as a significant problem. I am less confident that dust could be effectively controlled. The processes involved would be almost certain to generate dust in the drier summer conditions, and, whilst appropriate measures would go some way towards reducing the problem, I do not consider that it would eliminate it. Whilst the main housing areas of Poyle and Colnbrook are about half a kilometre away, there are a few houses close to the appeal site. There is also a proposal for a golf course immediately to the west of it. The Council do not suggest that dust would be a serious problem, and no quantitative evidence on the subject was presented at the Inquiry. Nevertheless, whilst I do not see it as a major problem, the likelihood that there would be some dust emission weighs to some extent against the proposal.
16. No-one has suggested that the proposals would be a source of harm in terms of archaeology or ecology. Whilst the Council originally suggested that their retention would increase the risk of damaging flooding, the parties agreed at the inquiry that subject to certain conditions this risk could be reduced to acceptable proportions. Nor has anyone produced significant evidence to indicate that the continuance of the use would be a source of unacceptable traffic problems. I turn, therefore, to consider the visual impact of the development.
17. Although the site is at some distance from most public viewpoints the height of the mounds of materials and, to a lesser extent, the size of some of the machinery involved means that the visual impact of the development is considerable. The heaps of material are more than 7m high and it is hard to see that the site could operate effectively without heaps of at least this height. They stand out starkly against this generally flat and open landscape, and appear intrusive and incongruous from Poyle Road in particular. They can also be seen at somewhat greater distances from the south and southwest, but are largely screened by mature trees from most areas to the north. From the west the nearest road is too far away to afford more than distant glimpses of the site, but if the golf course is constructed the appeal site would have considerable impact upon those using it. Although the area as a whole contains many urban features such as roads and industrial development there are also wide stretches of open countryside, and the appeal site lies within such an area.
18. Landscaping would, in time, soften the site's appearance but it would take a number of years to become even partially effective and probably more than 20 or so years to screen heaps of this size. Fences and walls would not be visually effective and bunds high enough to screen the site would in themselves appear both intrusive and incongruous. Objectors appear to find the appearance of the site offensive and I can understand their feelings in this regard. The intended designation of this area as a Landscape Improvement Area, and its inclusion within the Colne Valley Park, are both evidence of the importance attached by the Council to protect its character. In my view the retention of this development would prejudice the objectives of such intentions.
19. I recognise that there are, close to the site, areas lawfully used for industrial or storage purposes and that these would remain irrespective of my decision on the present appeal. So

too would elements of the appeal site such as some of its boundary features. However, such features are much less visually intrusive than the mounds and machinery needed for recycling. Taking all of these factors into account I consider that this development is seriously harmful in visual terms.

20. I have already explained that inappropriate development in the Green Belt necessarily causes harm by virtue of that inappropriateness. The height and extent of the heaps of materials are such that the openness of the area is reduced, and I have also considered the effects upon the purposes of including land within Green Belts, listed in PPG2. Whilst it has no implications in terms of most of those purposes I am satisfied that it would prejudice the aim to check the sprawl of built-up areas. The fact that the site is not within a Strategic Gap does not significantly reduce the extent to which it is subject to green belt policies or purposes. Taking into account its visual impact, the likelihood of some dust emission, and the harm inherent in its status as inappropriate development in the green belt, I conclude that the proposal is a source of serious harm. As such its retention would be contrary to the provisions and objectives of local and national policies designed to protect the Green Belt, Colne Valley Park and Landscape Improvement Areas.

The Need for the Development

21. National policy provides strong support for increasing the proportion of all waste dealt with by recycling, and this applies just as much to mineral and demolition wastes as to any others. Local development plans reflect this guidance and the WLP seeks to achieve the recycling of 40% of inert waste by 2005/6. To meet this target for the County the rate of recycling by that year would need to be about 516,000 tpa¹. The plan envisages that this target will be met by sites in two separate categories, the first being a number of facilities already in existence and set out in its Appendix 5. These are stated to have both a valid planning permission and a valid waste management license, and the WLP assesses their combined likely maximum capacity as being slightly less than 500,000 tpa.
22. The second category of sites, listed in WLP Appendix 7, are those known as preferred areas or preferred areas of search. These relate to a variety of facilities but include those intended for recycling inert waste materials. Policy WLP 11 provides that, in such areas, applications for waste management development will normally be permitted subject to compliance with other plan policies and environmental considerations. Twenty-seven such areas are identified in Appendix 7 and in 10 of them inert waste recycling is indicated as being a suitable potential use. The plan envisages that 4-6 such sites are required within Berkshire, ideally distributed across the County close to centres of population and with a combined throughput of about 650,00 tpa.
23. At first sight the plan appears to make a very generous provision in seeking to provide sites with a capacity in excess of 1,100,000 tpa to meet a target of just over 500,000 tpa. However, there are some important points to note in making such a comparison. Firstly, the appeal site, despite the presence of the enforcement notice, is included in the first category as being an existing facility. This may stem from the interpretation placed on the temporary permission in existence for three years. Secondly, although the plan clearly states that the

¹ Tonnes per annum

two categories are to be regarded as being different, at least two of the four inert waste sites in Appendix 5 are contained also in Appendix 7. One of these two is by far the largest facility of the four, and no convincing explanation of this apparent contradiction emerged at the present Inquiry. Thirdly, some persuasive evidence has been adduced by the appellants that the capacity estimated in the plan for some of the sites in Appendices 5 and 7 was optimistic.

24. Because of uncertainty as to intentions of individual site owners and occupiers, predictions as to future levels of waste recycling cannot be exact. Moreover the industry as a whole can be significantly affected by national factors, for instance changes in the level of taxes such as landfill tax. Nevertheless I am sure that the capacity of inert waste recycling sites in place by 2005/6 will fall considerably short of the 1,100,000 tpa envisaged in the plan. I am much less confident as to how far it will fall short but I do not consider that the evidence justifies an assumption that the objective for waste recycling in 2005/6 is incapable of being met without the present appeal site.
25. Whilst it is not disputed that there is a need for more inert waste recycling facilities in this part of Berkshire, the means of meeting that need were examined and set out as policies in the WLP. The present appeal site was originally proposed for inclusion in the list of preferred areas. However, following the inquiry into such objections, the Inspector holding that inquiry recommended its deletion from the list and the Council subsequently accepted that recommendation. This decision was taken fairly recent and I have no doubt that the inquiry into objections to the WLP had access to a wider range of information than was presented to the present inquiry, including information from the owners and potential operators of many of the sites referred to in the WLP. I recognise that a number of the preferred areas eventually selected are also within the Green Belt, but I have no doubt that the harm likely to arise from their use, and other relevant circumstances, were weighed in the balance prior to their selection as preferred areas.
26. The factors involved in the supply and demand for such facilities has changed somewhat since then and the analysis, at the present inquiry, of the likely output of some of the preferred areas raised legitimate doubts as to assumptions made in the WLP. It is also plain that what has been achieved so far in terms of inert waste recycling is below a level obtained by assuming a linear progress towards the 2005/6 objective. Nevertheless, whilst it is apparent that the objectives of the WLP in this area have not yet been met, I think it is far too early to say that they will not be met by 2005/6. Taking all of these factors into account I conclude that whilst there is an undoubted need for an inert waste recycling facility in this area, it has not been established that it cannot be met in the preferred areas identified in the WLP.

Conclusion on Ground (a)

27. A number of policies have a bearing on these appeals but the situation is best summed up in WLP Policies 28 and 29. Together these provide, in essence, that on sites outside the preferred areas, and within the Green Belt there is a strong presumption against development such as that involved here. To outweigh such a presumption, and any harm caused, there must be a need to develop land outside the preferred areas to meet the demand anticipated by the Plan. On balance, and taking into account my conclusions on the issues I have identified, I do not consider that there is such a need for the development on this site.

I am satisfied that the retention of this development would be a source of substantial harm and that to allow it to remain would be contrary to local and national policies which are both relevant and up-to-date. I am satisfied that permission should not, therefore be granted and the appeals on Ground (a) fail accordingly. In reaching this decision I have taken into account the arguments that interpretation of figures relating to the County as a whole should be modified to take into account the geographical distribution of inert waste recycling sites within the County. I do not, however, believe that such matters significantly affect the reasoning that led to my overall decision.

The Appeals on Ground (f)

28. The appeals on this ground relate to the omission of certain of the Notice's requirements that are either excessive or incorrectly worded. I agree that the wording of some of the requirements seems to have been taken without much modification from conditions on the earlier permission relating to the site. The Council has accepted that it would be appropriate to alter the terms of such requirements and I agree. I shall therefore alter parts of requirements (vi) and (ix). In addition both parties reached agreement during the Inquiry that requirements (vii) and (viii) should be deleted and I see no reason to differ.
29. In respect of Requirement (v) there was agreement between the parties as to an alternative wording should I decide that the notice could be varied in this respect without injustice. The appellants felt that such variation would be a source of injustice but I do not agree. It seems to me that the requirements set out in the alternative wording would not be significantly more onerous than those in the original notice and I shall amend it accordingly. Finally there are some requirements which depend upon subsequent agreement of details by the Council. In my view this does not tell the appellants with sufficient precision what they should do and is inconsistent with the judgement in *Kaur v SoSE (1989)* which deals with such matters. I have taken into account what the Council has said on the matter, and the case of *Murfit v SoSE (1980)*, but I believe that *Kaur* is more applicable here. I have therefore amended the notice to omit or alter any requirements that depend upon such wording. The appeals on Ground (f) succeed to the extent that these changes are made.

The Appeals on Ground (g)

30. For reasons I have given earlier I am satisfied that waste recycling on this site should cease, and that the site should be restored in accordance with the notice's requirements (as varied). However, whilst I consider that no more waste should be brought onto the site, it would be contrary to national guidelines on waste to move the existing materials elsewhere to be either recycled or deposited as landfill. I believe the best solution would be to allow the material existing on the site at present to be recycled there. I also agree with the appellants that 18 months would be a reasonable period to allow this to be done, plus a short additional period for clearing and restoring the site. This is somewhat more than is normally allowed for compliance with the requirements of an enforcement notice, but in this instance I consider that the circumstances justify such a period. To that extent the appeal on Ground (g) succeeds.

Other Matters

31. In reaching these decisions I have taken into account, as well as those mentioned, all of the other matters referred to. None are sufficient to outweigh those matters which led to my decisions. At the Inquiry the appellants requested that, if I found against them on Ground (c), I should indicate what my decision on Ground (a) would have been if their arguments on Ground (c) had been successful. Whilst I appreciate their position, it is not for me to prejudice any future redetermination of these appeals should I be found to have erred on legal matters. I shall not therefore accede to that request.

Conclusions

32. For the reasons given above I conclude that the appeal should not, on balance, succeed I shall exercise the powers transferred to me uphold the notice with corrections and variations and refuse to grant planning permission on the deemed application.



APPEARANCES

FOR THE APPELLANT:

Mr C Kalkowski

Of Queens Counsel

He called

Mr G Thomas BSc(Hons) DipTP Planning Director, Elsworth Sykes Planning
MRTPI

Mr C F Thurlow BA DipTP MRTPI Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Bird

Of Counsel

He called

Miss Sanders DipTP MRTPI Principal Planner Babbie Group Minerals and Waste Advisers to Slough BC

Mr A Scale BA(Hons) DipTP MRTPI Senior Planning Assistant, Slough B C

DOCUMENTS

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|----------|----|--|
| Document | 1 | List of persons present at the inquiry |
| Document | 2 | Letter of Notification and List of those Notified |
| Document | 3 | Representations Received |
| Document | 4 | Statements of Case |
| Document | 5 | Copy of Enforcement Notice |
| Document | 6 | Documents relating to Planning Permission Dated 31 st March 1995 |
| Document | 7 | Documents relating to Application for Renewal dated 24 th March 1998 |
| Document | 8 | Documents relating to Application for Maintenance Building Dated 3 rd July 1996 |
| Document | 9 | Documents relating to Permission for Golf Course dated 7 th December 1994 |
| Document | 10 | Appeal Decisions Relating to other Sites |
| Document | 11 | Photographs of the Site and its Surroundings |
| Document | 12 | Plans Illustrating Various Aspects of the Site |
| Document | 13 | Documents Relating to the risk of Flooding |
| Document | 14 | Documents Relating to the Site's Planning History |
| Document | 15 | Documents Relating to the Need for Recycling Facilities |
| Document | 16 | Schedule of Suggested Conditions |
| Document | 17 | Documents Relating to the Site Access |

Schedule 1

5. WHAT YOU ARE REQUIRED TO DO

(NOTE: FOR THE PURPOSES OF THIS NOTICE THE SITE IS DIVIDED INTO TWO AREAS, AREAS A & B IDENTIFIED ON THE ACCOMPANYING PLAN 2)

- (i) Cease bringing waste materials onto the land within one day of this notice taking effect.
- (ii) Cease the use of the land for the recycling and reclamation of waste materials within one month of this notice taking effect.
- (iii) Remove from the land all scrap metal within 3 months of this notice taking effect.
- (iv) Remove from the land
 - (i) All other unrecycled or reclaimed materials
 - (ii) All earth bunds, and
 - (iii) All mobile plant, machinery, concrete bases, buildings, partly erected buildings, skips and lorries associated with the uses specified in 3 above within 6 months of this notice taking effect.

The buildings and hardstanding set out in Annex 1 and shown on Plan 3 are permitted to be retained on the site.

- (v) Within 12 months of the date of this notice taking effect the land in Area A shall be regraded to a level of 21 AOD consistent with surrounding land levels and the boundary of the Area shall be delineated by fencing or bunding in accordance with a landscaping scheme to be submitted under Section vi.
- (vi) Within two months of the date of this notice taking effect a landscaping scheme shall be submitted for the approval in writing of the Local Planning Authority. This shall relate to both areas and shall include provision for:
 - (a) The positions, species, density and initial sizes of all new trees and shrubs.
 - (b) The position of any fencing/bunding to delineate Area A and the type of fencing or extent of bunding and associated planting.
- (vii) The current access to the site shall be reduced in width to 3m with kerb radii of 5m within 12 months of the date of this notice. The excess width of the access to the site, including all foundations, shall be removed and the site of the excess width of the access restored in accordance with the conditions attached to this

permission. This will ensure that the access is in keeping with the rural nature of the site and in the interests of amenity.

- (viii) No tipping or works shall take place within 10 metres of the Colne Brook and any works potentially affecting groundwater will require the necessary authorisation from the Environment Agency.
- (ix) Within 12 months of the date of this enforcement notice taking effect carry out and complete the reinstatement of the site to agricultural land. The following conditions will ensure that proper restoration is achieved in line with current practice:
 - (a) Regrade the area (Area B) to 300 mm below surrounding ground levels (i.e. 300mm below 21 AOD).
 - (b) Thoroughly treat the regraded land to a depth of 700 mm so as to remove all contaminants and to break up and remove all contaminants and to break up and remove compacted layers and remove compacted layers and to remove large solid objects exceeding 150 mm in any direction which may damage cultivation machinery.
 - (c) Place a minimum of 300mm of general purpose grade topsoil (to BS:3882 standard) over the regraded area such operations to be carried out when the soil is in a dry and friable condition with a minimum of working and compaction.
 - (d) Take measures to prevent further tipping on such land by installing appropriate fencing (to be submitted to the Local Planning Authority as part of the Landscaping Scheme) and a lockable gate to be situated at point A as indicated on the attached Plan 4.
 - (e) In the next seeding season following the placement of topsoil to seed such land to a specification to be agreed in writing by the Local Planning Authority and to repeat cultivation and seeding until the grass is well established.

Schedule 2:

The Appeals : T/APP/J0350/C/99/1029704-5

1. It is directed that the enforcement notice be corrected by the deletion of the whole of Section 3 and the substitution therefor of the following :

3. THE BREACH OF PLANNING CONTROL ALLEGED

The breach of planning control alleged in the notice is the failure to comply with Condition 2 of the planning permission granted on 31st March 1995 (Ref No SP91/0701) by using the land for the depositing, stockpiling, recycling and processing of waste materials and the storage of waste and processed materials beyond 1st April 1998 in contravention of Condition 2.

2. It is directed that the enforcement notice be corrected by the substitution, for Plan 2, of Plan A attached to this decision.
3. It is directed that the enforcement notice be varied by the deletion of the whole of Section 5 and the substitution therefor of the following :

5. WHAT YOU ARE REQUIRED TO DO

(NOTE: FOR THE PURPOSES OF THIS NOTICE THE SITE IS DIVIDED INTO TWO AREAS, AREAS A & B IDENTIFIED ON THE ACCOMPANYING PLAN 2)

(i) Cease bringing waste materials onto the land;
Time for Compliance : 1 Day

(ii) Cease the use of the land for the recycling and reclamation of waste materials;
Time for Compliance : 18 Months

(iii) Remove from the land all scrap metal, unrecycled or reclaimed materials, all earth bunds, and all mobile plant, machinery, concrete bases, buildings, partly erected buildings, skips and lorries associated with the uses specified in Section 3 of this notice; ****(See Note)**
Time for Compliance : 21 months

(iv) Regrade the land in Area A to a level consistent with surrounding ground levels so as to permit, on that part of Area A shown to the west of the dotted line on Plan 2, a total storage volume of 3500 cubic metres between 20.28 AOD and 20.61 AOD, all such volume to be available for flood storage and constructed to permit a flood route to all parts of Area A to the west of the dotted line.
Time for Compliance : 21 months

(v) *Reinstate the site to a condition appropriate to allow its use as agricultural land by carrying out the following :*

(a) *The regrading of Area B to 300 mm below surrounding ground levels (i.e. 300 mm below 21 AOD;*

(b) *The thorough treatment of the regraded land to a depth of 700 mm so as to break up and remove all contaminants and compacted layers, and to remove solid objects exceeding 150 mm in any direction which may damage cultivation machinery;*

(c) *The placing of a minimum of 300mm of general purpose grade topsoil (to BS:3882 standard) over the regraded area, such operations to be carried out when the soil is in a dry and friable condition with a minimum of working and compaction;*

(d) *The taking of measures to prevent further tipping on such land by the installation of fencing and a lockable gate to be situated at point A as indicated on the attached Plan 4.*

(e) *In the next seeding season following the placement of topsoil the seeding of such land with grass seed and the repeated cultivation and seeding of the land until the grass is well established.*

Time for Compliance : 24 months

****Note :** *The buildings and hardstanding set out in Annex 1 and shown on Plan 3 are permitted to be retained on the site as exceptions to requirement (iii).*

4. Subject thereto the appeals are dismissed, the notice as corrected and varied is upheld, and planning permission is refused on the applications deemed to have been made under S177(5) of the amended Act.