

West Area Planning Committee

10th March 2015

Application Number: 14/03475/CT3

Decision Due by: 12th February 2015

Proposal: Infilling of 2no. pool tanks to create public open space.
(Retrospective)

Site Address: Hinksey Pools, Hinksey Park, Abingdon Road (**site plan: appendix 1**)

Ward: Hinksey Park

Agent: Deloitte

Applicant: Oxford City Council

Recommendation:

The West Area Planning Committee is recommended to grant retrospective planning permission for the following reasons:

Reasons for Approval

- 1 That the infilling of the redundant pool tanks to create an area of public open space within Hinksey Open Air Pool through the reuse of construction material from the Blackbird Leys Pool Extension accords with the general principles of the waste management hierarchy. The development has improved the quality of public open space within Hinksey Park in a manner that would also respect the setting of the open air pool and park itself. Furthermore the soil sampling and phase 2 investigations have adequately identified the risks posed from the deposited material upon human health and controlled waters, and subject to the recommended remediation measures being carried out there would not be a significant risk to either from contamination. The development would not create any adverse flood risk for the surrounding area. As such the retrospective application would accord with the aims and objectives of national waste planning guidance and also the relevant policies of the Oxfordshire Minerals and Waste Local Plan 1996, emerging Oxfordshire Minerals and Waste Local Plan Core Strategy - Consultation Draft, Oxford Core Strategy 2026, and the Oxford Local Plan 2001-2016.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

- 3 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

Conditions:

- 1 Remediation Measures and Validation Report undertaken within 6 months of the date of permission

Main Local Plan Policies:

Saved Policies of the Oxford Local Plan 2001-2016

- CP1 - Development Proposals
- CP22 - Contaminated Land
- SR5 - Protection of Public Open Space

Core Strategy

- CS9_ - Energy and natural resources
- CS10_ - Waste and recycling
- CS11_ - Flooding
- CS21_ - Green spaces, leisure and sport

Saved Policies of the Oxfordshire Minerals and Waste Local Plan 1996

- W7 – Landfill Site Criteria

Oxfordshire Minerals and Waste Local Plan Core Strategy – Consultation Draft Feb 2014

- W1 – Management of Oxfordshire waste;
- W3 – Diversion of waste from landfill
- W7 – Landfill

Other Material Considerations:

- National Planning Policy Framework
- National Planning Policy for Waste
- National Waste Management Plan for England
- Planning Practice Guidance

Relevant Site History:

14/01347/CT3 - Infill of unused pool tanks (retrospective): Withdrawn

Representations Received:

A single letter of objection from Mr M Wyatt (no address given) has been received, and their comments can be summarised as follows:

- The principle in putting to use the waste from the Blackbird Leys site otherwise sent to landfill, to fill in the voids at Hinksey Pools was on the face of it sound and sensible use of waste.
- The Oxford City Council and Oxfordshire County Council have provided me with conflicting advice as to whether the infill constituted 'waste' and who the relevant 'waste authority' was in that instance. I have to question the honesty and integrity of both Authorities in the confused and totally unacceptable way in which they have dealt with this issue.
- The Oxfordshire County Council have spent and continue to spend hundreds of thousands of pounds in prosecuting some but not all private sector firms in the constructing and shaping of land in much the same in principle way as is being proposed by Oxford City Council.
- The City Council in accepting the initial 'blind eye' reaction from the County Council were prepared to proceed with their scheme without planning permission despite knowing that the waste material contained contamination.
- Subsequent enquiries with the Oxford City Council have revealed levels of contamination above the threshold within the waste that was directly transferred from Blackbird Leys to Hinksey Park without any procedural requirement.
- My concern, apart from the distorted way in which private sector business's are treated by Oxfordshire Authorities, is for the health and safety of the users of the newly grassed area. It is obvious to me that the City Council has limited expertise in managing such an important operation that has been described.

Statutory Consultees:

Environment Agency Thames Region:

- No objection
- We have assessed this application as having a low environmental risk.
- The Agency has been involved with this site from a permitting perspective, following the deposition of waste soils at this site outside of any regulatory framework. From a protection controlled water remit under the planning regime we would not view the contaminant identified are not particularly soluble. Given that they are within a former "tank" there may also be a fair degree of isolation from the wider water environment.
- Some of this material though is still above inert WAC criteria and the risks to controlled waters cannot be automatically completely discounted. Provided the soils which have been identified as containing elevated PAH/Benzo(a)pyrene are removed the risks to controlled water are negligible.
- As such we would have no objection to granting planning permission. Any action in relation to the deposition of waste soils outside of the regulatory framework, will be taken outside the planning process.

Oxfordshire County Council:

- No objection
- The development constitutes waste disposal, and is retrospective as this has already been undertaken.
- Although the application is for a waste development, the development was carried out by Oxford City Council and the application therefore falls to be determined by the City Council under Regulation 3 of the Town and Country

Planning General Regulations 1992 (rather than by the County Council as the Waste Planning Authority).

- The waste deposited at Hinksey Park comprised 2,600 cubic metres (approximately 5,000 tonnes) of excavation waste material and soils from the construction of a new swimming pool at Blackbird Leys.
- This is a small quantity of waste material in the context of the approximately 1 million tonnes of construction, demolition and excavation waste currently managed in Oxfordshire annually. The development will have made a small contribution to the management of this waste stream in 2013.
- The application should be considered against saved policy W7 of the Oxfordshire Minerals and Waste Local Plan 1996 (on landfill).
- The following policies of the emerging new Oxfordshire Minerals and Waste Local Plan: Part 1 – Core Strategy – Consultation Draft February 2014 should also be taken into account: Policy W1 – Management of Oxfordshire waste; Policy W3 – Diversion of waste from landfill; and Policy W7 – Landfill.
- The Government’s National Planning Policy for Waste October 2014 should also be taken into account in the determination of this application. Paragraph 1 and Appendix A (the Waste Hierarchy) and Paragraph 7 on determining planning applications are of particular relevance.
- Government’s Planning Practice Guidance on waste, which includes the following statements:

‘Driving waste up the Waste Hierarchy is an integral part of the National Waste Management Plan for England and national planning policy for waste. National waste planning policy is capable of being a material consideration in decisions on planning applications for waste management facilities.’

‘In the case of waste disposal facilities, applicants should be able to demonstrate that the envisaged facility will not undermine the waste planning strategy through prejudicing movement up the Waste Hierarchy.’

Officers Assessment:

Background to the Proposal:

1. The site comprises the Hinksey Open Air Pool located within the grounds of Hinksey Park which is on the western side of Abingdon Road (**site plan: appendix 1**)
2. The application relates to the infilling of two disused swimming pool tanks measuring approximately 1400m³ at Hinksey Open Air Pool. The works were carried out following feedback from the Hinksey Pool customer user group who had asked whether the tanks could be filled in to provide a new area of public open space adjacent to the main pool. The tanks were filled in using approximately 2600m³ of material from the ground excavations for the new swimming pool at Blackbird Leys Leisure Centre.
3. It was established following an investigation by both the Environment Agency and Oxford City Council Local Planning Authority that the material was deposited in the redundant pools without the relevant planning permission or licence being obtained. Waste disposal is subject to control through planning legislation and

also licensing under the Environment Protection Act 1990. The site licensing is dealt with by the Environment Agency, whereas planning legislation is enforced through the relevant waste authority. The purpose of this application is to regularise this unauthorised waste operation retrospectively.

4. The County Council normally deal with these types of applications as the Waste Planning Authority. However as the works have been carried out by Oxford City Council on land under its control, the application falls to be determined by Oxford City Council under Regulation 3 of the Town and Country Planning General Regulations 1992 rather than the County Council.
5. Officers consider that the main determining issues in this case are the principle of development, impact on visual amenity, environmental health impacts, and flooding and groundwater impact.

Principle of Development

6. The Government has set out national advice on waste development in the National Planning Policy for Waste and National Waste Management Plan for England. The key objectives of these documents are to deliver sustainable development through an effective and responsible management programme for waste in order to reduce the need for landfill sites. This is achieved through the waste management hierarchy which sets out that waste should be reduced, re-used, recycled, recovered, and disposed. The intention of this system is to move waste management away from disposal and towards the more sustainable methods of reuse, recycling and treatment and thereby reducing energy usage and environmental impacts.
7. The Oxfordshire Minerals and Waste Local Plan Core Strategy – Consultation Draft supports this government advice and the Waste Hierarchy. Policy W3 (Diversion of Waste from Landfill) and W7 (Landfill) aim to provide maximum opportunities to divert waste away from landfill, while, also restricting the amount of material that can be taken to landfill sites. This document is yet to be adopted but nevertheless provides guidance on the emerging waste management policies for Oxfordshire.
8. Saved Policy W7 (Landfill) of the Oxford Minerals and Waste Local Plan 1996 also seeks to control the location of landfill sites, and will consider the potential need for such sites; the impact upon residential and visual amenities and the environment, flood risk, biodiversity, hydrology and geology, green belt and other areas of special interest, and highways.
9. The Oxford Core Strategy 2026 also supports these aims with Policy CS10 making clear that new developments should have regard to the waste management hierarchy and that permission will be granted for development that has regard to the management and treatment of waste.
10. The material deposited in the redundant tanks at Hinksey Pool is classified by the national guidance as construction and demolition waste. The Oxfordshire County Council have stated that the material used would amount to a small quantity of

material in the context of approximately 1 million tonnes of construction and demolition material currently managed in Oxfordshire annually and the subsequent reuse of this material would have made a small contribution towards the management of this waste stream in the past year. Officers consider that the principle of using this material to infill two redundant swimming pool tanks to create public space would accord with the waste management hierarchy and above-mentioned local plan policies as it has maximised the opportunity to reuse the material rather than seeking disposal at a suitable landfill site.

Visual Amenity

11. Hinksey Park is designated in the Oxford Local Plan 2011-2016 as a protected public open space, with Policy SR5 resisting development proposals that would result in the loss of this space. Oxford Core Strategy Policy CS21 supports improvements to public open space, and indoor and outdoor sports and play facilities.
12. In addition Oxford Local Plan Policy CP1 states that new development proposals should show a high standard of design, including landscape treatment, that respects the character and appearance of the area, and retain important open spaces of recreational or amenity value. This is supported by Oxford Core Strategy Policy CS18.
13. The open air pool is set within the grounds of Hinksey Park. The views of the pool from within the park are limited due to the metal rail fencing and mature planting around the boundary which provides a degree of privacy to the open air pool. The two pool tanks covered a large proportion of the area to the north of the main pool and did not contribute positively to the visual appearance of the setting of the pool or views from the public realm.
14. The works subject to this operation have provided a large area of usable public open space adjacent to the main pool which sits more comfortably within this setting than the two redundant concrete tanks. The transformation of this redundant area has received positive feedback from customers as it has increased capacity in the pool and also helped to reduce queuing times.
15. Officers consider that the works have improved the quality of public open space within Hinksey Park in a manner that would also improve the visual appearance of the open air pool and its setting. This would accord with the aims of Oxford Local Plan Policies CP1 and SR5 and also Policies CS18 and CS21 of

Environmental Health Matters

16. The application has been accompanied by the following reports which consider the environmental impacts of the works that have been undertaken.
 - Blackbird Leys Phase 2 Intrusive Investigation (50577/DM/1235) (Nov 2010)
 - Hinksey Pool Phase 2 Intrusive Investigation Rev C (EB1429/A/GL/4136) (Dec 2014)
 - Hinksey Pools Trial Pitting Exercise Letter (Jul 2014)
 - Infilling of Former Swimming Pools Report (Dec 2014)

17. The material used in the redundant pools was excavated from the Blackbird Leys swimming pool extension. The Phase 2 Intrusive Investigation (50577/DM/1235) undertaken for the swimming pool development did not find any contaminants that would exceed the thresholds for commercial use and identified that this could be disposed of as inert waste under the Waste Acceptance Criteria for landfill sites. The investigation did find some contamination that would be above the more stringent residential thresholds but the material was not to be reused for residential development. As a result no remediation of the Blackbird Leys site was proposed prior to construction of the pool. When the site works commenced at Blackbird Leys an area estimated at approximately 3m x 3m was found to contain some Asbestos Roof Sheeting material. The material was subsequently fenced off and removed by a licensed specialist, who found that there was less asbestos than initially envisaged. The broken fragments were placed into 4x25kg bags and taken to a permitted site for disposal and the site was subsequently returned to the contractor to recommence the works.
18. The use of this material for the infilling of the tanks at Hinksey Pool has been subject to investigation by both the Environment Agency and Oxford City Council Local Planning Authority. As part of this investigation a trial pitting and soil sampling exercise was undertaken in June 2014 along with a follow up investigation in November and December 2014. The purpose of the testing was to determine if the soils were suitable for use within the recreational setting of the park. The results are set out within the Hinksey Pools Trial Pitting Exercise Letter and Hinksey Pool Phase 2 Intrusive Investigation Rev C (EB1429/A/GL/4136).
19. The reports set out that a total of 46 samples were taken within the new area of public open space at Hinksey Pools. This sampling has been undertaken at a higher degree of frequency than would normally be required as part of any site investigation or soil validation. The investigation identified 3 locations where there were moderately elevated levels of Benzo(a)pyrene which would be above the generic assessment criteria for recreational use. The samples taken also tested negative for asbestos fibres. The Phase 2 Investigation identifies a number of remediation measures in order to address these findings. These include removing the areas of contamination around the identified hotspots up to the edge of the nearest borehole sample locations. The impacted topsoil will be removed and disposed of to a suitably licensed disposal facility, and refilled with clean and inert topsoil and subsoil.
20. Officers consider that the reports adequately identify and assess the risks posed from the material deposited within the swimming pool tanks and that there would not be a significant risk to human health from contamination at the site in accordance with Oxford Local Plan Policy CP22 subject to the remediation measures recommended in the Phase 2 report being undertaken. The remediation measures should be secured by condition requiring the works to be carried out within a specific time period. This would also include a validation report which includes photographs demonstrating the depth of excavation and clean cover; laboratory analysis confirming that imported soils are clean and suitable for recreational use; and that the remediation measures have been met and the site is deemed suitable for the proposed end use.

Impact on Groundwater and Flood Risk

21. The site is located within Flood Zone 3a according to the Oxford City Council Strategic Flood Risk Assessment. The bases of the redundant tanks were punctured prior to the waste being deposited within them and as such officers consider that the proposal would not result in significant flood risk.
22. The Environment Agency has been involved in this application as part of their own investigation into the unlicensed deposit of waste. In the context of this retrospective application, the Environment Agency's remit is limited to controlled waters (surface and groundwater). The Agency has raised no objection to this retrospective application and assessed it as having a low environmental risk.
23. Having reviewed the findings of the soil sampling at Hinksey Pools the agency have indicated that the contaminants identified (Benzo(a)pyrene) have been categorised by Public Health England as being 'practically insoluble in water' and are therefore not generally considered to pose a major risk to ground or surface water. Furthermore as these would be located within a former "tank" there may also be a fair degree of isolation from the wider water environment.
24. The agency accepts provided the soils which have been identified as containing elevated PAH/Benzo(a)pyrene are removed the risks to controlled water are negligible. Therefore they have raised no objection to this retrospective application and on the basis that the remediation measures are carried they consider that there should be no major risk to ground or surface water.

Conclusion:

25. The retrospective application is considered to be acceptable in terms of National Waste Planning Policy and the relevant policies of the Oxfordshire Minerals and Waste Local Plan 1996, emerging Oxfordshire Minerals and Waste Local Plan Core Strategy – Consultation Draft, Oxford Core Strategy 2026, and the Oxford Local Plan 2001-2016, and therefore officer's recommendation is to approve the development.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant retrospective planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant retrospective planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Contact Officer: Andrew Murdoch

Extension: 2228

Date: 26th February 2015

This page is intentionally left blank