

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

FORM RP/10

TEXT RP/10

Date of Decision 11th September, 1990.	Town and Country Planning Act, 1971 Town and Country Planning Development Orders
Reference Number R89/2039P	
Wimpey Waste Management Ltd., Matthews Street, Ardwick, Manchester. M12 5BB	
Description and Location of Development Revised application for planning permission to develop land for inclusion in the existing amenity park scheme by landfilling with controlled wastes at Grange Park, off Upper Wortley Road, Droppingwell, Rotherham, for Wimpey Waste Management Limited.	

The Rotherham Metropolitan Borough Council, acting as the Local Planning Authority, have considered your application in respect of the above development and have decided to refuse planning permission for the following reason(s) :-

1. The Council considers that the proposed development would be injurious to the amenities of residents of adjoining housing areas and to users of Grange Park by reason of:-
 - (i) The emission of smell, noise, dust and other windborne materials from the site, together with the general disturbance to the locality for the duration of the tipping operation.
 - (ii) The disamenity and disturbance likely to be experienced over a substantial period of time from the associated increase in heavy goods vehicle movements on the already heavily trafficked A.629 Upper Wortley Road which pass through residential areas; as well as on the Grange Park access road.

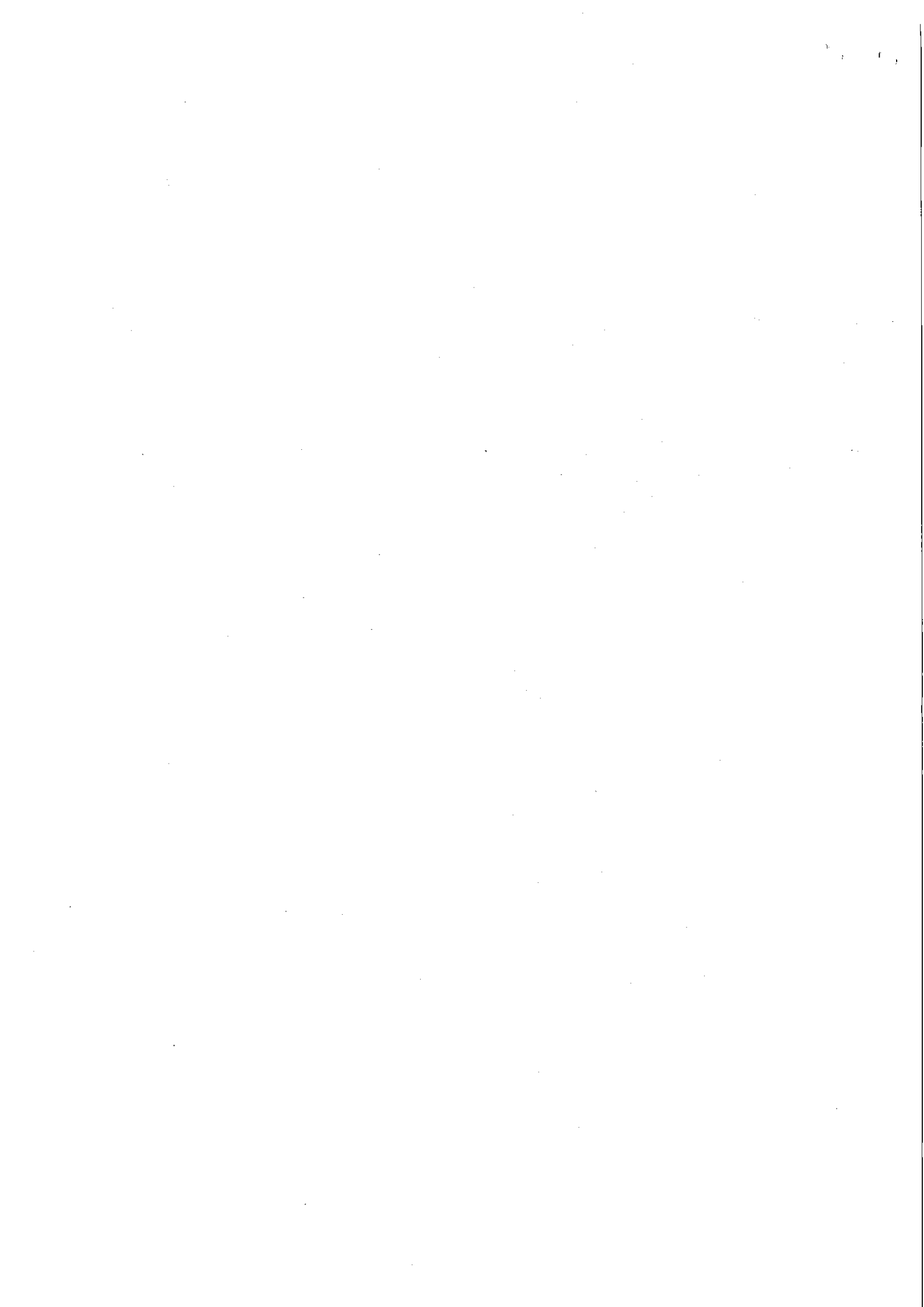
Department of Planning,
Norfolk House,
Walker Place,
Rotherham. S60 1QT

Tel. Rotherham (0709) 382121

COPY

Director of Planning

PLEASE READ THE NOTES OVERLEAF CAREFULLY





Planning Inspectorate
Department of the Environment

Room 1404 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 448321

Direct Line 0272-218923

Switchboard 0272-218811

GTN 1374

Mr R J Tyler
Wimpey Group Services
Hammersmith Grove
London
W6 7EN

Your Reference:
Council Reference: R89/2039/P
Our Reference:
T/APP/P4415/A/90/174179/P6
Date: 13 APR 92

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY WIMPEY WASTE MANAGEMENT LIMITED
APPLICATION NO R89/2039/P

1. As you know I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Rotherham Metropolitan Borough Council to refuse planning permission to develop land at Grange Park, Droppingwell, for inclusion in the existing amenity park scheme by landfilling with controlled wastes. I held an inquiry into the appeal on 8 to 11 October 1991 and 13 to 15 January 1992, and carried out an inspection of the site and surrounding area on 16 January 1992. During my site inspection I viewed the appeal site from several points in the nearby residential area, and through the rear windows of No 62 Redscope Road.
2. At the inquiry, an application was made by you for an award of costs against the council, and by the council for a partial award of costs against your clients. These are the subject of separate letters.

SITE AND BACKGROUND

3. The appeal site extends over about 22.8 hectares of open land, lying between the Grange Park municipal golf course to the north and north-west, and playing fields (reclaimed from a former colliery site) to the east. To the south lies Walkworth Wood, and to the west some recent planting and another area of older woodland, Brick Kiln Plantation. Beyond the open land, to the north and east, are extensive residential areas. It was agreed at the inquiry that the boundary of the nearest residential property, on Upper Wortley Road to the north, is 220 metres from the appeal site boundary, and 240 metres from the proposed putrescible waste areas. Houses on Droppingwell Road, to the east, are further from the site (Document 3). In the south-east of the appeal site is a partially overgrown, steep-faced tip, known as Watson's Tip. This results from planning permissions granted in 1950 and 1958 (Document 10, pages 1-7), the latter covering about 12 hectares of the appeal site. (The name 'Watson's Tip' was used during the inquiry to refer both to the existing tip and to the whole area of the 1958 planning permission. In this letter, I shall use the name in the former sense.) You and the council are agreed that the 1958 permission is still extant, and that around 1 million cubic metres of fill could be placed on land within the appeal site. The local residents argue that the 1958 permission is no longer capable of implementation. I shall say more about that below.

4. Watson's Tip was last used officially in the early 1980s. In 1987 its owner began negotiating to sell it, and the council's officers became concerned at the implications. There followed a series of committee reports and resolutions. Amongst these was a recommendation of the Planning and Development Committee that the local planning authority should indicate its willingness to consider favourably the principle of extending the tipping area beyond the 1958 confines in order to facilitate the achievement of a more sympathetic final landscape (Document 10, page 51).

5. The appellants became interested in the site, and discussions took place with the council's officers, leading to the submission of a planning application. Following public opposition, this was withdrawn, and a revised application, the subject of this appeal, was submitted. The officers recommended approval (Document 10, pages 33-35), on the grounds that the appellants' scheme would result in the final reclamation of the site, including the capping of toxic materials in Watson's Tip, and in a more desirable landform than would be achieved under the 1958 permission. Your clients offered a section 106 agreement to allow the revocation of the 1958 permission without compensation, the dedication of the restored site to public open space, lorry routing, and other such matters. However, the application was refused.

REASON FOR REFUSAL

6. The reason for refusal was as follows: 'the council considers that the proposed development would be injurious to the amenities [sic] of residents of adjoining housing areas and to users of Grange Park by reason of: (i) the emission of smell, noise, dust and other windborne materials from the site, together with the general disturbance to the locality for the duration of the tipping operation; (ii) the disamenity and disturbance likely to be experienced over a substantial period of time from the associated increase in heavy goods vehicle movements on the already heavily trafficked A629 Upper Wortley Road which passes through residential areas, as well as on the Grange Park access road'.

POLICY BACKGROUND

7. There is a reference to waste disposal in general terms in the South Yorkshire Structure Plan, and the Rotherham Waste Disposal Plan sets out a presumption against waste disposal where residential amenity is likely to be adversely affected. Droppingwell is identified as a site with permission in the Waste Disposal Plan (Document 11, Appendix 3)

8. The appeal site lies within the approved green belt as defined in the adopted Rotherham Green Belt Local Plan. The land to the north, south and west is allocated for public open space in the approved County Borough of Rotherham Development Plan of 1955 (Document 17, RMBC 10 and 11). Local plan policy RGB5 says that development in the green belt should take account of the need to conserve and where possible enhance the environment. Policy RGB20 says that the council will make every effort to reclaim derelict and despoiled land in the green belt to bring it into beneficial use. Policy RGB21 encourages the provision of footpaths and bridleways.

9. From the written representations it is clear that some residents feel that tipping would harm the green belt, but the question of whether or not the proposed use is appropriate in the green belt was not an issue addressed at the inquiry. The council's pre-inquiry statement said that had the principle of tipping not been established, the council would have resisted it in order to preserve the character of the green belt (Document 10, page 77). On the other hand, the officers, in their report to committee (Document 10, page 40), took the view that tipping is an interim use of land which is not inconsistent with green belt status. That appears to me to be

the more convincing position, but in view of my findings, below, on visual amenity and the matter of the 1958 permission, I see no need to reach a firm conclusion on the question of green belt principle in this case.

10. The council's informal Countryside Study identifies a hierarchy of 'heritage sites' where natural and archaeological features are to be conserved. Grange Park has grade 3 (local or parochial) status, whilst Walkworth Wood and Barber Wood, to the south, have grade 2 (borough wide) significance. Ockley Bottom, to the south-east of the appeal site, is recognised as an ancient woodland and has grade 1 (regional) status.

THE APPEAL PROPOSAL

11. Operations would take 3 years (including site preparation and final restoration), beginning with the capping and restoration of Watson's Tip, and the tipping, with inert waste, of the 'golf course triangle' in the north-west corner of the site. Thereafter cells would be excavated, lined with compacted clays and shales won from the site, and filled with a variety of domestic, industrial and commercial wastes (Plans A4 and A7). Access would be taken from Upper Wortley Road, by realigning and sharing the existing golf course access.

MAIN ISSUES

12. Whether or not there would be benefits from this proposal, it would not in any event be right to dismiss the appeal unless some demonstrable harm would be likely to stem from it, judging it against the existing situation, with Watson's Tip dormant or extinct. I shall therefore first consider that question, and if there is harm, I shall go on to consider whether there are any benefits to outweigh the harm, including, of course, the matter of the 1958 permission.

13. Bearing in mind all the foregoing matters, the evidence which I heard at the inquiry, the written representations, and my inspection of the site and surroundings, I consider that the main issues in this case are:

1. the effects of the appeal proposal (apart from the effects of vehicle movements) on:

(a) the amenity of local residents, and of users of the golf course and playing fields, in the following respects:

- (i) landscape and visual amenity;
- (ii) noise;
- (iii) dust;
- (iv) litter;
- (v) odour;
- (vi) flies and vermin;
- (vii) landfill gas and leachate generation;

(b) the flora and fauna of the locality;

2. the effects of an increase in heavy goods vehicle movements;

3. If there is harm, whether there are benefits which outweigh the harm, and in reaching this judgement:

- (a) whether there are benefits in the covering and planting of Watson's Tip;
- (b) whether there is a demand for tipping space in the area;
- (c) what is the status of the 1958 planning permission;
- (d) if the 1958 planning permission is held to be extant, the way in which the site might be worked;
- (e) comparisons between the appeal proposal and the continuation of tipping under the 1958 planning permission, in terms of landscape, means of access, conditions and other matters.

ASSESSMENT OF HARM

Landscape and visual amenity

14. At present the appeal site has broadly speaking, a valley form, with Watson's Tip protruding prominently as a south to north ridge. Some local residents described Watson's Tip as a pleasant, vegetated landscape feature, and no doubt over time it has become an accepted part of a generally attractive scene. However, I inspected it with great care from many viewpoints, and except from the more distant points, the thin winter growth of vegetation could not disguise the ugly, exposed waste deposits on its eastern and western flanks. I do not therefore regard the covering and planting of the existing tip as a harmful proposal. However, the appeal proposal would do more than that. It would in effect extend the ridge across the valley (Document 8A) and encroach upon the golf course in the north-west corner of the appeal site. Neither the council nor, to any great extent, the local residents, took issue with the final landform per se, although the (range Park Action Group did say that it might be thought bland. The residents were principally concerned with the loss of visual amenity which would take place whilst the tipping was going on. You argued that peripheral screening would, for the most part, prevent views into the landfill areas, although your landscape witness conceded that some landfill operations would be seen from Redscope Road (Photograph A3). In my opinion, there would be disruption and harm to a generally attractive landscape for the duration of the operations.

Noise

15. You agreed with the council that the question to be answered is whether the noise generated by this development would make the surrounding area less pleasant, and if so, whether to a significant extent. There was a large measure of agreement between the professional witnesses. The residents took a very different view. In essence the professional witnesses were agreed that, using your 'worst case' noise assumptions, and allowing for soft ground attenuation, noise from the site would be audible in the surrounding areas, but that it would not be so great as to cause loss of amenity for residents or users of the golf course or playing fields. I heard and read considerable evidence concerning the appropriate noise standards for use in a situation such as this, and I have given it full consideration. My key findings are as follows:

- (a) whilst inspecting the site and its surroundings I was always aware of background noise, whether from the M1, from traffic on Upper Wortley Road, or from other sources. The witnesses agreed that the noise climate in the locality is typically urban or suburban, rather than rural. They agreed in general terms that background levels (L₉₀) are typically around 55dB-59dB on Upper Wortley Road, around 45dB-48dB on

Droppingwell Road, and around 4dB-4.5dB in the open areas (Documents 14 and 20). They also agreed that traffic noise levels (L_{A10}) are around 70dB on Upper Wortley Road;

(b) the council predicted noise levels at a point 100 metres from plant working on the site boundary, using on-time figures which you now say are too high. You adjusted the council's predictions to allow for lower on-times at maximum power (which the council's witness accepted) and soft ground attenuation, giving 56dB for site preparation and 60dB for landfill operations. The corresponding figures for 300 metres are 47dB and 51dB. Your witness produced noise contours for all plant working at the centre of the site (Document 14, Figure 8) and for capping the existing tip (Document 24). According to those contours, noise from landfill would exceed 55dB to the west of the site boundary, and noise from capping would exceed 65dB to the east of the site boundary (the capping contours appear to differ from your witness' earlier evidence, which was that the level would be up to 60dB);

(c) the witnesses were agreed that background noise levels and traffic noise levels at houses on Upper Wortley Road are already so high that neither noise from the site nor from additional traffic would be likely to have any effect, and I see no reason to disagree. But your witness agreed that noise from the site would be heard at facades in Farm View Road and Droppingwell Road, and on the playing fields and golf course, where background levels are lower. The impact would depend on wind direction, the contours of the tipping site at any given time, and the position of the main area of activity within it;

(d) whether or not BS4142 should be given much weight in this case, and notwithstanding that it is intended to apply to fixed installations affecting residential areas, you did not seek to content it; advise that an increase in noise of 10dB above background levels is likely to give rise to complaint. I see no reason why this conclusion should not apply to noise from a waste disposal site, if it is likely to be perceived as emanating from a fixed source for prolonged periods of time. That seems to be likely in this case, where a phased approach means that plant would be concentrated in relatively small areas for considerable periods of time. However, the council were unable to demonstrate that 10dB increases would be likely in the residential areas. It is possible that increases of up to 6dB might be experienced at facades in Droppingwell Road, but such increases have only marginal significance as an indicator of likely complaints. The picture is less clear so far as the open areas are concerned, but taking into account the predicted and background noise levels referred to above, it appears likely to me that a 10dB increase might well occur from time to time on parts of the golf course and playing fields close to the appeal site. In reaching this conclusion I have taken into account all the limitations to which the data are subject;

(e) so far as absolute standards are concerned, from the wealth of evidence which I heard and read (including BS4142, Circular 10/73, Documents 5, 6, 25A-C, 26, 27, 28 and 33), 55dB L_{Aeq} (1h) appears to me to be a reasonable daytime limit for noise sensitive areas. I think it is reasonable to include in this category open space which is well-used by the public for formal and informal recreation. You did not challenge the assertion by the council and the residents that the playing fields and the golf course are well-used. From the evidence it is likely that 55dB L_{Aeq} (1h) would be exceeded at times on the playing fields and golf course, though not at the facades of residential properties. The alternative limit of 60dB L_{Aeq} (1h) suggested by your witness appears to me to be unreasonably high for this locality, which, although not rural, is for the most part pleasantly suburban;

(f) vehicle reversing alarms were not taken into account in the noise forecasts. In my experience they are likely to be particularly noticeable when not shielded by screen mounds, though your witness said that this would not be a common state of affairs.

16. In summary, I have no doubt that noise from the appeal site would be noticeable to some residents and to many users of the open space, though its impact would vary from time to time. However, on the evidence before me, it would not be likely to be of a level sufficient to persuade the environmental health department to recognise a statutory nuisance, nor indeed a loss of amenity. By commonly accepted standards there would not be much likelihood of complaint from the residential areas. On the other hand, I believe it highly probable that users of the golf course and playing fields would be unpleasantly aware of noise from the site for at least part of its life. For this reason I conclude that noise from the proposal would have a significantly harmful effect upon the surroundings.

Dust

17. I heard considerable discussion about the applicability of the Beaufort scale, the usefulness of data from the Sheffield University weather station, and the limited research which has taken place on the spread of dust generated at or close to the ground. Even if your arguments are accepted, winds of force 4 or more occur about 23% of the time at Sheffield, and in my view that is a significant occurrence, notwithstanding that sometimes rainfall accompanies high winds. I have no doubt, from the evidence, and as a matter of common sense and experience, that in dry, windy weather there is a likelihood that some dust would escape from the site, even though the amount might be limited by spraying. Equally, I do not think that there is much chance that there would be a significant impact upon residential properties, the nearest of which is over 200 metres away. I have no doubt that the open land around the site would be affected, and although, once again, the professional witnesses were agreed that there would be no loss of amenity, I consider, as do the residents and the council members, that the playing fields and golf course would become less pleasant places for their users.

Litter

18. Similar arguments apply to the spread of wind-blown litter. Litter screens and litter-picking would no doubt minimise the impact, but on the evidence, and as a matter of experience, I would expect there to be some littering of the open land around the site. In my view litter screens are in themselves unsightly, and would detract from the setting of the recreation areas.

Odour

19. Even with the best control methods, a landfill site taking putrescible wastes can be expected to produce odours. The professional witnesses agreed that it would be unlikely that the residential areas would be affected, and I see no reason to disagree. They agreed that there would be localised effects upon the recreation areas, and although they thought that this would not amount to a loss of amenity, I share the opinion of the residents and the council members, that the open spaces would become less pleasant places.

Flies and vermin

20. Although some residents are understandably concerned about these matters, there is no convincing evidence that any severe effects would be felt in the residential areas.

Landfill gas and leachate

21. The representative of the Grange Park Action Group accepted the figures for the availability and importation of clay and soils given by your witness (Document 32) in preference to his own figures (Document 31). The local residents expressed fears that the lining of the site, the monitoring of gas and leachate, and, if necessary, their treatment or disposal, would not be sufficient to prevent migration and damage to local watercourses and vegetation, especially as there are disused coal workings under the site. I recognise that the migration of gas and leachate from landfill sites is not unknown, and that methane from coal workings has vented into gardens near the site. I put questions to your expert witness concerning the suitability of the on-site clays and shales, the possibility of using a synthetic liner, and gas control measures, all bearing in mind the advice of Circular 17/89 and Waste Management Papers Nos 26 and 27. It would obviously be of great importance to locate all the minehafts which underlie the appeal site before tipping started. I understand the fears of the residents. However, all the technical evidence before me supports the appellants' contention that the permeability of the clays after compaction would be low enough to seal the site, and that, if properly engineered, this site could be made secure. Mere apprehensiveness is not a sufficient ground for finding harm.

Flora and fauna

22. Extensive evidence was submitted concerning the natural history interest of the site and its surroundings (Documents 12, 18, 19 and 21, and residents' letter No 120) which I have studied with care. The local residents appear to rate the natural interest of the locality more highly than either you or the council, in particular attaching ancient woodland status to more extensive areas. Be that as it may, I am not convinced that the appeal site itself is of such value that its loss would be significant. I recognise that noise, litter, dust, gas, leachate, peat control and changes in hydrology (including a balancing pond in Brick Kiln Plantation) might have some effect upon the woodlands, grassland and wildlife outside the site boundaries. The diversion of existing drainage courses and the control of leachate would both clearly require particular care in the implementation of the appeal proposal. However, with one exception there was no convincing evidence of any specific, demonstrable or quantifiable threat. The exception is a small area of woodland fronting Upper Wortley Road, which would be lost in the widening of the access. Even if, as the residents argue, it has the characteristics of ancient woodland, it is not formally protected, and in my opinion its loss would have only a small effect upon the appearance and diversity of the area.

23. The Secretary of State for the Environment did not consider that an environmental assessment was necessary under the 1988 Regulations (Document 10, page 53).

Increase in heavy goods vehicle movements

24. From the evidence before me, including a video recording shown by a resident and what I saw during my site inspection, it is clear that at present Upper Wortley Road is heavily trafficked, that Droppingwell Road is much less busy, and that the golf course access road is lightly used (Document 13). From the evidence given by the local residents it appears that significant peak hour delays can occur for traffic waiting to turn into Upper Wortley Road from Droppingwell Road and Oaks Lane (Photographs SI-3). Residents also experience difficulties in crossing Upper Wortley Road to reach the bus stops. I have borne in mind the gradient to the west of the Grange Park access, the presence of schools in the area, and the planned closure of a motorway slip road. However an increase of around 192 heavy goods vehicle (HGV) movements and 22 light vehicle movements per day, as proposed by your clients, would not in my opinion have a significant impact upon the total flows on Upper Wortley Road

(less than 2X at any time). There would be a much greater increase in HGV flows (up to 12X in the worst hour) (Documents 7, 9A and 9B). I do not think that residents would be unaware of such a large increase in HGVs. However, on the expert evidence before me, the A629 has sufficient spare capacity to accommodate the increased flows, and highway safety is better than the national average for this class of road. The Director of Engineering did not object to the use of Upper Wortley Road. The weight of the evidence is that there would not be a significant increase in congestion, noise, dust, or danger to highway users on Upper Wortley Road as a result of this proposal.

25. By contrast, the effect upon the golf course access would in my opinion be dramatic. Up to 24 HGV movements per hour would take place on a road used almost entirely by cars and pedestrians at present. The conflict would take place over a short length of road, and for only about 7 years, but in my opinion the recreational users of the access, especially the pedestrians, could not help but be unpleasantly aware of the regular presence of heavy vehicles where formerly there were very few. Your expert on dust said that in muddy conditions, the golf course access road, and very occasionally the A629, would require sweeping. Despite the considerable distance proposed between the golf course access road and the wheel wash, I would expect there to be some localised dust generation on the former from the passage of so many HGVs. Even with the best management practices, the close proximity of HGVs on a shared access would in my opinion be likely at times to create significant noise, fumes, dust, danger and loss of amenity for recreational users.

26. The effect upon Droppingwell Road was the subject of contention at the inquiry. It is narrower and more winding than Upper Wortley Road, and on the evidence is less suitable for HGVs. Your clients say that they would prevent their customers' vehicles using Droppingwell Road, by barring them from the site if they did not comply, and that they would bind themselves to do this by means of a section 106 agreement. The residents were sceptical about the efficacy of such arrangements. They said that if the proposed controls were to fail, it would be likely that HGVs would use Droppingwell Road, and even the residential Farm View Road, as routes to and from the Blackburn estate, the motorway, and Sheffield. From the evidence and my inspection of the area, that seems highly probable. If it were to occur, there would in my view be significant harm to amenity for local residents.

Conclusions on harm

27. I recognise that modern standards of operation and control of waste disposal sites are higher than in the past, and that the implementation of section 34 of the Environmental Protection Act this year will bring further benefits. I have no doubt that your clients would do their best to operate to the highest standards, as set out in government advice. Nevertheless, the evidence leaves me in no doubt that, even with the highest standards of control, the proposal before me would have significant harmful effects for users of the golf course and its access road, for users of the playing fields, and upon the appearance of the locality during operations. There would also be some risk of harm from the use of the quieter roads in the area by HGVs if the proposed controls over routing were to fail.

BENEFITS WHICH WOULD ACCRUE REGARDLESS OF THE STATUS OF THE 1958 PERMISSION

Watson's Tip

28. I think that the covering and planting of the ugly and exposed flanks of the existing tip would improve the landscape. However, were there no other considerations, I do not think that the extent and duration of the tipping, and the consequent harm which I have identified, would be justified simply by the improvement to the exposed tip faces.

29. Your clients, the council, and the South Yorkshire Hazardous Waste Unit collected samples from the surface of Watson's Tip in March 1990. Analysis showed that the samples contained a variety of contaminants, especially metalliferous compounds resulting from the tipping of wastes from the steel industry. The council were concerned that any disturbance of the waste on the tip posed a risk of releasing unacceptable quantities of contaminated dust into the atmosphere. The council issued a public notice saying that it would use all means at its disposal to press for the sealing of the tip in its future consideration of the site (Document 30).

30. At the inquiry, there was no serious challenge to the council's findings on the toxic nature of the tip, nor was a reasoned, practicable, and financially viable alternative to sealing the tip put forward. Considered in isolation, as a technical problem, Watson's Tip could of course be sealed without any further tipping of controlled wastes. The sealing of the tip under the appeal proposal would clearly be beneficial, but, leaving aside all other considerations, I am not convinced by the evidence before me that the benefit, even in conjunction with the visual improvement of the tip, would outweigh the harm which I have identified.

The demand for tipping space.

31. Your landfill expert said that in 1990 the predicted ten-year demand for landfill capacity for waste in Rotherham exceeded available capacity by over 2 million cubic metres (Document 11, Appendix 3). There is also a predicted shortfall in neighbouring Sheffield (Document 11, Appendix 4). He also said, and it was not challenged, that there would be a particular shortage of tipping space for putrescible waste. This demand for landfill capacity, whilst adding weight to your case, is not in my view sufficient to tip the balance in favour of the appeal proposal.

Other benefits

32. It was common ground between you and the council that there should be a section 106 agreement if planning permission were to be granted. I have therefore assessed the benefits on the assumption that such an agreement would be made, and that those heads of agreement not relating to the 1958 permission would be retained in any event. Most of the matters covered arise from the proposed landfill operations (for example lorry queuing, highway improvements and long-term monitoring) and are not therefore benefits for the purposes of this assessment. However, the dedication of the restored site for public open space, off site planting, and public footpath provision, would in my view constitute a gain for the public. Nevertheless, even the addition of these benefits to the others I have identified would not be sufficient in my view to justify several years of disturbance and disamenity in this pleasant area.

THE BENEFITS DEPENDENT ON THE EXISTENCE OF THE 1958 PLANNING PERMISSION

the status of the 1958 planning permission

33. I am aware that there is an outstanding complaint concerning this matter before the Ombudsman. I make no comment on that complaint nor any other administrative matter. My comments relate entirely to the planning issues in this case, and are based on the evidence which I heard at the inquiry, and the representations which I have made. You and the council are agreed about the status of the 1958 permission (Document 29 and submissions made at various times during the inquiry), and about the consequences which flow from it. The local residents take a different view. I shall summarise these two positions.

34. It is common ground that Watson's Tip has been tipped to higher levels than were permitted by the 1958 permission (Document 8A), in contravention of condition (a)6. It is also common ground that Watson's Tip contains toxic materials. The council take the view that condition (a)3 was probably unenforceable from the start, as more than 5 acres of the site was out of cultivation at the time the permission was granted. They say that condition (a)4 is probably unenforceable because the 'four-year rule' applies, and that it was probably incapable of implementation anyway. They also say that condition (a)5 was in practice incapable of implementation. You say that the breach of condition (a)6 is immune under the 'four-year rule'. The council say that the implementation of condition (b)1 would stir up the toxic waste in Watson's Tip, and that therefore no reasonable authority would consider it expedient to enforce compliance. The council expressed views upon the other conditions, but in my judgement those I have mentioned are the critical ones in this case. The council conclude that tipping on the 'yellow land' to the north of Watson's Tip could take place under the terms of the 1958 planning permission, even though the final landform, over the 1958 site as a whole, would not correspond to that which was permitted in the first instance. They also cite the case of Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment in which it was held that a planning permission still capable of being implemented cannot be taken to have been abandoned.

35. The local residents say that by virtue of condition (b)1, tipping cannot continue, on the 'yellow land', until the previously tipped areas have been restored in accordance with conditions (a)3-6. They say that the breaches of those conditions cannot be remedied without the co-operation of the local planning authority, and that therefore no further tipping can take place under the 1958 planning permission. They also say that the 'four-year rule' does not apply to waste disposal, as the latter constitutes a material change of use. They argue that the duty of care placed on an operator by the Health and Safety at Work Act 1974 would mean that some agreement about the treatment of Watson's Tip would have to be reached with the local planning authority by the owner or operator. In their view any further importation of material, for restoration, would need to be the subject of a new planning permission. If an application for such a permission were made, they consider that it would be appropriate for the local planning authority to prevent further tipping under the 1958 planning permission by condition. In support of that view they cite *Hillingham Borough Council v Medway (Chatham) Dock Co Ltd and others* (Queens Bench Division, 30 July 1991).

36. There are several strands of argument in the residents' case, and I shall deal with each in turn. First of all there is the question of the enforceability of conditions (a)3-6 and (b)1. It appears from the evidence that (a)3 could not have been complied with from the start and that it was therefore invalid. Even if the condition was not invalid, it is probable that the breach took place before the end of 1963 and is therefore immune. Condition (a)4 might well have been invalid and does not appear to have been complied with. Both (a)5 and (a)6 have been breached. In my view conditions (a) 4-6 relate to operational development, notwithstanding that they were attached to a planning permission for a material change of use. The council's view, that enforcement action against past breaches would probably not succeed, therefore appears to me to carry considerable weight. In any event, there is no dispute that to require the breaches to be remedied, or to enforce compliance with condition (b)1 were tipping to recommence, would result in the disturbance of Watson's Tip with its toxic materials. On the evidence before me, that course of action would result in some degree of hazard for the public, and the council's stance on the matter, that it would not be expedient to enforce, appears reasonable.

37. On the evidence before me, it would be physically possible for the 'yellow land' to be tipped to the permitted levels. The council takes the view, reasonably in my estimation, that neither they, nor any reasonable council, would be likely to enforce against the breaches of condition which have taken place or against the breach of condition (b)1. In the circumstances I conclude on the balance of probability that an

operator would find it possible to continue tipping under the terms of the 1958 planning permission, so far as planning law and the planning responsibilities of the council are concerned.

38. In reaching my conclusion I have not relied upon the Pioneer Aggregates case, as it concerns mining operations, rather than waste disposal. Nevertheless, as a matter of practicality and logic, similar principles appear to me to apply in this case.

39. There remains the matter of other controls, specifically the Health and Safety at Work Act 1974. The application and enforcement of that Act is not a matter for me. If the scenario put forward by the residents has substance, then it would be for the council to decide how they would respond to an application for restoration of Watson's Tip. Whether they would consider a condition along the lines suggested by the residents would be a matter for them. However, given their stance at the inquiry, and the evidence which is before me, I see little probability of the council seeking to prevent further tipping under the 1958 planning permission by the way of such legislation.

Intensity of working

40. The existing site licence as modified (Document 10, pages 8-14 and 57-63) allows the deposit of up to 1000 tonnes a day of non-hazardous industrial waste, construction waste, and slag. The council said that your clients' waste disposal licence application seeks permission for up to 1000 tonnes of waste a day in total, including 300 tonnes of domestic waste. However, the appeal proposals envisage an intake of only 440 tonnes per day, generating 192 heavy vehicle movements and 22 light vehicle movements per day, over about 7 years. These figures are based upon a business plan which aims to operate the site over a commercially beneficial period for the company. I do not doubt that the appeal proposal represents your clients' current best option, but even if it were permitted, another operator might have different requirements. You also put forward, for comparison, your estimate of the likely effects of continued tipping under the 1958 planning permission. Under this scenario, there would be an intake of 875 tonnes per day, generating 750 heavy goods vehicle movements per day, over about 4 years. However, as your witness said in re-examination, this figure was derived from Wimpey's experience, and another operator might lengthen or shorten the site life for business or other reasons.

41. The council put forward two alternative scenarios for continued tipping under the 1958 permission. They said that it might carry on as in the past, in a low-key fashion over many years. Alternatively, they argued, it might continue at a rate of 1000 tonnes a day, in 20 some loads, giving about half the number of vehicle movements proposed by the appellants, and a shorter tip life. They appeared to regard either of these alternatives as preferable to the appeal proposal.

42. It appears to me that there is in fact a wide range of possibilities for the continuation of tipping under the 1958 permission, and I heard no conclusive reasons for adopting one rather than another as a basis for comparison with the appeal proposal, so far as traffic generation and period of operation are concerned. In the assessments below, I shall first assume comparable traffic figures and timescales, and then go on to look at the alternative scenarios.

Other comparisons

43. If tipping were to continue under the 1958 planning permission, the final landform would in essence be similar to that resulting from the appeal proposal, except that the eastern and western faces would be much steeper. In theory the eastern face could be vertical, though in practice it would of course be less than that. In my opinion the more natural final contours of the appeal proposal would represent a

significant benefit by comparison with the 1958 scheme. Moreover, through the early shaping and restoration of the eastern and north-western boundaries, and the phasing of operations, the appeal proposal also offers benefits by way of screening. It offers comprehensive landscaping, and additional benefits would come from off-site planting under the proposed section 106 agreement.

44. The noise and disturbance necessitated by extensive site preparation under the appeal proposal would no doubt be different in kind and extent from the activity associated with a simple continuation of south to north tipping under the 1958 permission. Any additional noise and disturbance in the short term would be offset by the long-term benefits to the landscape.

45. It seems likely to me that, as a general proposition, litter and odours would be more likely to occur in connection with domestic waste than with industrial waste. In that respect continued tipping under the 1958 permission would have some advantages.

46. There are rights of access to the 1958 tip site from both Upper Wortley Road and Droppingwell Road. The access route from the latter passes through extensive playing field and informal recreational areas, well-used by the public, including children. The prohibition of tip traffic on this access (which would be secured through the proposed section 106 agreement) would, in my opinion, outweigh the harm arising from the use of the golf course access. I say this because only a short section of the golf course access, already used by cars, would be affected, and also because the HGVs would have relatively more impact on Droppingwell Road than on the noisier and busier Upper Wortley Road.

Conditions

47. Other significant benefits which would come from the approval of the appeal proposal include the imposition of comprehensive and up-to-date conditions, particularly restrictions on hours of operation and the life of the site, which are not controlled under the 1958 permission. Although I queried the precision of several of the agreed conditions as drafted in Document 4, in essence I consider that they would be both necessary and reasonable if planning permission were to be granted for this development.

Section 106 agreement

48. The parties were agreed that certain other matters, including the revocation of the 1958 permission, the prohibition of access from Droppingwell Road, the monitoring and control of gas and leachate, highway improvements, lorry routing, off-site landscaping, footpath provision, the dedication of the restored site to public open space, and some continuing maintenance, should be controlled by means of a section 106 agreement. In my opinion these are matters which constitute significant benefits in favour of the appeal proposal, by comparison with the 1958 permission. In my view a section 106 agreement, or an equivalent binding obligation, would be both necessary and reasonable if the benefits which are said to justify the grant of permission in his case, were to be secured.

Alternative scenarios

49. In making the above comparisons, I have assumed, for the reasons I have already set out, that the timescale and traffic generation would be similar under both the appeal proposal and the 1958 permission. As I have said, it is possible that tipping could continue under the 1958 planning permission at its previous low level, or that it would be over in a shorter time than the appeal proposal. The first case would prolong the harm to the landscape, whilst minimising the impact of traffic on the

Droppingwell Road access and in the locality generally. The second case would minimise the period of disruption, at the cost of relatively high traffic volumes (though possibly lower than under the appeal proposal). By comparison with either scenario, the appeal proposal still offers benefits to the landscape, both during and after tipping, the opportunity to establish modern standards of control, and the benefits offered by the proposed section 106 agreement, including the control of lorry routing.

Lorry routing

50. Throughout the inquiry, both you and the council assumed that the control of lorry routing would be effective, and that underlay all the arguments which you and they put forward. The residents were sceptical. I raised the question of whether a section 106 agreement (or equivalent obligation) is an appropriate instrument for controlling off-site lorry routing. You said that you were satisfied that section 106 is a proper contractual medium for the purpose, and that in your opinion there is no other. Your landfill expert said that most of the vehicles using the site would either be the company's own vehicles, which would be under direct control, or local authority vehicles, and that contracts with local authorities would stipulate the routes to be used. From the evidence which I heard, I see no reason why routing should not be effectively controlled by the means and in the particular circumstances which you set out.

THE BALANCE OF ADVANTAGE

51. From the evidence before me, it is not possible to say with any confidence how intensively tipping might continue under the 1958 permission, nor were the probable effects discussed in depth as were the consequences of the appeal proposal. Nevertheless, even at the lowest intensity, there must in my view be the prospect of some noise, dust, harm to the appearance of the area, and disturbance from traffic on Droppingwell Road and the tip access road. The appeal scheme would take about 8 years, during which time there would in my opinion inevitably be harm to the locality. However, the appeal proposal would end the uncertainty about the future of the 1958 site, it would make safe and restore Watson's Tip, it would in my view produce a more desirable final landform, and it would be subject to much more stringent controls, including lorry routing. The access would be preferable, screening would be better during operations, the site would be dedicated to public open space after tipping, and there would be off-site planting and other benefits. In my opinion these factors would be sufficient to outweigh the harm and disruption which would accompany the scheme, provided that all the benefits which you offer could be realised.

OTHER CONSIDERATIONS

52. At the inquiry I questioned whether improvements in the control of the 1958 site could be made through variations in the site licence conditions. I was told that whilst the Waste Disposal Authority could vary the licence conditions, the new conditions could be the subject of an appeal if they were regarded as being too onerous. From the responses to my questions, there is no reason to suppose that any substantial improvement in the control of the 1958 site is likely to take place through this means in the near future.

53. In determining this appeal I have taken into account the petitions and the hundreds of letters addressed by local residents and others to the council and to Stan Growthor MP. I have also borne in mind: the complaints experienced at other waste disposal sites (Documents 22 and 23); that site A in the complaints list was the subject of an improved planning permission; that the character of the area surrounding the appeal site has changed dramatically since 1958; the fear that houses would be

devalued (though this is not a proper planning consideration) and the fear that the economic life of the area would be further depressed as a result; possible changes in policy as a result of the preparation of a unitary development plan and a new waste disposal plan. I have taken into account these and all the other matters which were raised by you, by the council, by the Grange Park Action Group, and by others, during the inquiry and in written representations, but none is of sufficient weight to alter my conclusions.

SUMMARY AND FINAL CONCLUSIONS

54. I have concluded that the appeal proposal would have significant harmful effects: from noise, dust, litter and odour for users of the golf course and playing fields; from the movement of heavy goods vehicles for users of the golf course access road; and upon the appearance of the locality during operations. There would also be some risk of harm from the use of the quieter roads in the area by HGVs if the proposed controls over routing were to fail. The covering and planting of the toxic and unsightly Watson's Tip would be a benefit, as would the provision of landfill capacity for which there is an acknowledged demand. The restored site would be dedicated for public open space and there would be off-site planting and public footpath provision. However, in themselves these benefits would not in my view outweigh the harm.

55. I have also concluded that tipping could continue under the 1958 planning permission. If tipping could continue in any event, then there are in my opinion advantages in securing a more natural final landform, control over hours of working and the life of the site, better phasing, screening and restoration, relocation of the access from Droppingwell Road to Upper Wortley Road, revocation of the 1958 planning permission, stringent modern controls over operation, and all the other benefits I have mentioned.

56. Given that the principle of tipping has already been established, I consider that the appeal proposal would comply with the policies of the Green Belt Local Plan, in that it would enhance the environment by providing a more natural landform, it would help to reclaim derelict and despoiled land, and it would provide new footpaths.

57. I conclude on balance that the above advantages outweigh the harm, and that planning permission ought to be granted provided that the benefits which I have set out in detail elsewhere in this letter can be secured. Some can be secured by conditions along the lines of those agreed between you and the council. Others can only be secured by other means such as the section 106 agreement which you proposed. A draft heads of agreement was before me (Documents 34-36), but there was no prospect of a final agreement being signed in the immediate future. In the absence of such an agreement, or an equivalent binding obligation, I do not think that it would be right to grant planning permission, and for that reason alone I shall dismiss this appeal.

58. For the above reasons and in exercise of the powers transferred to me I hereby dismiss this appeal.

I am Sir
Your obedient servant

Brian Dodd

BRIAN DODD BA MPhil MRTPE MBIM
Inspector