
Appeal Decision

Hearing held on 8 to 10 July and 1 September 2014

Site visit made on 10 July 2014

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 20 January 2015

Appeal Ref: APP/L3055/A/13/2194755

Red Hill Marina, Ratcliffe-on-Soar, Nottingham, Nottinghamshire NG11 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Richard Morley against Nottinghamshire County Council (NCC).
 - The application Ref 12/00856/CMA, is dated 18 April 2012.
 - The development proposed is the construction of a leisure marina comprising marina basin with 553 leisure moorings and ancillary buildings, associated vehicle parking, landscaping and infrastructure and the incidental excavation and removal of minerals.
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Decision

1. I dismiss the appeal, and refuse to grant planning permission for the construction of a leisure marina comprising marina basin with 553 leisure moorings and ancillary buildings, associated vehicle parking, landscaping and infrastructure and the incidental excavation and removal of minerals.

Preliminary matters

2. The appeal site comprises 20.14 ha of agricultural land (classified as Grade 4), in three open fields, adjacent to the River Soar. The existing Redhill marina lies to the north of the site. This provides for up to 200 moored boats as well as buildings, plant and equipment associated with the marina, along with large areas of open storage for boats.¹ Ancillary uses include agricultural barns used for light industrial purposes, along with holiday cottages. The eastern bank of the River Soar adjacent to the appeal site is used for moorings licensed by Redhill marina. To the east of the appeal site beyond an open field is the main east coast rail line and East Midlands Parkway Station and car park. Network Rail acquired the nearby semi-detached property Mason's Barn/the Bungalow, which is currently vacant. On the other side of the railway line is Ratcliffe-on-Soar power station, with large buildings and cooling towers. Access to the appeal site is from a roundabout that serves the railway station and links via a signalled junction to the recently upgraded A453. There is also a vehicular link via a gated access under the A453 to the village of Ratcliffe-on-Soar. East Midlands airport lies some 3.5 km to the south-west. The appeal site lies within the Green Belt as designated by Policy ENV15 of the Rushcliffe Borough

¹ At the time of my site visit there were 179 boats on the site; 66 on the river, 34 within 'the parlour', which is a small inlet off the River Soar, and 79 on the land.

Local Plan 1996 (LP), which is a saved policy in the Rushcliffe Local Plan Part 1: Core Strategy, adopted in December 2014 (CS). The existing marina, the railway station and the power station are also within the Green Belt. The application was accompanied by an Environmental Statement (ES), and I have taken into account the Environmental Information in determining this appeal.

3. NCC failed to make a decision on the planning application in the required amount of time. However, had it been able to do so, NCC would have refused the application. The reason for refusal would have made reference to:
 - (a) The development of a marina in the Green Belt is inappropriate development and there is no demonstrable need for new marina berths within the local area. There are no very special circumstances to justify the harm to the openness of the Green Belt that would be caused by the proposed development. As such, it is contrary to the National Planning Policy Framework (NPPF) and Policy ENV14 (Protecting the Green Belt) of the Rushcliffe Borough Non-Statutory replacement local plan.
 - (b) The proposed development is 3.5 km from East Midlands Airport. The design of the proposed marina would create new habitat suitable for birds that are a birdstrike risk to aircraft. The development would have an unacceptable risk to aviation safety which is contrary to the NPPF.
 - (c) The excavation of sand and gravel and the construction of the marina would generate noise levels at nearby sensitive receptors that exceed the maximum noise levels for minerals development as set out in the Technical Guidance to the NPPF. As such, the development would have unacceptable noise impact contrary to the NPPF and Policy M3.5 (noise) of the Nottinghamshire Minerals Local Plan (MLP).
 - (d) The site contains archaeology of at least regional importance, and potentially contains elements of national importance. Given the lack of need for the proposed marina, the importance of the development is not considered to outweigh the importance of the remains. Therefore, the development is contrary to the NPPF and Policy M3.24 (Archaeology) of the MLP.
 - (e) There is insufficient information for the planning application to be fully assessed against policies M3.3 (Visual Intrusion), M3.9 (Flooding), M3.15 (Bulk Transport of Minerals), M3.16 (Protection of Best and Most Versatile Agricultural Land), M3.17 (Biodiversity) and M3.27 (Cumulative Impact) of the MLP; and policies EN11 (Features of Nature Conservation Interest), EN21 (Loss of Agricultural Land) and WET2 (Flooding) of the Rushcliffe Borough Non-Statutory Replacement Local Plan. As such, the development is contrary to Policy M3.1 (Information in support of Planning Applications) of the MLP which seeks to ensure that sufficient information is submitted to enable a balanced assessment of all relevant factors.
4. An inconsistency between the Illustrative Construction Plan² and the Indicative Layout of Habitat Creation Area³ was addressed at the Hearing by the submission of an amended phasing plan⁴. This deleted land in the western part of the appeal site from excavation, so as to be consistent with the proposed habitat creation area. The title of the revised drawing states that it is

² Drawing No.0523/CP/1.

³ Hearing Document 3.

⁴ Hearing Document 18.

illustrative, but it was clarified at the Hearing that it is intended to be an application drawing and is cited in the suggested conditions. The height of the road serving parking areas adjacent to moorings was also clarified at the Hearing in sections I-I and J-J.⁵ Minor changes to access roads in relation to the red line boundary are a matter that could be addressed by a condition requiring a revised master plan. So too could the provision of a land bridge to the proposed island within the marina.

5. The judgment of the High Court in *Redhill Aerodrome Ltd and SoS CLG* was discussed at the resumed Hearing. Comment was subsequently invited on the Court of Appeal's judgment which overturned the High Court's decision, and I have taken these written representations into account in determining this appeal.⁶ I have also had regard to representations about the adopted CS.⁷
6. The red line depicting the appeal site includes land owned by the Canal and River Trust. NCC raised this in an email dated 26 August 2014, and the matter was discussed at the Hearing. The Hearing was left open so as to enable written submissions about section 327A of the 1990 Act to be submitted, and for the requisite notice to be given.⁸ The Hearing was closed in writing on 12 January 2015.
7. A draft agreement was submitted by the appellant on 1 July 2014, and a signed unilateral planning obligation was submitted on 9 July 2014.⁹ A revised obligation, dated 29 August 2014, was submitted at the resumed Hearing.¹⁰ This provides that the landowners would undertake three obligations on commencement of the development that is the subject of this appeal. Firstly, to transfer on-line moorings to the marina. The obligation provides that on-line residential and leisure moorings along the bank of the River Soar for the length of the appeal site (shown as A to B on the plan attached to the obligation), including the inlet known as 'the parlour', would be offered an equivalent off-line mooring within the proposed development under rental terms commensurate with those in place for their mooring on the River Soar. That all new moorings in the proposed development would be leisure moorings save only for transferred residential moorings, which would be limited personally to existing licensees. After the completion of the proposed marina no boats would be permitted to moor along the River Soar from A to B. Secondly, heavy goods vehicles for the extraction and/or removal of minerals and aggregate would only access the site via the A453, so as to avoid passing through the villages of Ratcliffe-on-Soar or Kegworth. Thirdly, to use reasonable endeavours to recruit residents of Nottinghamshire in the construction and operation of the development.
8. There was some debate at the Hearing about the provisions of the obligation that relate to land owned by the Canal and River Trust. However, I am satisfied that the practical realities here are that the provisions of the obligation could be achieved, notwithstanding the land ownership issue, as vehicular access to this land would involve use of the appellant's land. Furthermore, NCC notes that the removal of moorings and related paraphernalia is a matter that could be addressed by the imposition of an appropriate planning condition.

⁵ Hearing Document 19.

⁶ Hearing Documents 31 and 32.

⁷ Hearing Documents 33.

⁸ Hearing document 30.

⁹ Hearing Document 13.

¹⁰ Hearing Document 24.

Main issues

9. The main issues in this appeal are:

- (a) Whether the development conflicts with policy to protect the Green Belt and the effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it.
- (b) The effects of the proposed development on the character and appearance of the area.
- (c) The effects of the proposed development on biodiversity.
- (d) The effects of the proposed development on aviation safety.
- (e) The effects of the proposed development on flood risk and safety.
- (f) The effects of the proposed development on heritage assets.
- (g) The need for the proposed development, including mineral extraction and marina berths.
- (h) If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Planning policy

10. In addition to the LP and CS the development plan for the area includes the Nottinghamshire Minerals Local Plan adopted 2005 (MLP). Policy M14.1 provides that planning permission for the extraction of minerals as a necessary element of any other development proposal on the same site would be granted provided, amongst other things, that there would be no unacceptable environmental impact. MLP Policy M6.2 endeavours to maintain a landbank of reserves for sand and gravel sufficient for at least 7 years extraction. MLP Policy M3.24 provides, amongst other things, that planning permission would only be granted for development which affected archaeological remains of less than national importance where it was demonstrated that the importance of the development outweighs the significance of the remains.
11. CS Policy 1 refers to the presumption in favour of sustainable development in the *National Planning Policy Framework* (hereinafter the *Framework*). CS Policy 4 carries forward the principle of the Green Belt, but Appendix B of the CS states that LP Policy ENV15 will not be fully replaced until after the Local Plan Part 2: Land and Planning Policies Development Plan Document is finalised. Given the current position in the development plan regarding Green Belt policies, the *Framework* is an important consideration in determining this appeal. CS Policy 5 aims to strengthen and diversify the economy. CS Policy 10 concerns design and local identity. CS Policy 11 states that planning decisions will have regard to the contribution heritage assets can make to the delivery of wider social, cultural, economic and environmental objectives. CS Policy 12 promotes healthy lifestyles, and Policy 13 encourages facilities for tourism and sport. The banks of the River Soar lie within an area designated as Green Infrastructure on the CS Key Diagram. CS Policy 16 provides for a strategic approach to the delivery, protection and enhancement of Green Infrastructure. This approach requires, amongst other things, that

landscape character is protected, conserved or enhanced where appropriate in line with the recommendations of the Greater Nottingham Landscape Character Assessment. CS Policy 17 aims to increase biodiversity. Limited weight should be given to the Rushcliffe Borough Non-statutory Replacement Local Plan 2006, given the adoption of the CS.

Reasons

Green Belt

12. The mineral extraction and engineering works proposed, where these did not conflict with the purposes of the Green Belt and preserved its openness, would not be inappropriate in the Green Belt. There is some dispute about how the exception for facilities for outdoor sport and recreation should be applied in this case. The appellant argues that the use of the land as a marina is a beneficial use enhancing access and opportunities for outdoor sport and recreation under paragraph 81 of the *Framework*, but accepts on the current state of authorities that the change of use of parts of the appeal site from pasture to marina mean that the scheme amounts (at least in part) to inappropriate development as a matter of policy and so very special circumstances need to be shown.
13. Even if the requirements for the exception for facilities for outdoor sport and recreation were met, namely that the facilities would preserve the openness of the Green Belt and not conflict with the purposes of including land within it, this would apply only to the construction of new buildings. The appeal scheme involves extensive areas for the mooring of boats and the parking of up to 375 cars. The scheme would involve a change of use that is not included in the exceptions set out in paragraph 89 of the *Framework*. I find, therefore, that the proposal would be inappropriate development in the Green Belt.
14. The *Framework* states that when located in the Green Belt inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The *Framework* provides that substantial weight should be given to any harm to the Green Belt, and very special circumstances 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.
15. The proposed buildings include a large structure measuring some 48 m long by 14 m wide and 15 m high. There would also be extensive areas of car parking, up to 553 moored vessels, along with associated infrastructure. Such development would have a significant adverse effect on the openness of the Green Belt. The scheme would have many urbanising features, such as extensive parking and lighting, which would affect the countryside, even if controlled by condition. The resultant encroachment into the countryside would be at odds with one of the purposes of the Green Belt. This would be particularly so as the appeal scheme would be seen in association with the existing marina development.
16. On the first main issue, I find that the proposal would be inappropriate development in the Green Belt. Furthermore, it would be at odds with one of the purposes of the Green Belt, and would erode its openness. The proposed development would, therefore, harm the Green Belt. I next consider whether the proposal would result in any other harm, and then have regard to other considerations, so as to undertake the balancing exercise outlined above.

Character and appearance

17. For landscape appraisal the site lies within the Soar Valley Farmlands TSV02 of the Trent Valley. In the Greater Nottingham Landscape Character Assessment (LCA) the area is described as a low-lying flood plain bordering the River Soar. Characteristic features of the area include the River Soar, with a meandering channel and gentle grassed meadow banks and riparian tree planting and pockets of vegetation. Fields are bounded mostly by hawthorn hedgerows with frequent trees. There is little built form on low ground, but urban elements are more frequent in views towards the north of the zone, in which the appeal site lies, with Ratcliffe power station and adjacent quarrying prominent. The railway is also identified as a prominent man-made element set on a raised embankment. Landscape condition in the LCA is described as moderate, and character strength as moderate to strong.
18. The scheme would introduce a large scale development with buildings and extensive areas of moored boats and parking into an open area of countryside close to the river. The power station and rail infrastructure are set back from the river. The proposal would not conserve areas of permanent pastoral farming or river meadows along the river floodplain. The nature and scale of the proposed development would harm the character of the area. I consider that this area has medium sensitivity to the type of development proposed. With a medium magnitude of effect, the proposal would have an adverse effect on the landscape resource of moderate significance.
19. I deal next with visual effects. Sand and gravel extraction and activity associated with it, would be harmful to the appearance of the area. In particular, the proposed soil bunds and stockpiles, even with controls on their height, would be visually intrusive from public vantage points. Excavation would inevitably result in a scar in the countryside that would detract from the attraction of this low-lying riparian landscape. This part of the development would be for a limited duration. Nevertheless, the harm would be considerable and would endure for a considerable time during the proposed phasing. Furthermore, once mineral extraction had been completed and the marina constructed, the appearance of the area would be substantially altered.
20. I acknowledge that moored vessels and associated paraphernalia on the bank along this part of the River Soar detract from the visual amenity of the river, and that their removal would be beneficial to the appearance of the area.¹¹ However, the proposed marina, with extensive areas of moored boats and large areas of car parking, would by reason of the overall scale of the facility, have an adverse visual effect. With appropriate landscaping some adverse impacts could be minimised in time, but the scheme would be visually intrusive in this part of the open countryside. This would have a harmful visual effect because the open rural landscape here serves as a useful foil to the nearby built forms of the railway station and electricity generating infrastructure. I consider that receptors here, particularly those using the local footpaths, would have a high sensitivity to the type of development proposed, and with a medium magnitude of effect, I find that the scheme would have an adverse visual effect of moderate/major significance.

¹¹ It was estimated that up to 120 on-line moorings would be removed as part of the appeal scheme.

21. Taking all these factors into account, I consider that overall the proposed development would have an adverse effect on the character and appearance of the area of moderate significance. I find that the proposal would be at odds with the aims of CS Policy 16.

Biodiversity

22. The open fields that comprise the appeal site are separated by hedgerows. There is also a ditch across the site, and numerous trees on field boundaries. NCC was critical of some of the wildlife surveys undertaken, but I am satisfied that there is sufficient information available for me to be able to properly consider this matter in the context of determining the appeal on its planning merits. The experts dispute the overall effects of the scheme on biodiversity. The scheme would result in the loss of some features of value to local wildlife, but would, in time, create others.
23. During the mineral extraction and marina construction stages the effects on local wildlife would be considerable. It would result in the loss of some riverside vegetation, existing ponds, wet and dry ditches, hedgerows and seasonally wet grassland. However, on completion of the marina, considerable wildlife benefits would result from the removal of moorings and bankside clutter from this part of the River Soar, including 'the parlour'. The creation of a new habitat area of about 2.75 ha would also be beneficial. How best to maximise the biodiversity of this area could be a matter addressed by planning conditions. An approved management scheme for landscaped areas within the proposed marina could also provide some useful habitat for wildlife.
24. During the extraction and construction phases there would be likely to be substantial harm to wildlife of local importance. The completed marina would provide opportunities for colonisation by flora and fauna, but would offer very different habitats to those that currently exist. In time, this is something that could be managed to benefit nature conservation. The overall effect on biodiversity of the scheme is therefore a difficult matter to balance. There are uncertainties about how successful new habitats created would be in providing for wildlife, especially as the site would primarily function as a large marina, with all the associated activities and impacts on its local surroundings. Overall, on the evidence adduced, I consider that the proposal would have a neutral effect on biodiversity.

Aviation safety

25. East Midlands Airport is concerned about habitat created at the marina attracting birds, particularly geese and starlings, which could pose a risk to aircraft using the airport because of bird strike. Air safety is an important consideration and the risk of bird strike a matter that should be taken seriously given the proximity of the airport. The airport is particularly concerned about local populations of birds being attracted to islands created within the marina, where predation was not a significant deterrent to occupation by birds. However, measures could be taken to control birds using these sites. These could include dense planting, the use of fences, and providing land bridges for predators. I am satisfied that reasonable and effective measures could be taken to deter birds from using the site, such that any risk of bird strike was so low as to be negligible.

26. Subject to the imposition of appropriate planning conditions, I do not consider that the proposed development would be likely to result in an unacceptable risk to air safety. I do not accept that this could only be achieved by a redesign of the marina, as appropriate measures could be taken to control birds on the site that might pose a risk to aircraft. I find no conflict with that part of paragraph 144 of the *Framework* which provides that mineral development should have no unacceptable adverse impact on aviation safety.

Flood risk and safety

27. The appeal site lies within Flood Zone 3B and is functional flood plain. The scheme would result in a minor increase in flood storage capacity. Boats moored on-line within the river are at particular risk during times of flood. Boats have been damaged and sunk in the past. Flooding would, at times, provide a risk to both property and lives. The permanent removal of up to 120 on-line moorings from this part of the river would be beneficial to safety in terms of both flood risk and navigation. This, along with the increased flood storage, is a consideration which weighs in favour of the proposed development. But the scheme would substantially increase the overall number of berths, parked cars and people visiting the area. This could potentially expose many more people and much more property to risk at times of flooding. I acknowledge that the marina's design, construction and management could all contribute to minimising the risk to property and safety from flooding. However, a net increase of 433 berths, along with the associated movement of cars and people, would make flood safety and evacuation considerably more complex tasks, and increase the potential for things to go wrong in an emergency.¹² Putting many more boats, cars and people at risk in a flood zone is a consideration which weighs against the proposal. On balance, I find that overall the appeal scheme would have a neutral effect in terms of flood risk/safety.

Heritage assets

28. The proposal would not have an adverse impact on any designated heritage assets. I have had regard to the submitted archaeological evaluation, which included trial pits. The site has been selected to avoid areas of known archaeological importance. However, it seems to me that the appeal site has potential for archaeological remains by reason of its proximity to the Roman shine at Red Hill, and to the nearby site of second to fourth century Romano-British occupation, and also because it lies close to the confluence of the Soar and Trent rivers. Notwithstanding suggested planning Condition 33, which would require a written scheme of investigation incorporating the mitigation measures set out in the ES, the proposed excavation and dewatering could harm any archaeological remains on the appeal site. The risk is difficult to quantify. However, given the nature of the works proposed, I consider that the risk would be significant, because the possible existence of remains that would require *in situ* preservation cannot be ruled out. I find that the risk to archaeological remains is a factor that, to some extent, weighs against the proposal. This is a consideration which should be given some weight in accordance with paragraph 135 of the *Framework*.

¹² The proposed 553 berths minus the existing 120 proposed to be removed would give a net increase of 433 berths.

Other matters

29. It seems to be that the quantity of sand and gravel to be extracted would be unlikely to justify investment in rail or water transport, and that it would, in the circumstances, be appropriate to use road transport. There is some local concern about HGVs accessing the site via the local village. I am satisfied that the obligation and planning conditions could provide for appropriate access to the A453, which did not materially affect the village. The transport evidence adduced demonstrates that there would be no unacceptable impact on the local highway network. Public rights of way across the site could be adequately protected by planning conditions.
30. The site is in an accessible location close to large urban areas. The proposal would gain some support from local and national policies which encourage tourism and leisure, sport and recreation, and growth in the rural economy. The additional employment opportunities the scheme would provide, both during the excavation and construction period, along with up to 14 full time jobs in the marina, would be of benefit to the local economy.
31. Noise from mineral extraction and construction of the marina is a matter that could be adequately addressed by the imposition of appropriate planning conditions. Appropriate measures could be taken to safeguard the residential amenity of the occupiers of Mason's Barn/The Bungalow were the building to become reoccupied.
32. The appeal site has been suggested as a route for the second phase of HS2. However, in the absence of a safeguarding direction this is a matter that should not be decisive in dealing with this appeal on its planning merits.
33. The effects of the proposed development on other environmental matters regarding air quality and land contamination are matters that could be addressed by the imposition of conditions.
34. Mr Barnham raised a query at the Hearing about disputed land ownership in the vicinity of the roundabout to the east of the appeal site, which affects access to his property. This has arisen because of procedural matters concerning land acquisition by Network Rail for the construction of the Parkway. However, appropriate notice about the marina application and the appeal was served on National Rail. Any disputed land ownership is a private matter for the parties involved, and has no bearing on my consideration of the appeal on its planning merits.

Need for mineral extraction

35. NCC has a landbank of less than 7 years for sand and gravel. The proposed extraction of about 500,000 tonnes of sand and gravel would make a modest contribution to meeting this need. In accordance with the provisions in the *Framework*, great weight should be given to the benefits of mineral extraction, including to the economy. Notwithstanding the limited quantity of sand and gravel involved here, which would add approximately 9 weeks to the landbank, the benefits of mineral extraction weigh significantly in favour of allowing the appeal. The fact that the mineral extraction is incidental to the construction of the marina does not diminish the weight that should be given to this factor.

Need for marina berths

36. There was dispute at the Hearing about the demand for additional berths, and no consistent evidence about the existing supply. Furthermore, there is no recognised and accepted methodology for assessing the future need for berths. A number of factors are relevant and were discussed at the Hearing. These include; surveys undertaken by NCC, the British Marine Federation and the appellant, data and statements from British Waterways Marinas Ltd, representations in support of the proposal, and the number of licences issued.¹³ I note that the Canal and River Trust's policy is to increase the use and value of the waterways. I have also had regard to the fact that Redhill marina can accommodate boats with a wide beam that are unable to navigate narrower canals. As noted above, the removal of on-line moorings would have navigational benefits for those using this part of the river. However, it is difficult from all this information to come to any meaningful conclusions about the overall need for the proposed facility. There is evidence of demand. But no convincing evidence of an unmet need for berths that would amount to a consideration that would weigh significantly in favour of allowing the appeal. On the other hand, there is no compelling evidence of any oversupply of berths that would indicate a likelihood of any harm were the facility to be constructed. This was a matter that took up considerable time at the Hearing, but on balance, it seems to me that the supply/demand situation is neither a consideration for, or against, allowing the appeal. I find here that it would have a neutral effect and should not weigh significantly either way in the planning balance.

Very special circumstances

37. The appellant argues that there are seven other considerations to weigh against the harm I have identified above:¹⁴

- (i) The provision of an appropriate recreational facility in the countryside that would provide opportunities for outdoor sport and recreation.
- (ii) The economic benefit of a large marina with appropriate facilities and employment opportunities.
- (iii) The need for further and better marina facilities in the area.
- (iv) The demonstrable need for sand and gravel reserves.
- (v) The enhancement of the stretch of the River Soar visually by moving boats moored along the river and within the 'parlour' into the new marina.
- (vi) The benefits to navigation, safety and flood risk by moving existing boats along the river into the marina, through the additional flood storage capacity and provision of a quality flood management regime within the marina itself.
- (vii) The net biodiversity benefits from new habitat creation and giving the river banks back to nature in accordance with a habitat management plan.

38. The recreational facility would provide opportunities for outdoor sport and recreation, along with economic benefits and employment opportunities, which in my view should be given moderate weight in support of scheme [(i) and (ii)]. The need for further and better marina facilities in the area is a neutral consideration, which should be given negligible weight [(iii)]. The contribution

¹³ Including Hearing Documents 2, 8 and 11.

¹⁴ Hearing Document 16.

to the supply of sand and gravel reserves weighs significantly in favour of the proposal, particularly given the support for mineral development in the *Framework* [(iv)]. The improved visual amenity along the river would be beneficial, but overall I have found that the scheme would have a moderate adverse effect on the character and appearance of the area [(v)]. For the reasons set out above, I have found that the effects on flood risk/safety and biodiversity are neutral considerations in this balancing exercise [(vi) and (vii)].

39. However, in the overall balancing exercise which applies here, substantial weight should be given to the harm to the Green Belt. The openness of the Green Belt in this area is already impacted by important infrastructure, such as the power station and railway line/station. The existing marina, with large areas of open storage, also has an impact. In this context, the remaining open areas take on a greater significance and importance. Openness within the Green Belt is a finite resource. The existing development in the Green Belt in the vicinity of the appeal site is not an argument in favour of further erosion of its openness. The impact of the proposed development on the Green Belt is a matter that in my judgement significantly and demonstrably outweighs the benefits of the scheme. The harm I have identified to the character and appearance of the area, and the risk to any archaeological remains, tip the balance even further against the proposal. Taking all the above into account, I find that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions.

Conclusions

40. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The proposal would gain some support from MLP Policy M6.2 concerning a landbank of reserves for sand and gravel. However, I have found that the proposal would result in an unacceptable environmental impact, and so would conflict with MLP Policy M14.1. Furthermore, I am unable to find compliance with MLP Policy M3.24 concerning any archaeological remains. The proposal would gain some support from CS Policies 5, 12 and 13, but would be at odds with the aims of CS Policies 1 and 16. I find that the proposal would conflict with the development plan, when taken as a whole. The conflict with national policy concerning the Green Belt weighs heavily against allowing the appeal. I do not consider that the proposal would accord with the requirements for sustainable development set out in the *Framework*. There are no material considerations here which would indicate that a determination other than in accordance with the development plan was justified.
41. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock

Inspector

APPEARANCES

FOR NOTTINGHAMSHIRE COUNTY COUNCIL (NCC):

Oliver Meek BSc(Hons) MPlan MRTPI	Senior Planning Officer NCC.
Alison Stuart BA(Hons)Landscape Architecture CMLI	Landscape architect.
Ursilla Spence BA(Hons) in Archaeology	Senior Practitioner Archaeology.
Nick Crouch BSc(Hons) MSc MCIEEM	County Ecologist.
David Collins BEng AMIOA	Project Engineer (Acoustics).

FOR THE APPELLANT:

Ned Westaway	Of counsel.
Christopher Whitehouse MRICS BSc(Hons)	Managing Director/Chartered Planning and Development Surveyor, NextPhase Development Ltd.
Paul Beswick BA(Hons) Dip LA	Technical Director, Enzygo Ltd.
Ian Wickett HNC Civil Engineering MCIHT	Associate Director, SCP Ltd.
Chris Leake BSc MSc FGS	Director/Senior Hydrologist, Hafren Water Ltd.
Dr Mark Webb PhD CIEEM	Director, Peak Ecology Ltd.
Richard Morley	Appellant.

INTERESTED PERSONS:

Janice Bradley CEnv MCIEEM	Head of Conservation Policy and Planning, Nottinghamshire Wildlife Trust.
Will Fuller BEng(Hons) MSc(Hons) MEIT	Aerodrome Safeguarding and Bird Control Officer, East Midlands Airport.
Tim Coghlan	Managing Director, Braunston Marina.
June Wheatman	Local resident.
Wendy Gibson	Local resident.
Chris Barnham	Local resident.

DOCUMENTS SUBMITTED AT AND AFTER THE HEARING

Document	1	Agricultural use and quality of land at Redhill Farm, Ratcliffe-on-Soar, Nottingham, Fox Bennett Chartered Surveyors, 26 June 2014. [Submitted by the appellant]
Document	2	Appellant's survey report of marina capacity 4 July 2014. [Submitted by the appellant]
Document	3	Figure 1 Indicative Layout of Habitat Creation Area, July 2014, Peakecology. [Submitted by the appellant]
Document	4	Supplementary Visual Impact Submission, Enzygo. [Submitted by the appellant]
Document	5	Extract from Circular Conservation of Species Protected by Law.
Document	6	<i>Birdstrike Risk Management for Aerodromes</i> CAP 772 Civil Aviation Authority.
Document	7	Extract from the <i>Planning Practice Guidance</i> Natural Environment.
Document	8	<i>Shaping our future Strategic priorities</i> Canal & River Trust.
Document	9	Response to the proposed habitat creation area by Nottinghamshire Wildlife Trust and NCC.
Document	10	Note from Mr Leake concerning flood storage.
Document	11.1	Financial Statements British Waterways Marinas Limited year ended March 2013.
	11.2	Financial Statements British Waterways Marinas Limited year ended March 2012.
Document	12	Example of licence issued by Red Hill Marine Ltd.
Document	13	Unilateral planning obligation 9 July 2014.
Document	14	Revised and supplementary planning conditions.
Document	15	Recommended planning conditions and condition topics.
Document	16	Response to Inspector's questions by appellant dated 4 August 2014.
Document	17	Revised draft unilateral planning obligation.
Document	18	Updated Illustrative Construction Management Plan Drawing No.0128-01/01.
Document	19	Cross Sections J-J and I-I Drawing No.0128-01/02.
Document	20	Response to Inspector's questions by NCC dated 8 August 2014.
Document	21	Correspondence from Euan Corrie dated 8 June 2011 and 21 June 2014.
Document	22.1	Appeal Ref:APP/H1840/A/13/2199085.
	22.2	Appeal Ref:APP/G1630/A/13/2209001.
Document	23	NCC note on Redhill judgment.
Document	24	Unilateral Planning Obligation dated 29 August 2014.
Document	25	Plan showing land owned by Canal and River Trust. [submitted by NCC]
Document	26	Section 327A of the Town and Country Planning Act 1990. [submitted by NCC]
Document	27	Closing statement notes by NCC.
Document	28	Closing statement on behalf of the appellant.
Document	29	Revised suggested conditions.
Document	30	Appellant's note on Section 327A of the Town and Country Planning Act 1990.
Document	31	Appellant's comments on Redhill Court of Appeal Judgment.
Document	32	NCC Redhill Court of Appeal Judgment.
Document	33	Comments on adopted Core Strategy.

COURT JUDGMENTS

Fordent Holdings Ltd v SoS CLG [2013] EWHC 2844 (Admin)

Europa Oil and Gas Ltd v SoS CLG [2013] EWHC 2643 (Admin)

Mrs Jean Timmins and AW Lymn and Gedling Borough Council [2014] EWHC 654 (Admin)

Redhill Aerodrome Ltd and SoS CLG [2014] EWHC 2476 (Admin)

Dartford BC v SoS CLG [2014] EWHC 2636 (Admin)

Cherkley Campaign Ltd and Mole Valley DC [2014] EWCA Civ 567

Michael Jonathan Parker and SoSCLG Rother DC [2009] EWHC 2330 (Admin)

Bizzy B v Stockton-on-Tees BC [2011] EWHC 2325 (Admin)

SCHEDULE OF PLANS

- a) Figure 1.1 titled *Site Location Plan*.
- b) Redhill Marina Proposals Site Plan – March 2012.
- c) Redhill Marina Proposals Masterplan – Option 1 Rev D – dated 16.03.12.
- d) Drawing No. 08.003.030A titled *Existing Road Access*.
- e) Drawing No: 08.003.003H titled *Facilities block schematic*.
- f) Drawing No: 08.003.006D titled *Cross Sections*.
- g) Drawing No: 08.003.011c titled *Boat House and Secondary Facilities*.
- h) Drawing No: 08.003.014B titled *Bridge and Causeway*.
- i) Drawing No: 0128/01/05 titled *Proposed Development Cross Sections*.
- j) Drawing No.0128-01/01 Revised illustrative construction plan.¹⁵
- k) Drawing No.0128-01/02 Cross Sections J-J and I-I.¹⁶

¹⁵ Hearing Document 18.

¹⁶ Hearing Document 19.