

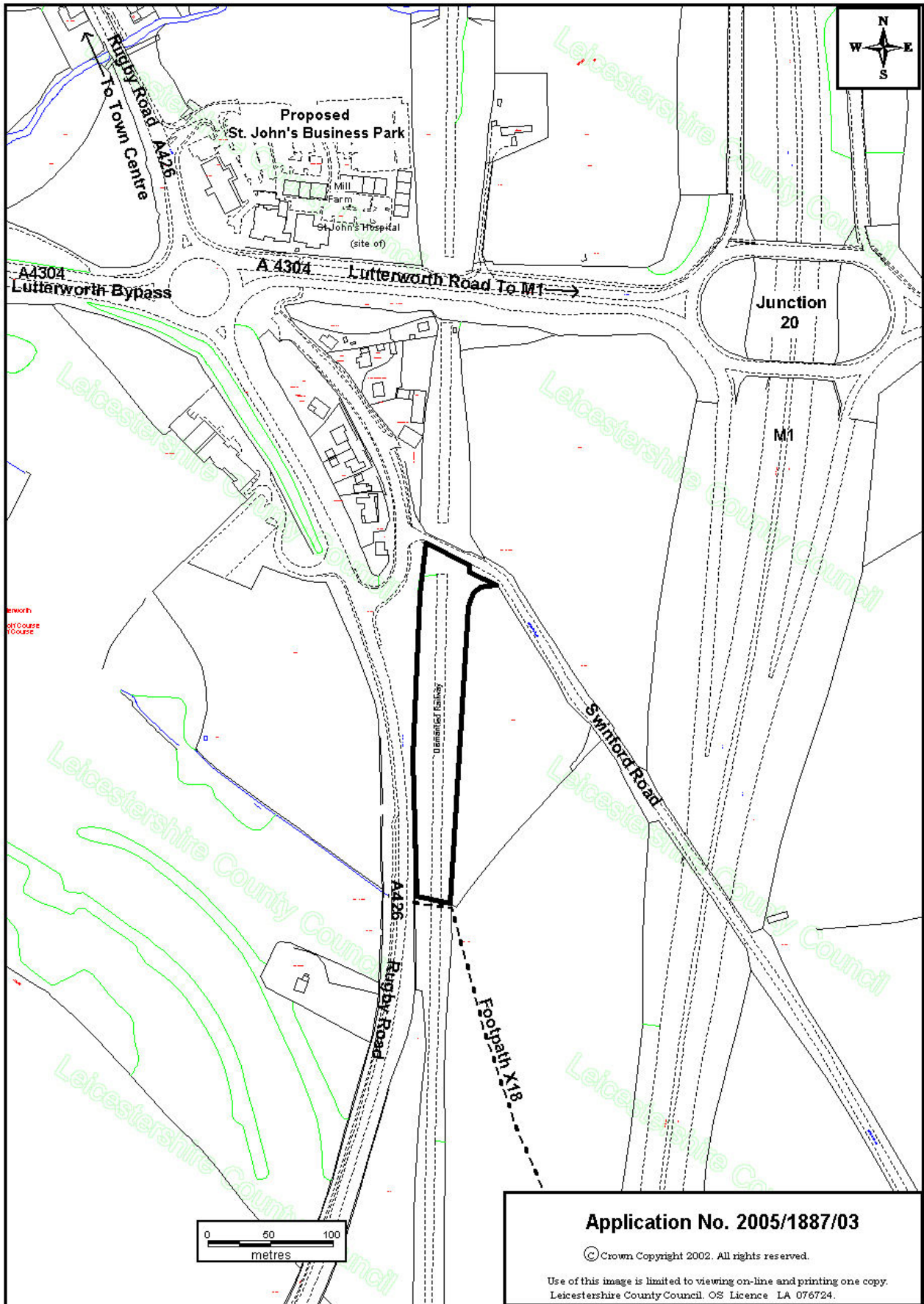
DEVELOPMENT CONTROL AND REGULATORY BOARD**20TH APRIL 2006****REPORT OF THE DIRECTOR OF COMMUNITY SERVICES****COUNTY MATTER****G.W. BURTON – PROPOSED TIPPING OF INERT MATERIALS ONTO FORMER
RAILWAY CUTTING, SWINFORD ROAD, LUTTERWORTH (HARBOROUGH
DISTRICT)****2005/1887/03 – 20th December 2005****Background**

1. This application was originally submitted in May 2005, but registration was delayed for some months pending the submission of necessary additional information and the correct fee. Following consultations with the agent, additional information has been secured on the type and sources of waste; rate of infilling; traffic generation; days of operation; finished contours; calculation of quantities of material; restoration rates; plant; and the 'case' for the development.
2. The proposal relates to the infilling of the disused railway cutting of a section of the Great Central Railway on the south side of Lutterworth. The route of the Great Central Railway runs from the southern tip of the County parallel to the M1 motorway, through Leicester City and forms the route of the private steam trust between Birstall and Loughborough in the north of the County. Much of the route has been lost to redevelopment, especially in the Leicester urban area, although isolated sections have been land-filled in the past.
3. This section of the railway line has remained vacant for many decades and runs in a deep cutting on either side of the Swinford Road. The surrounding road network has been altered with the construction of the Lutterworth Southern Bypass (A4304), and re-alignment of Rugby Road from the new roundabout junction between A426/A4304 (near junction 20 of the M1 motorway). The old line of Rugby Road now forms a cul-de-sac from its junction with Swinford Road.

Description of Proposal

4. The application site forms a long, narrow section of the railway cutting directly to the south of Swinford Road, being some 38m wide at the northern end and 30m wide at the southern end. The site extends for 280m in length from north to south, with a 70m frontage to Swinford Road itself. The cutting is nearly 6m deep at the north and 4m deep at the southern end, with steep banks on either side. The capacity of the site is calculated to be some 16500 cu. m., if the cutting is raised to the level of the adjacent land.

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Application No. 2005/1887/03

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5. To the north end of the site is the junction of Swinford Road and Rugby Road, connecting by a steep gradient to the A426. There are several detached residential properties along the cul-de-sac of Rugby Road and the premises of Uponor Training Centre at the north-east end of the road. Open fields exist to the south and east of the site, with the route of the M1 motorway some 180m to the east. On the west side, there is a roadside embankment to the A426 road and the entrance to the Lutterworth Golf Course on the opposite side of this road.
6. Public footpath X18 runs close to the southern boundary of the site and it is intended that this be retained and kept clear from the site operations. The Southern Area PROW Inspector has expressed concerns that the route of this footpath is safeguarded and that its integrity is not damaged along the original line.
7. The submitted proposal indicates that access into the site would be taken from the easterly point on the Swinford Road frontage, in the position of a field gate. The access would be widened and lead to a haul road along the eastern embankment and into the southern end of the site. Visibility splays of 4.5m by 90m would be provided to the west and 4.5m by 210m to the east. Parking and turning facilities would be provided close to the access point.
8. The proposed operations would involve the deposit of about 16200 of inert (mainly demolition and construction waste) into the cutting. This would amount to 32400 tonnes of waste, or just over 2000 loads by 8 cu.m. vehicles. The intended rate of tipping is an average of 20 loads per working day, giving about 4 months of tipping activity. In original correspondence, the applicant suggests that this might be stretched over 1½ years and that the haulage contractor would be Greens Bulk Haulage and Plant.
9. The waste materials would be brought to the site from housing and commercial development sites in Rugby, Milton Keynes, Market Harborough, and Northampton area. It is suggested that inert soils would be transported to the site as 'backloads' on route to Croft Quarry, prior to transport of recycled aggregates from that Quarry to the above-mentioned development locations.
10. The rate of fill would depend on the availability of materials and weather conditions, but a total of some 4 months filling capacity exists at the site. One bulldozer would operate on the site during filling operations. It is proposed to carry out deliveries and operations between 0730 – 1730hrs (Mondays-Friday) and Saturday mornings.
11. The application is accompanied by a noise assessment which compares the noise arising from the operations to existing fly-tipping and motorcycling activities in the cutting. The survey method involved the calculation of daytime background noise levels at the nearest residential property (40m away from the centre line of the cutting). It concludes that the predicted noise levels from tipping operations and HGV traffic would +11dB above existing background levels and +8dB above recommended WHO guidelines for general daytime outside noise levels at residential properties. However, this is compared to the higher levels of noise nuisance (say +14dB above existing background levels) that arise from occasional motorcycle scrambling activities on the site.

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Planning Policy

National Policy

12. PPS10 provides advice on the important role of the land-use planning system in achieving a sustainable waste management regime through the provision of appropriate waste management facilities. It also sets out the general policy context and the criteria for the siting of facilities. The Government wishes to see waste management decisions based on the principle of regional self-sufficiency and the 'proximity' principle (i.e. waste should be managed as near as possible to its place of production, to reduce the environmental impact of transporting waste).
13. The guidance sets out advice on the material planning considerations and planning conditions for waste management facilities, which should be determined in accordance with the planning strategy of the development plan. Planning conditions should be used to control vehicle movements, hours of operation, impact on neighbouring land uses, timescale and landscaping.

Development Plan policies

14. The development plan in this instance is made up of the East Midlands Regional Spatial Strategy (RSS), The Leicestershire, Leicester and Rutland Structure Plan (LLRSP), Leicestershire, Leicester and Rutland Waste Local Plan and the Harborough District Local Plan. The relevant policies set out below.
15. The Regional Spatial Strategy promotes a change in consumer and business approach to waste looking towards reduction and promoting re-use and recycling. The Regional Waste strategy is working towards zero growth in waste levels by 2016.
16. The application site is not included within the built up limits of development of the adopted Harborough Local Plan. Consequently, it is an area where *Strategy Policy 8* of the approved Structure Plan applies, which states that the countryside will be protected for its own sake. Development in the countryside will only be acceptable if the general appearance and character of the landscape and the countryside is safeguarded or enhanced. Built development should be well integrated in relation to existing development and designed sympathetically to fit into the local surroundings.
17. New development in the countryside (i.e. beyond the existing and planned limits of settlements) will normally be limited to appropriate rural activities, including of course agriculture. Waste management development might be acceptable if it can be demonstrated that there is an overriding need and appropriate works of mitigation are undertaken.
18. *Resource Management Policy 8* of the Structure Plan states that when allocating land or considering planning applications for the management of waste, sufficient provision will be made based upon the waste hierarchy.

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19. *Resources Management Policy 12* states that when allocating land for waste management developments account will be taken of the transport implications of the proposed development. Where road borne transportation is involved, associated heavy lorry movements will be restricted from using unsuitable roads.
20. *Accessibility and Transport Policy 1* states that if traffic generated by a development, together with that from existing and committed development would:
 - (a) impair road safety;
 - (b) have an unacceptable effect on the environment; or
 - (c) exceed the capacity available in the local highway system,
21. *Policy EV/5* of the Harborough Local Plan provides that development within the countryside will be strictly controlled. Development proposals will be refused unless (inter alia):
 - (i) it is likely to sustain or improve the rural economy and cannot reasonably be provided within or adjacent to an existing settlement;
 - (ii) it does not adversely affect the character and appearance of the countryside;
 - (iii) it does not adversely affect the amenities of local residents;
 - (iv) the development is accompanied by a landscape scheme appropriate to its siting and location;
 - (v) satisfactory access can be provided without adversely affecting the character and appearance of the locality; and
 - (vi) there is capacity in the local road network to accommodate the traffic likely to be generated by the development
22. *Policy TR/3* of the Local Plan states that planning permission for new development will be refused where the traffic flow generated by the development would create a substantial adverse effect on the existing road network unless satisfactory and environmentally acceptable improvements can be implemented to alleviate the impacts of the development.
23. *Policy RM/11* of the Local Plan states that planning permission will not be granted for development proposals which would adversely affect a protected species or its habitat. Where appropriate, the Council will attach conditions to planning permissions or seek to enter into agreements to secure the protection of such species.
24. The Waste Local Plan incorporates the principles of national policy guidance set out in PPS10. *Policy WLP8* of the Plan sets out a number of criteria where waste management operations will not be permitted by virtue of the impact on environmentally sensitive areas (e.g. best quality agricultural land; important landscapes/woodlands; heritage sites; areas of particularly attractive countryside; drainage systems; residential areas; inadequate road systems; and public rights of way).
25. *Policy WLP7* sets out a list of factors that will be taken into account in assessing all waste management proposals, of which the following are pertinent to the current application:

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- (i) the effect on, and relationship to, sensitive nearby land uses (particularly residential);
 - (ii) the visual impact on the landscape and surrounding area;
 - (iii) transportation implications, including the nature and volume of traffic generated by the proposal and the suitability of the highway network;
 - (iv) the effect on public rights of way
 - (v) the provisions of the development plan and other planning guidance;
 - (vi) the feasibility of restoring the land within a reasonable period of time;
 - (vii) feasibility of the proposed after-use and management of the restored land; and
 - (viii) the extent to which the development will contribute to an improvement in the efficiency of managing waste which is disposed at waste disposal sites.
26. *Policy WLP 18* deals with waste disposal sites for construction and demolition waste (including soils). It provides that such development will be permitted so long as:
- (i) it would not result in the delay of final restoration of existing waste disposal site,
 - (ii) it would not divert waste which is required for operational or restoration purposes at existing waste disposal sites; or
 - (iii) there is a demonstrable 'local' need for the facility that cannot otherwise be reasonably met.

Consultations

Harborough District Council (Planning)

27. No objection to the application providing that the traffic generated by the proposal does not become a source of annoyance/disturbance to nearby residents.

Harborough District Council (Environmental Health)

28. The railway cutting has been identified as an area of potentially contaminated land due to its former use (Part 2A of the Environment Act) and the possibility of fly-tipping greatly increases the likelihood of the land being contaminated. A risk based assessment would be required if the site is to be occupied as after-use.
29. The noise survey that accompanies the application identifies an existing problem with motorbike noise and predicts that the proposed tipping operation will have significant impact on residential properties with noise levels some +8dB above WHO recommendations for daytime noise and +12dB above existing background noise level. Notwithstanding the unauthorised nature of the motorbike noise, the introduction of lorries to the site will create a further problem which will increase noise levels.
30. The acoustic report does not suggest any methods of noise attenuation whatsoever and further work is needed to determine how the predicted levels can be reduced.

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Lutterworth Town Council

31. The Town Council objects strongly to the application for a number of reasons:
- (i) Lutterworth suffers from continual traffic movement, as highlighted in the Local Transport Plan, and is one of 3 locations in the County where nitrogen dioxide levels exceed national and EU limits;
 - (ii) the projected increase in lorry movements would conflict with objectives to undertake a town centre regeneration project;
 - (iii) the development would be likely to generate hazardous driving conditions (dust and mud) on main roads in the locality (e.g. M1 motorway and A426);
 - (iv) any increase in the use of Swinford Road/A426 junction by HGVs will have significant impact on road safety;
 - (v) the proposal appears to be contrary to Local Plan Policy RM16, which seeks to safeguard the former railway line from development that would prevent or impair future use as a recreational or transport route;
 - (vi) section 2.42 of the Local Plan advises that the value of former railway lines as corridors for wildlife is recognised and will be protected under Policies RM/8 – RM11.

Lutterworth Improvement Partnership

32. Objects to the planning application for the following reasons:
- (i) contrary to Local Plan Policy RM16 (see 'v' above). The cutting is used by walkers, ramblers and local people, especially in the summer;
 - (ii) noise pollution will arise from HGV movements and site operations, which should be compared with the existing *legal* uses of the site;
 - (iii) pollution from dust and mud, which would affect the local road network;
 - (iv) traffic hazard from the increased HGV movements (including right turning movements) at the Swinford Road/A426 junction;
 - (v) impact of additional HGV movements on the conditions in the town centre, including air quality.

Environment Agency

33. No objections subject to condition that there shall be no raising of ground levels over or within 5 metres of any existing culverts that may be present within or on the boundary of the site. The proposals may be subject to regulations under Pollution Prevention and Control or Waste Management Licensing Regulations, depending on the types and quantities of waste materials to be deposited.

Leicestershire Badger Group

34. Badgers currently use the railway cutting and there is every likelihood that there is a sett on the embankment. It would be necessary for the applicant to carry out a full ecological survey before the planning application can be determined. (as per protected species and guidance in PPS9).

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County Highways Authority

35. No objections to the proposal, subject to conditions relating to access gates and gradient, widening and radii kerbs to the access road, internal parking areas, drainage, turning facilities, wheel cleaning, and visibility splays. The last of these conditions would require the removal (or severe cut back) of some 50m of roadside hedge along the Swinford Road frontage, which would have significant impact on the amenities of the locality.
36. It would be necessary to restrict HGV movements into and out of the site, so as to prevent traffic using Swinford Road to the south of the site. Details of the routing of haulage traffic would need to be agreed before operations commence on the site. Attention is drawn to the public footpath that runs across the southern tip of the site.

Publicity

37. The application has been advertised in the local press and by means of site notices posted on 25th January 2006. Individual letters have been posted to residential and commercial properties on Rugby Road.

Representations

38. The Local District Councillor has expressed strong opposition to the proposal, because of increase in traffic in Lutterworth town centre and the adverse environmental affect. There are known air pollution problems in this area, which should not be exacerbated. The success of the Lutterworth regeneration scheme rests with resolution of the traffic problem, which would only be made worse by this application.
39. Three letters of objection have been received from nearby residents of Rugby Road and one letter from Avery Close (elsewhere in the town), raising the following concerns about the proposal:
 - (i) the generation of additional traffic in the town;
 - (ii) more traffic, including HGVs, on the local road network;
 - (iii) dust arising from the proposed development, adding to existing problems experienced in the locality;
 - (iv) the inappropriate location of the tipping facility, in relation to the sources of materials (i.e. failure to satisfy the proximity principle);
 - (v) the likelihood that HGVs will come down the cul-de-sac of Rugby Road, which already suffers from on-street parking in connection with the Uponsor Training Centre, and consequent difficulties of turning vehicles;
 - (vi) reference to legal matters relating to the former proposal by Great Central Railways on the application site;
 - (vii) the possibility that the filled site might be used for new housing development;
 - (viii) the temporary noise nuisance from motorcycles can be dealt with by other means and the proposed development is considered to be less acceptable;
 - (ix) impact on existing wildlife and possible danger to protected species;
 - (x) inevitable devaluation of property.

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40. One letter from the occupant of nearby Cossington House (Rugby Road) welcomes a solution to the noise from motorbikes that is causing unreasonable noise intrusion at weekends and in the evening.
41. One letter of support has been sent by the occupant of Wood Farm (Swinford Road), which discounts any objection on traffic grounds, as there is no need for traffic from this development to use the town centre. No dust problems should arise and the weekend use of the site by motorcycles is deemed to be of greater nuisance to local occupiers. The objections from Uponor are considered to be unreasonable, because that company is considered to generate far more traffic and parking problems in the area.

Assessment of Proposal

42. This application should to be assessed against the various criteria set out national guidance and the relevant policies of the development plan. At the same time, an assessment needs to be made of the various representations made above. The main issues are considered to be:
- the need for this form of development in this particular location, in the context of the approved policies for waste management operations;
 - the implications of traffic generation on the local road network;
 - any consequential impact on pollution levels within the town centre;
 - the impact on the amenities of nearby occupants;
 - the likely impact arising from noise generated by the activities;
 - the effect on the character and appearance of the rural locality; and
 - any implications for matters relating to the ecology of the site.

Need for the development

43. Dealing firstly with the need for this waste disposal operation, the applicant claims that the site is required to meet a shortage of waste disposal facilities for inert construction waste in the general locality. a relatively local 'market' for this kind of material. The source of the waste appears to be construction sites in the neighbouring Warwickshire, Northamptonshire and Milton Keynes areas. Reference is made to return trips between these locations and Croft Quarry.
44. However, there are landfill sites within the general area that have consent for inert disposal, including Shawell Quarry, Slip Inn (Dunton Bassett) and Ling Hall (Rugby). These sites are subject to restoration requirements that rely on a stream of waste and which have experienced difficulties in obtaining the necessary materials. In the context of Policy WLP 18 there is no demonstrable need for an additional facility, and any redirection of waste to the application site would divert waste away from the approved sites, thereby delaying their restoration.
45. In terms of the 'proximity' principle, the application site is not particularly well placed to receive surplus material from sources such as Northampton and Milton Keynes. In any event, the approved sites mentioned above are as convenient for 'backloading' between the suggested sources and Croft Quarry.

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Traffic

46. The suggested level of traffic generation is relatively small, if restricted to 20 loads per day (40 movements) and the County Highways Authority has no objection to this level of increase on the local road network or junctions. The level of HGV traffic could be controlled by conditions and/or legal agreement. Therefore, it would not seem appropriate to resist the proposal on this ground.
47. Comments have been made about the impact on traffic in Lutterworth town centre and the initiatives to undertake a regeneration project. The A426 through the town is a designated lorry route and it would not seem reasonable to resist the proposal on the marginal increase in traffic that might arise from the development. Notwithstanding this fact, it would be possible to enter agreement with the operator on lorry routeing, which could avoid the town centre, but this would involve a more circuitous route to and from Croft Quarry.

Pollution

48. For the reasons given above, it would be possible to prevent any reduced levels of air quality arising from the development itself. Similarly, if the site operations are properly controlled (by wheel washing, etc) there should be less opportunity for nuisance from dust, although this could be an unnecessary impact on nearby residents, if there is no justification for the development.

Noise

49. The submitted noise assessment appears to confirm that the site activities would give rise to excessive noise levels (mainly from delivery vehicles) in the locality, giving cause for concern by the District Council's Environmental Health Officer. Comparison with the noise generated by unauthorised motorbike scrambling in the cutting is not considered to be a valid reason for allowing excessive noise impact on the locality, as this illegal use of the cutting could be prevented by other means.
50. In response to the potential noise pollution, the applicant has offered to erect a noise bund, but provides no details of its size or location, or the likely mitigation that it could provide. Clearly it would have no impact on HGVs using the road to gain access into the site.

Amenities of the locality

51. The proposal seeks consent for landfill operations to achieve agricultural and/or forestry restoration of the site. This might be considered an appropriate after-use, but there is no outstanding requirement to restore about 0.8ha of such land, and the principle purpose of the development is for commercial tipping operations. The appearance of the cutting does not have any detrimental impact on the rural character of the immediate locality.

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52. However, the introduction of these operations would conflict with the objectives to safeguard the character and appearance of the countryside, by reason of commercial activity and traffic. In particular, the requirements of the County Highways Authority (to provide adequate means of access and visibility splays onto Swinford Road) would result in the necessary removal of substantial amounts of established vegetation and exposure of the site operations.

Ecology

53. Notwithstanding a request for additional information, no ecological survey has been submitted to date. There is evidence of badger activity in the cutting and the possibility that these protected species might be affected by the proposals. In the absence of any detailed assessment, it is not possible determine the likely impact on this issue.

Public Right of Way

54. Although public footpath X18 is not included in the application site, it runs immediately adjacent to the southern boundary. Care would need to be taken to ensure that this route is not affected, either by obstruction or stability of the ground. However, the ambience of the footpath would be affected by the operations on the site.

Conclusion:

55. On the basis of the above assessment, it is considered that there is no proven need for an additional landfill site in the area. Without such justification, the development conflicts with the development plan, particularly the intentions of Policy WLP18, and would have undesirable results for the restoration of approved sites. Furthermore, it gives rise to objections on grounds of noise, rural amenity and potential ecological impact. It should be refused for these reasons.

Recommendation

- A. That the application be refused in accordance with the recommendation set out in the attached Appendix.
- B. To endorse, as requested by the Town & Country Planning (General Development Procedure) Order 1995 (as amended) a summary of the:
- i) Policies and proposals in the development plan which are relevant to the decision, as follows:

This application has been determined in accordance with the Town and Country Planning Acts, and in the context of the Government's current planning policy guidance and the relevant Circulars, together with the relevant Development Plan policies, including the following, and those referred to under the specific conditions, as set out in the appendix: -

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Strategy Policy 8; Resource Management Policies 8 and 12;
Accessibility and Transport Policy 1 and Access Transport 1 of the
Leicestershire, Leicester and Rutland Structure Plan
Policies EV/5 and T/3 of the Harborough Local Plan
Policies WLP7; WLP8 and WLP 18 of the Waste Local Plan

Circulation Under Sensitive Issues Procedures

Mrs. R. Page, CC

Officer to Contact

Mr. C. J. Noakes (Tel: 0116 265 7053)
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Refuse for the following reasons:

The proposal is contrary to the intentions of Policy WLP 18 of the adopted Waste Local Plan for Leicestershire, Leicester and Rutland. It is considered that there is no demonstrable need for this development, which would divert waste away from approved landfill operations in the area and delay their final restoration.

The development is not considered to be acceptable in the context of criteria set out in Policy WLP7. It conflicts with the 'proximity principle' embodied in Planning Policy Statement 10 and the Waste Local Plan, in that the source of potential waste has been identified well outside the local area.

The proposal conflicts with the intentions of Strategy Policy 8 of the approved Leicestershire, Leicester and Rutland Structure Plan and Policy EV/5 of the adopted Harborough Local Plan, which seek to restrict development in the countryside to essential activities, unless there is an overriding justification.

The development would have an unwarranted and adverse impact on the amenities of nearby occupiers, by reason of noise and other loss of amenity.

The introduction of tipping operation on the site would have an adverse impact on the character and appearance of this rural locality, including the necessary removal of significant vegetation to provide adequate means of access from Swinford Road.

In the absence of an ecological survey, the development could have an adverse impact on protected species, contrary to the intentions of Policy RM/11 of the Harborough Local Plan

The development would have an adverse impact on the use of public footpath X18 which runs immediately adjacent to the southern boundary of the site.

DEVELOPMENT CONTROL AND REGULATORY BOARD

The considerations set out below apply to all preceding applications.

EQUAL OPPORTUNITIES IMPLICATIONS

Unless otherwise stated in the report there are no discernible equal opportunities implications.

IMPLICATIONS FOR DISABLED PERSONS

On all educational proposals the Director of Children's Services and the Director of Resources will be informed as follows:

Note to Applicant Department

Your attention is drawn to the provisions of the Chronically Sick and Disabled Person's Act 1970, the Design Note 18 "Access for the Disabled People to Educational Buildings" 1984 and to the Disability Discrimination Act 1995.

You are advised to contact the County Council's Assistant Personnel Officer (Disabled People) if you require further advice on this aspect of the proposal.

BACKGROUND PAPERS

Unless otherwise stated in the report the background papers used in the preparation of this report are available on the relevant planning application files.

SECTION 38(6) OF PLANNING AND COMPLUSORY PURCHASE ACT 2004

Members are reminded that Section 38(6) of the 2004 Act requires that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Any relevant provisions of the development plan (i.e. the Regional Spatial Strategy, Structure Plan or any approved Local Plans) are identified in the individual reports.

The circumstances in which the Board is required to "have regard" to the development plan are given in the Town and Country Planning Act 1990:

Section 70(2)	:	determination of applications;
Section 77(4)	:	called-in applications (applying s. 70);
Section 79(4)	:	planning appeals (applying s. 70);
Section 81(3)	:	provisions relating to compensation directions by Secretary of State (this section is repealed by the Planning and Compensation Act 1991);
Section 91(2)	:	power to vary period in statutory condition requiring development to be begun;
Section 92(6)	:	power to vary applicable period for outline planning permission;
Section 97(2)	:	revocation or modification of planning permission;
Section 102(1)	:	discontinuance orders;
Section 172(1)	:	enforcement notices ;
Section 177(2)	:	Secretary of State's power to grant planning permission on enforcement appeal;
Section 226(2)	:	compulsory acquisition of land for planning purposes;
Section 294(3)	:	special enforcement notices in relation to Crown land;
Sched. 9 para (1)	:	minerals discontinuance orders.