IN THE MATTER OF:

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

and

AN APPEAL BY NRS AGGREGATES LTD AGAINST THE REFUSAL OF PLANNING PERMISSION BY WORCESTHIRE COUNTY COUNCIL OF PROPOSED SAND AND GRAVEL QUARRY WITH PROGRESSIVE RESTORATION USING SITE DERIVED AND IMPORTED INERT MATERIAL TO AGRICULTURAL PARKLAND, PUBLIC ACCESS AND NATURE ENHANCEMENT ON LAND AT LEA CASTLE FARM, WOLVERLEY ROAD, BROADWATERS, KIDDERMINSTER, WORCESTERSHIRE

PINS Ref: APP/E31855/W/22/3310099

County Council Ref: 19/000053/CM

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION

1. These Closing Submissions address the 5 main issues identified by the Inspector in his opening on Day 1 of the Inquiry:

    a. The need for the proposed development with particular regard to the landbank position for sand and gravel and the need for inert waste

b. The effect of the proposed development on living conditions of the occupants of existing and future nearby dwellings and the amenity of pupils and staff at Heathfield Knoll School and First Steps Day Nursery with particular regard to outlook, noise, air quality and health.

c. Effect on the character and appearance of the area, and the weight to be attached to matters relating to highways, local economy, PROW/bridleways and heritage.

d. The effect on the openness of the Green Belt and whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies.

e. If the proposal is inappropriate development 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.

2. It is not the purpose of these Closing Submissions to repeat what is already before the inquiry in the written evidence, or to summarise everything that was said at the inquiry in relation to all of the above matters. The aim is to focus on the key matters in dispute, and provide succinct submissions on those matters to help the Inspector reach a reasoned decision. The Inspector is requested to read these Closing Submissions alongside the Opening Submissions that were provided by the Appellant on Day 1 of the Inquiry.

MATTER 1: NEED

3. No one has sought to seriously contest the fact that the County has an urgent need for more sand and gravel.

4. MLP14 (CD11.03, p.121) states that a landbank of at least 7 years will be maintained throughout the plan period. This mirrors the requirement in the NPPF (para. 213(f)). The PPG on Minerals (para. 082) states that 'for decision-making, low landbanks may be an indicator that suitable applications should be permitted as a matter of importance to ensure the steady and adequate supply of aggregates'. This is underscored by para. 084, which conveys the message that even if a landbank is above the minimal level, this is not a good reason of itself to refuse permission – 'there is no maximum landbank level and each application … must be considered on its own merits regardless of the length of the landbank'. More pertinently for this appeal, it adds 'where a landbank is below the minimum level this may be seen as a strong indicator of urgent need.'

5. As regards how the landbank is to be measured, MLP14 states: 'As the levels .. of permitted reserves will vary over the lifetime of the MLP, the most recent Local Aggregates Assessment must be referred to by applicants and decision-makers.' It is submitted that this is an important provision and there is no reason not to apply it. Its purpose is to ensure that there is a fixed point in time for determining the level of supply, because ad-hoc additions to the supply arising from consents granted after the base-date of the assessment are, [(o)2 .(sse)-0.002 Tc -0.ant

and/or whether the appeal will succeed), the supply falls to 4 years.

7. CW next sought to rely on applications currently under consideration. If we make a deduction for the fact that Piches Quarry has reduced its application to 850,000 tonnes (from 1Mt), if all three of these applications were granted this would add a supply of 1.9 years (LT para. 5.2.8). It follows that the supply would still be below the required minimum 7 years (4+1.9 = 5.9yrs). But such approach is flawed in any event because

    a. it goes against the express requirement in the DP that when taking decisions one should take the supply figure set out in the latest published assessment;

    b. it fails to acknowledge that if nothing is done now to grant more permissions by the time these quarries become operational (possibly two years from now) the supply would have fallen by a further two years;

    c. and (most importanty) it invo

operational or safety reasons and/or that it is not the most appropriate option. Indeed, the WCS expressly cites landfill for restoration of mineral workings as an example of something that is required for operational or safety reasons (para. 4.45 of the explanatory text to Policy WCS5).

10. MLP26, under the heading of 'Efficient use of Resources', does require the decision-maker to have regard to 'the appropriateness of importing fill materials on to site, and the likely availability of suitable fill materials'. As regards the former, no one has questioned that it is appropriate to restore the site with fill materials. Assertions have been made to the Inquiry that there will be insufficient inert waste available to carry out the restoration as planned. Such assertions derive no support from the available evidence.

11. As explained by LT in his written and oral evidence, the NRS group of companies are one of the largest waste management operators within the Midlands. It runs some of the largest inert tipping facilities in the Midlands, and has strong links with construction companies and house builders throughout the region[illegible]

will not be able to get its hands on 600,000 cubic metres of inert material at a rate of 60,000 cubic metres per annum.

MATTER 2: IMPACTS ON LOCAL AMENITY

13. Considerable concern and anxiety was expressed by the R6 and other local residents over the potential of the proposal to impact on the living conditions and health of the local populace. Issues raised focussed on outlook from residences, noise, air quality and health. We briefly address each of these.

Outlook

14. The concern related to the impact that bunds would have on the outlook from residences situated around the site. The Inspector has been provided with detailed information about the size, location and duration of each bund. Evidence has also been provided to explain how they will be graded and grass seeded. The majority of the temporary bunds on site will only be 3m in height. There will be one bund which is 6m, but this will be in situ for only 9 months.

15. The facts being established, the question of impact is a matter of planning judgment. The Appellant invites the Inspector to agree with it that, given the generally enclosed nature of the site, the distance from residential properties

of the area. They were satisfied that the measured noise levels calculated were robust in isolation, the noise from this proposal would remain within national guidance and there would be no adverse noise impacts associated with this development in isolation. Since that date a cumulative assessment has been provided also, and the County has satisfied itself (presumably after liaising with WRS) that the noise impacts will remain within national guidelines and thus acceptable even when assessed in combination with other committed development.

17. No expert evidence has been submitted to this Inquiry to challenge the evidence submitted on behalf of the Appellant, or to challenge the assessment of that evidence by WRS. Ms Canham on behalf of the Appellant explained that she had taken updated baseline measurements, and these demonstrated that the noise levels measured in 2018 were very much a worst case baseline (the background noise measured in 2023 was higher, and thus the noise limits proposed are, by virtue of being based on the 2018 results, extremely stringent). Furthermore, the detailed calculations for each specific receptor used the worst case distances (i.e the closest) from the operational parts of the site and the highest calculated result for each location was presented in the assessment.

18. The outcome is that the noise from this proposal will not exceed the background by more than +10dB at any of the receptors, and neither will it exceed 55dB(A) LAeq (free field). It will therefore accord fully with PPGM para. 021. The R6 sought to argue that because the noise levels are already close to 55dB at some of the receptors, and some of the suggested noise limits are set close to 55dB, this means that the proposal gets 'very close' to breaching acceptable noise limits. This is to misunderstand the evidence and also the planning guidance for minerals. The suggested noise limits are all at or below the 55dB LAeq. Finally, the calculated site noise level will remain at or below the suggested noise limit at all receptors.

Air Quality

19.

23. The assessment shows that there is a risk of 'moderate' dust impact at the Bungalow (1 property), but only during the initial phase. As the bunds establish and the process moves away from the boundary, the impact drops to slight to negligible (KH, para. 5.3.20). The properties at Castle Barns are likely to experience no more than a 'slight adverse' impact at most, and all other receptors will experience 'negligible' effects (KH, paras. 5.3.21 – 5.3.22). Once again, the R6 case that this develop comes close to causing significant adverse effects is simply not supported by the evidence.

24. As regards PM10 and P2.5, the maximum average concentrations in the study area relevant for this proposal are substantially below relevant objectives (at approx.30% of the objective limit) (KH para. 6.1.4). The assessment shows that this development would add 1up/m3 (microgramme per cubic metre) (as an annual mean) to the background, and this would have no perceptible impact on the objective (given the headroom to the limit) (KH para. 6.1.7). The IAQM Guidance on mineral dust specifically states that no assessment is required when the background PM concentration is less than 17 ug/m3; here the background level stands at 11.18 to 12.01 (KH para. 6.1.9 and 6.1.10).

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Health

27. The R6 party has submitted evidence relating to silicosis (RCS).

28. The HSE provides guidance on protecting on-site workers, because it is those who are working in very close promixity (and especially in enclosed spaces) who are at greatest risk (KH para. 6.3.3-6.3.4)

29. There is no UK established or recommended standards for RCS in ambient air, and neither is there any available, agreed assessment methodologies (either statutory or non-statutory). But importantly, HSE advice is that 'No cases of silicosis have been documented among members of the general public in Great Britain, indicating that environmental exposures to silica dust are not sufficiently high to cause this occupational disease' (extract from HSE website provided in KH Appendix10).

30. So despite literally hundreds of years of quarrying in this country, including operations which are more likely to lead to the release of silica dust (hard

contrary, as recorded in the RTC (para.594), the site formed part of 'a now degraded agricultural parkland with the loss of trees, woodland and hedgerows'. The LVIA concluded that there would be slight to moderate effects on landscape character during the operational phase.

33. The LVIA recorded that post restoration, there would be a strengthening of appropriate landscape elements and features which respects and replicates the sites historic past whilst providing new and increased diversity and net gain of individual landscape elements along with the promotion and integration of amenity and wellbeing opportunities and biodiversity net gain. This includes pocket parks based around a green infrastructure strategy. New habitats would also be created including approximately 7.5 hectares of acidic grassland; approximately 3.42 hectares of new woodland blocks; new planting and strengthening of existing hedgerows, totalling approximately 1,018 metres in length; and planting of approximately 170 avenue and parkland trees. As now recorded in the SOCG, there will be BNG of almost 40%, 4 times that required by national planning policy. The LVIA assessed the restoration scheme as providing as having a notable beneficial impact (as compared with the baseline) as a result of the enhancement proposals. The objective is bring back elements of the original parkland that have been lost.

34. The LVIA also contained a detailed assessment of the visual impact throughout the lifetime of the operation. It concluded that subject to the implementation of these mitigation measures no visual receptors would receive significant adverse effect during the proposed development.

35. The County Landscape Officer reviewed the LVIA and said he agreed wiiidi-1 (p.002 s)]TJTf(a)2 8.18 -1.74 ffecat (i)-1al(t)-2sTd( )TjEMC /13.375 (u)6 (b)1 (jec)-1 (t)4 (t)-1 (o)3 (t)-1we1 (a)3 o

site are visible from every part of the PROW network.

e. A combination of the bunds and the lower level of the mineral working will mean that after the initial soil stripping on each phase (which lasts only a matter of weeks) the operation will not be visible to those using the PROW.

f. Having to walk past a graded, grass-seeded bund, an experience which will last for only a short stretch of the PROW at any given time, will not spell the end of the world. We refer to the above sections on noise and AQ in support of our submission that people using the PROW will not experience any significant noise or air quality issues – an excavator scraping up soft sand and placing it into a dumper truck that drives from A to B is not a particularly noisy operation, and neither does the processing involve the crushing of large rocks.

g. The impacts on visual amenity from the PROW will temporary, but the additional 2.7KM of proposed PROW/bridleways and permissive bridleways as part of the restoration will be permanent.

h. If the impacts on the PROW network are going to be as bad as suggested by the R6 it is difficult to understand why there was objection to this development from either the County Footpath Officer, the Wyre Forest DC Countryside and Parks Manager, the Rambers Association or the Malverns Hills District Footpath Society, all of whom were consulted and all of whom expressed themselves as satisfied with the proposals.

41. Much as been made by the R6 and other local objectors regarding the impact on horseriders using the bridleway. All of the above points apply with equal force to bridleways – they will always remain available, any diversion will be for a short duration, and an extensive length of new bridleway will be

provided along the southern boundary of the site.

42. The BHS was consulted, and fully engaged with these proposals. They submitted 4 consultation responses. Regional and local representatives of the BHS attended the Cookley Public Consultation event. We cannot say definitively that they did visit the site, but it would be odd if they turned up locally but chose not to visit the site, given that they then engaged fully throughout the process and made suggestions about what they wanted to see upgraded, how and why. It is wrong for the R6 to assert, without any evidence, that the BHS representatives did not visit the site or were not familiar with it.

43. The R6 then sought to hang its hat on the fact that the BHS had asked for more information, which had not been provided. If it believed that it could not support the proposal unless it was provided with this information it would have said so. Instead, what it said was that 'notwithstanding' these matters it welcomed the Appellant's proposals. It is also wrong to say that it wanted more information – what it said was that 'more detail is required in relation to where the new section of public access would cross the proposed site entrance' (para. 246). The details called for were specific and narrow in scope – signage, speed restrictions, surfacing etc. It was for the

Appellant's proposals as 'positive', to 'welcome the restoration proposal and proposed additional shared use routes for … horseriders' (RTC para. 246/247), and nor would it have asked that some more of the PROW be upgraded to a bridleway.

Highways

45. The NPPF is clear that development should not be refused on highway grounds unless there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (NPPF para.111). Both highway safety and the assessment of cumulative impact require a technical analysis, by an individual with the necessary qualifications, training and experience. This application is supported by a TA and a road safety audit, all prepared by individuals with the necessary qualifications, training and experience. All of this reports and studies conclude that there will be no unacceptable impact on highway safety and yea a(pub(by)3)1 (a)2 (a)ngNPPbg (y)-11

explained by Mr Hurlstone, the access has been designed so as to ensure no right turn out and no left turn in. Conditions are imposed to monitor and enforce driver behaviour.

Local Economy

48. The R6 evidence on alleged adverse impacts on the local economy was no such thing – it amounted to no more than speculation and assertion that the people would stop sending their children to the local schools in sufficient numbers to threaten the viability of the schools, and that people would stop visiting the area and using local facilities to such an extent as to result in local businesses closing down. No evidence was presented from anywhere in the country to suggest that a quarry of any sort, let alone a phased sand and gravel quarry, has this impact on the local economy.

49. The R6's case on impact on local economy is parasitic on its characterisation

evidence of businesses closing down around these quarries, or people pulling their children out of school.

51. Finally on this point, the R6's case on economic impacts flies in the face of Govt. policy. If mineral extraction is bad for the economy, as the suggested by the R6, the Govt. would not be instructing decision-makers to attach 'great weight' to the benefits of mineral extraction, 'including to the economy'.

MATTER 4: GB OPENNES1sp41 ()-1 ( ))1]

d. The RFR alleges ‘unacceptable impact on the openness of the GB’, an unnecessary allegation if this development falls within para.149 because if within para.149 it would be inappropriate development requiring VSC regardless impact on openness.

e. There is not a single mention of para. 149 in the Council’s SoC, or any of the DP plan policies that deal with the construction of new buildings in the GB

f. There is not a single mention of para. 149 in the Council’s written evidence, nor of any of the DP plan policies that deal with the construction of new buildings in the GB.

g. CW set out all components of the proposed development at his paragraph 4.32, including the site office and welfare facilities, but did not say that the latter (unlike all the other components) constituted inappropriate development because they amounted to the ‘construction of new buildings’ in the GB and thus fell into para. 149, let alone explain why this element fell outwith the mineral operation.

h. CW at para.4.35 lists the ‘offices’ within a list which ends with the words ‘and other ancillary facilities’, thereby accepting that everything that falls within the list is ancillary to the mineral operation;

i. CW at para. 4.66 makes it clear beyond doubt that his case is based solely on the concept of ‘tipping point’, something that is not relevant at all to NPPF para. 149.

54.

55. Section 55 of the 1990 Act defines ‘development’ to mean the carrying out of

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fanciful situations but for those generally encountered in mineral extraction (para.65)

"Secondly, as Green Belt policies NPPF 89 and 90 demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and one a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another" (para. 66)

"If paragraph 90 NPPF is of any purpose, the mere fact of the presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate" (para. 75)

58. These paragraphs are relevant to the assessment of impact on openness (and therefore whether a given development falls within para. 150), but they are also relevant in supporting the proposition that mineral extraction will inevitably require structures, engineering works and associated buildings. So if portacabins are brought onto site to serve the purpose of the mineral extraction operation (to provide space for offices, welfare facilities and training), their introduction cannot be characterised as 'the construction of new buildings' in the GB as mentioned in NPPF para.149. Any other interpretation would mean that mineral extraction would always fall within para. 149, because it is impossible to see how a mineral operation could possibily be carried out without offices and welfare facilities.

59. The disagreement that CW has with above analysis is not one of principle (for the reasons set out above, he appears to accept the principle), but one of fact. He stated in his examination in chief, without any warning or evidence or analysis, that the size of the portacabins shown on the plans were 'excessive' for an operation of this size. This argument has nothing to do with the definition of 'building', rightly so because buildings (if necessary to

facilitate the mineral operation) fall

69. Firstly, the SC made it clear that the case-law that emphasises the visual dimension of Green Belt must be approached with care when assessing the impact of mineral extraction, because that case-law is concerned with the construction of buildings in the GB, which is by definition inappropriate (unless it falls within a specified exception), whereas mineral extraction is appropriate development unless the proviso applies. The reason why visual impact is much more important in the former case is that limited visual impact cannot make appropriate that which is by definition inappropriate (see para.23). The case of Turner (which pressed the distinction between volumetric and spatial) was placed in its proper factual context – it was a case dealing with an express provision within GB policy (redevelopment that would not have greater impact on openness etc), where the visual comparison between the baseline and the proposal is unavoidable. As the SC said, 'it tells us nothing about how visual effects may or may not be taken into account in other circumstances.' (para.25).

70. Secondly, and importantly, the SC was at pains to emphasise that when assessing the impact of mineral development on openness the tail should not be allowed to wag the dog. It did so by making the point that the openness and purposes provisio now found in para. 150 in respect of minerals was not found in PPG, but that it (the SC) did 'not read this as intended to mark a significant change of approach … to my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material change.' The Appellant submits that the way to give effect to this observation by the SC is to apply the approach set out in Europa Oil and Gas above, namely accept that that which is normal and to be expected in mineral extraction should not be viewed as as detracting from openness.

71. Thirdly, and finally, the SC endorsed the proposition that 'openness' is the 'absence of built development'. It explained this definition expressly by reference to the distinction between buildings (inappropriate by definition) and the categories of development within para. 150 (which are appropriate) (para. 40). In this same paragraph it contrasted openness with 'urban sprawl',

a. The proposals (including the offices/welfare facilities) were 'all part and parcel of the proposed mineral extraction for the purposes of applying Green Belt policy' (para.451);

b. Given the contained nature of the site the visual impacts did not undermine openness (para.458);

c. He cited and applied Lord Carnwath's dictum that a quarry was not urban sprawl but a barrier to urban sprawl (para.459);

d. Vehicle movements were at a level not unexpected for this type and scale of operation, 'so it would not be able to operate where minerals are found if it did not have this level of infrastructure and vehicle movements … so this in itself could not make it inappropriate' (para. 459);

e. The site would be restored 'to an open state following completion of extraction and would be no more built up on completion of the development as a result of the proposal as it is now', and he expressly gave effect to the special status of mineral extraction and cited Europa Oil and Gas in support (para. 459);

f. He understood and applied the correct lesson from the case-law:

'It is considered that the proposal is in line with typical mineral development in the Green Belt, and it is assessed that this site should benefit from the exceptions that are clearly provided for in the NPPF for mineral sites. There would be impacts, but only of a temporary duration, and relatively short for mineral extraction, with an appropriate restoration programme, back to a beneficial status in the Green Belt. The NPPF clearly envisages that mineral extraction should benefit from the exemption in paragraph 150, and this proposa In any it oineral sites. n

74. In XX Ms Clover asserted that the Appellant's witnesses had failed to assess the impact of the proposal on GB openness. You have all of the Appellant's evidence before you, both that provided for this inquiry and all of the evidence (including the Planning Statement and the ES) that was provided at the application stage). In response to Ms Clover's assertion that we ask that the Inspector ask himself two questions. Firstly, in the light of all of that evidence, does he really need more pages assessing the impact on openness?

of soils, is visually less obstrusive and jarring, assists with both noise and dust mitigation, and hides

point about towns above), or that that this temporary development would fail to preserve that setting.

MATTER 5: VERY SPECIAL CIRCUMSTANCES

81. This section is relevant if and only if the Inspector rejects the Appellant's case that this development constitutes appropriate development. If that case is accepted, the development accords with the DP, no one has suggested there are material considerations that indicate that the proposal should be determined otherwises than accordance with the DP, and accordingly permission should be granted 'without delay' (NPPF 11(c)).

82. It is not the purpose of this section of the Closing Submissions to repeat the list of VSC relied upon by the Appellant or their weighting (they are set out in the evidence of LT). The aim here is to repond to the points taken by the Councl and the R6 in evidence.

Economic Benefits

83. We have already responded to the R6 case that the weight to economic benefits should be reduced because of alleged harms to the local economy. We do not repeat those points.

84. The R6 sought to attack the Appellant's assessment of jobs created, and expenditure within the local and national economy. But it provided no evidence as to why the Inspector should disbelieve the Appellant, who is an experienced operator of quarries. It knows how many empoyees will be needed on site to run this operaton, how many off-site and head office jobs this is likely to create, and how much money the operator will spend to set up and keep the operation going.

officer, who agreed that the impact of the restoration would be beneficial. It is not tenable to suggest, as the County's witness and advocate appear to be suggesting, that the Landscape Officer would not have had regard to change to landform when assessing whether the retoration was merely acceptable or positively beneficial. Landform (and impact on landform) form one of the key inputs into any LVIA.

89. Also, CW, not being a landscape expert, does not explain in his evidence how and why the proposed restoration landform is harmful. He made a reference to the loss of long range views (which is in any event a visual matter, not a matter of harmful landform), but when asked was unable to identify which views would be lost as a result of the lower landform.

Alternative Sites

90. It is important to understand the legal position on when alternative sites are relevant.

91. There is no general principle of law or policy that a decision-maker must have regard to alternatives. Neither is there any law or policy which says that alternatives are relevant and/or must be considered when a proposal involves the use of GB land. The general principle is that an application should be judged on its own merits.

92. Alternatives are only relevant where it is agreed there will be harm, and an applicant relies upon need to justify the harm. The question then arises as whether the need could be met elsewhere. In this connection, it matters not whether the harm is to Green Belt or some other policy. This does not affect how one applies the law on when alternatives must be considered.

93. If an objector wishes to argue that the identified need can be met on an alternative, less harmful site, it is for the objector to identify that alternative site and demonstrate that (a) it is less harmful and (b) that it will meet the

e. Finally, as the learned judge observed in the Esmnond Jenkins case, the R6's argument leaves out of account the obvious fact that 'if alternative sites with owners willing to seek planning permission had been