

WORCESTERSHIRE COUNTY COUNCIL  
TOWN AND COUNTRY PLANNING ACT 1990  
SECTION 78 APPEAL

Appeal

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1.0 Introduction

1.1 I am Christopher Whitehouse, a Member of the Royal Institution of Chartered Surveyors (RICS)

## 2.0 Background and Scope of Evidence

2.1 I have been instructed to appear as a witness at this Inquiry on behalf of Worcestershire County Council ('WCC' or 'The Council') to an appeal against the Council's decision to refuse consent for application 19/000053/CM on 27th May 2022, for the following description of development:

"Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement"

2.2 Following a High Court challenge to the Inspector's original decision, the Court ordered that the appeal decision was to be quashed, and the appeal be re-determined, on the basis of a ground of challenge (Ground 1) against the approach taken by the Inspector to the weight to be attached to biodiversity net gain as set out in the decision. A second ground of challenge (Ground 2) alleging a breach of the Inspector's duty under section 38(6) failed. On the 18<sup>th</sup> of April 2024, the Planning Inspectorate ("PINS") confirmed that the appeal would be re-determined following another Public Inquiry.

2.3

- 2.5 In his written note dated 8 August 2024 following the Case Management Conference (“CMC”), the Inspector, having regard to the fact that the Option 2 remained open to public consultation until 6<sup>th</sup> September 2024, concluded that it would be likely that Proofs of Evidence would need to address both the Option 1 and Option 2 schemes, and that PINS on behalf of the Secretary of State would assess compliance of the Option 2 scheme with the EIA Regulations following the end of the consultation period. The Inspector further set out that it was likely that he would issue a Pre-Inquiry Note at that stage inviting written submissions from the main parties setting out their respective positions which would be considered in a round table discussion on the first day of the Inquiry.
- 2.6 The application was refused with 9 reasons for refusal; as noted in the Council’s Statement of Case (CD13.28) and in having regard to the proposed revisions detailed in relation to the Option 2 scheme, it remains the intention of WCC to defend only reason for refusal 2 (“unacceptable impact on openness of the Green Belt”) within this Inquiry.
- 2.7 The Council screened and scoped the application in compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“EIA Regulations”). It confirmed the application required an Environmental Impact Assessment and an ES submitted by the Appellant. The subsequent Option 2 submission is supported by an Addendum ES and PINS will assess its compliance with EIA Regulations.
- 2.8 This proof of evidence will consider the issues captured within the Inspector’s CMC Conference Note from the CMC, where they refer to the Council’s case. These issues were set out as follows
- (1) The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt.
  - (2) The effects of the proposed development on the character and appearance of the area.
  - (3) The effects of the proposed development on the local amenity of the area and the living conditions of nearby residents, with particular reference to outlook, noise, dust, air quality and health.
  - (4) The effects of the proposed development on Public Rights of Way and access.
  - (5) The effects of the proposed development on heritage assets.

- (6) The effects of the proposed development on highway safety, particularly for vulnerable road users.
- (7) The effects of the proposed development on biodiversity.
- (8) The effects of the proposed development on employment and the economy.
- (9) The need for sand and gravel, having regard to likely future demand for, and supply of, these

2.11 The Council reserves the right to consider and respond to issues raised by the Appellant in the submission of their evidence, through rebuttal proofs, necessary, in accordance with the instructions raised within the CMC.

2.12 The evidence prepared and provided for this appeal in this proof of evidence is independent and has been prepared by me and is given in accordance with the guidance of my professional institution, the Royal Institution of Chartered Surveyors. As a Chartered Surveyor giving expert evidence, I am bound by the RICS Practice Statement "Surveyors Acting as Expert Witnesses, 4th Edition" (RICS, amended 2023). The opinions expressed are my true and professional opinions.

### 3.0 Planning Policy Context

#### 3.1 The Development Plan

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework ("NPPF") or ("the Framework")~~(2012)~~ Planning Practice Guidance ("PPG") are material considerations.

3.2 The requirements in determining applications "in accordance with" the plan does not mean that an application must comply with each and every policy, but it is approached on the basis of the plan taken as a whole. 4.1 (f)-2 ( t)0. 7-1.5 (a1 (g a-2.9 ( w)5.7 (q)-0f0.6 5.1 (f)-2 ( .6 (3.002 a1 (n t6 (h( ).  
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limited or negligible contribution is made towards these priorities, permission will only be granted “where the economic, social and/or environmental benefits of the proposed development outweigh the benefits of delivering the corridor priorities”.

- 3.15 Policy MLP 14 provides that WCC will seek to maintain a landbank of at least 7 years throughout the plan period and sufficient capacity of sand and gravel will be maintained to “at least meet the guideline in the most recent Local Aggregate Assessment”. The policy provides scale of provision required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).
- 3.16 Policy MLP 15 identifies that planning applications for minerals development are required to identify the contribution that such a grant of permission would make towards maintaining a landbank of permitted sand and gravel reserves in the county.
- 3.17 Policy MLP27 at part a) provides that WCC will support mineral extraction and/or engineering operations in the Green Belt where a “level of technical assessment appropriate to the proposed development demonstrates that, throughout its lifetime, the mineral extraction and/or engineering operations will:
- preserve the openness of the Green Belt; and
  - not conflict with the purposes of including land within the Green Belt”.
- 3.18 At part b) the policy provides that



3.25 National Planning Policy Framework

The NPPF (updated in December

3.31 Paragraph 53





- The National Planning Policy for Waste (2014) (“NPPW”)
- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

#### 4.0 Analysis of Main Issues

##### 4.1 The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt.

Paragraph 42 of the Framework states that “The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”.The purposes of the Green Belt are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

##### 4.2 Framework Paragraph 50 states that “local planning authorities should plan positively to enhance the beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land”.

##### 4.3 Paragraph 52 states that

the proposal both preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt.

- 4.5 What comprises 'mineral extraction' for the purposes of applying this policy is not defined in the NPPF. However, section 55 of the 1990 Act defines mining operations to include the removal of material of any description from a mineral working deposit. With regard to the imposition of conditions for





to preserve the openness of the Green Belt and the effect on Green Belt purposes, so as not to be inappropriate.

4.16 The Appellant's predominant consideration of the impact on openness of the Green Belt rests on the



transported to a proposed field hopper and conveyor located within the eastern part of Phase 2, where it would be conveyed under the existing track and public right of way (bridleway 626) to the proposed processing plant site. In Phases 4 and 5 the dump trucks would transport the excavated

4.26 Vehicular access to the application site would be via a proposed new access and internal haul road onto the Wolverley Road (B4189) in the south





4.38 Large bunds are used to screen the working site from surrounding viewpoints. Whilst they may be defined as engineering operations with regard to paragraph 5.15 of the NPPF, they reduce openness. The processing plant may be considered a necessary part of minerals extraction, but given its size, also reduces openness. The cumulative effect of these (bunds, haul roads, plant areas and associated activity), in combination with large stockpiles does increase the overall effect on openness.

4.39







4.54 The current view provides an open westward view across the land either side of Wolverhampton Road, to the brow of the land bordering Phases 4 and 5, and to the tree cover beyond. Bund 18 will restrict views to the tree cover beyond the brow, creating a singular, uniform mass that reduces any perceived openness to the landholding beyond. In combination with the building out of the allocated area on land to the foreground of the view across the same development period, the combined impact on the perceived openness of the Green Belt will be significant across the period associated with Phases 4 and 5 of the proposed works.

4.55 Whilst the Appellant's original landscape proof of evidence provides for a year 10 photomontage viewpoint from this same view (referred to as Figure 17) it is of limited usefulness in assessing openness impact limited for two reasons. Firstly, the location of the viewpoint is taken from the only safe pedestrian access point at Park Gate Road, which is the same viewpoint as taken in my own evidence. The view from this specific location towards the site is significantly blocked by an existing row of trees running parallel with Wolverhampton Road and as such struggles to fully represent the view experienced by vehicles traveling on Park Gate Road, who would not be impacted by the tree cover screening. Secondly, the photomontage provides no attempt to set out the visual impact of the Lea Castle mixed use development as would be likely be constructed, or the process of construction, by year 10 of the appeal scheme, and as such the photomontage is unhelpful in assessing the cumulative context on visual openness.

4.56 Key View E is taken from the entrance to a residential estate on Stourbridge Road, the location of which is detailed in WCC2. The dwellings located along Stourbridge Road have wide ranging views across the north west and to the north east from a higher vantage point. The view shows the appeal site to the north west, with the brow adjacent to Phases 4 and 5 and tree cover beyond in clear view, with the western extents of the Lea Castle Village masterplan area to the north east. The combined impact of the introduction of Bund 18 with associated operational movements on the appeal site, in combination with the building out of the Lea Castle Village allocation will, in combination, substantially erode the perceived visual openness of Green Belt from higher vantage points to the south of the site, of which there are a substantial number of residential receptors along Stourbridge Road. The combined impact on the perceived openness of the Green Belt will be of great significance across the period associated with Phases 4 and 5 of the proposed works. Again, the Appellant's submission does not provide a visual illustration of the proposed cumulative impacts from this viewpoint.



#### 4.62 Reversibility and Temporary Development

The Appellant asserts, considering the conclusions of Europa Oil and Gas (CO12.07) that the 10-year duration of development, would be temporary and reversible through restoration, and as such there would be no permanent harm. In this instance, it is considered that the substantial use of large bunds, which cause a spatial impact across the site for a period of 10 years would, in combination with development adjacent to the site, create an intensive impact on the Green Belt at a time when the site is considered to have a heightened responsibility in effectively performing its purposes as Green Belt land. I set out why the site has a heightened responsibility at paragraphs 4.70 and 4.71.

4.63 I note that it is the fundamental aim of the Green Belt to prevent urban sprawl by keeping the land permanently open [my emphasis]. The proposed development would mean that for at least 10 years the Green Belt is not open at the site. I conclude that the Green Belt cannot be permanently open if it is open only some of the time. As such I conclude that the proposal would negatively impact upon the permanence of the Green Belt that 10 years is a substantial period of time when the site has a heightened responsibility and

4.66 Consequently, both visually and spatially, the proposed development would result in significant harm to the openness of the Green Belt.

#### 4.67 Green Belt Purposes

The appeal site is located within the North West Worcestershire “Strategic Corridor” for solid sand and gravel and silica reserves as identified within the Minerals Local Plan. Whilst the majority of the Corridor is located within the West Midlands Green Belt, this does not mean that it is all of equal importance.

4.68 The appeal site sits in its entirety within land parcel N7 of Green Belt reviews Parts I and II (CD12.02 and CD12.03) undertaken by Wyre Forest District Council as part of their Local Plan Examination submission. The Corridor area consists of 26 different land areas that are considered by the authors of the review to provide differing and distinct contributions to the Green Belt

4.69 Whilst the appeal site is contained within land parcel N7 adjacent Lea Castle Village development sits within land parcel NE2, and land south of the site off Wolverley Road sits within parcels N5 and N6. The land parcels are concluded by the review to contribute differently to the purposes of the Green Belt.

4.70 The appeal site is defined by the review as directly contributing to the prevention of both the incremental encroachment of development into the open countryside and to the sprawl of Kidderminster along the A449; as such having heightened purposes in relation to two of the five purposes of Green Belt land.

4.71 I agree with the conclusions of the review. The site sits at its narrowest within a 100 metre gap between the settlements of Kidderminster and Cookley. A public right of way within the appeal site, adjacent to Castle Barn, provides clear views of Kidderminster to the south, on higher land, and Cookley to the north. The role of the appeal site in providing visual separation between the settlements is evident and would be undermined by the impact of the plant, equipment, buildings and

access and activity associated with mineral extracttogether with the extent of use of the engineered bunds

4.72 The appeal site protects against urban sprawl from viewpoints into Kidderminster from the A449 Wolverhampton Road as it approaches the town from the north, with the distinct lack of development to the north of Wolverley Road by comparison to the south of it serving as a visual barrier to sprawl from this vehiculagatewayinto the town.

4.73 From higher viewpoints.8 (oew)-1.8 (1.5u )-5.14k.1 (i)-1.5 (n)-0g.3 ( )0.8 (n)-0rtwarns5-5.8 ( a)-2.6 (   
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#### 4.76 Option 2

The proposed differences between the schemes are set out within the Appellant's updated Non Technical Summary ("NTS") (CD15.13). As noted within it, "the main changes associated with the proposed development to that of the previous scheme relates to the proposed Processing Plant and the use of bunds within development". The proposed processing plant height is reduced from 12m to 6.3m and its overall footprint reduced from 2,752 sqm to 451 sqm. The reduction in size of the plant, in combination with the proposed mitigation measures taken to screen it, lead me to conclude that, in isolation, it would not reduce openness. With regards to the initial works, the plant site area itself is not proposed to change; but Bund 3 is proposed to be reduced in height from 6m to 3m. Additionally

views eastwards across the site remain despite the proposed reduction in Bunds 13 and 16 during Phase 3.

4.80 The Appellant's revised submission includes for the provision of additional landscape photomontages (CD15.03 to 15.09), and the proposed Year 1 photomontage from viewpoint Da and the proposed Year 1 and 4 photomontages from viewpoint Db reinforce these conclusions.

4.81 I maintain the conclusion that the Option 2 scheme will have a detrimental impact on the visual openness of the site from its western extents for the lifespan of the development. The impact would be predominantly experienced by the users of the existing and proposed public rights of way to the west of the site. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of great significance during the construction phase.





4.93 I conclude that, both visually and spatially, the proposed Option 2 development would result in significant harm to the openness of the Green Belt. This adds to the harm caused to the Green Belt by reason of inappropriateness to the extent that it “tips the balance” to make it inappropriate development.

#### 4.94 Green Belt Purposes

The amendments made to the proposals within the Option 2 scheme do not affect my conclusions that the site provides a strong and direct contribution towards purposes a) and c) of Paragraph 43 that would be impacted upon by the proposed development.

#### 4.95 Option 2 Green Belt Conclusion

Insofar as I conclude that the tipping point of development has also been exceeded by the harm caused by the development to the openness of the Green Belt in the Option 2 scheme, I conclude that the appeal scheme is inappropriate development. Furthermore, the development would fail to check the unrestricted sprawl of built up areas and would not assist in safeguarding the countryside from encroachment, and so would provide conflict with two purposes of the Green Belt, both to a significant level. I conclude that the harm to the Green Belt arising from these matters attract substantial weight against the proposal and that the proposal would be in conflict with policies MLP 27, WCS 13 DM.22 and the Framework.

#### 4.96 In addition to the potential harm to the Green Belt, what, if any, other harm is there?

The Court of Appeal in *Redhill Aerodrome*<sup>14</sup> held that that the words “any other harm” in the Framework test did not only mean harm to the Green Belt; it means any other harm that is relevant for planning purposes. Any other harm should be weighed in the balance when considering whether or not there are very special circumstances to justify the development. In understanding that the balancing exercise needs to consider these harms, consideration has to be given to the other planning harm concluded to be provided by the development

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<sup>14</sup> *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386

4.97 The Impact on the Setting of Nearby Heritage Assets



required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).

4.107

adopted in July 2022 and to reflect greater certainty about demand for HS2 once the project moves into a period of peak demand (which is likely to be reflected in 2023 and 2024 sales figures)”

- 4.111 The annual production guideline for sand and gravel identified in the LAA is, therefore, 0.667 million tonnes per annum. This is lower than both the sub-regional apportionment derived from the ‘National and regional guidelines for aggregate provision in England’ of 0.871 million tonnes per annum and the previous approach undertaken by Worcestershire County Council which was to use the 10 year sales average +50%.
- 4.112 I conclude that the Council’s reduction of the annual apportionment to 20% within the LAA was appropriate. Based on this production guideline and the stock of permitted reserves of 5.06 million tonnes, Worcestershire had a landbank of 7.59 years on 31 December 2022.
- 4.113 The MWSOC provides details of matters which inform the Council’s landbank. The most pertinent details are that between 31 December 2022 and 31 December 2023, Council did not grant any new permissions for mineral extraction.
- 4.114 I conclude that it is reasonable to make the assessment of the Council’s landbank as it applied at the 31<sup>st</sup> December 2023, in accordance with the approach taken within the LAA, as any other approach would require a rolling assessment taken on a monthly basis; this would provide a reactive and overly micro approach to assessing the market place, in conflict with an existing approach which accounts for the previous 10 years.

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<sup>19</sup> Paragraph 1.7, Local Aggregate Assessment, published January 2024

Derived from the National and regional guidelines for aggregates provision in England. These guidelines were produced to cover the period 2002-2016 and updated for the period 2005-2020 and set out the level of provision which should be made by each Region. No sub-regional apportionment based on the 2005-2020 Guidelines was agreed, and no further National and Sub National Guidelines have been published by government.

4.115 I conclude that

short of the required 7 years. Paragraph 21 of the Framework makes clear that great weight should be given to the benefit of minerals extraction and Paragraph 9 requires the Council to maintain a

4.125 The Council conclude therefore that as of 2021 Worcestershire had 786,000m<sup>3</sup> of inert capacity. Furthermore, additional capacity is expected by way of the proposed restoration with inert fill at Sandy Lane Quarry, Chadwich Lane Quarry, Bow Lane Quarry and Pinches (4) Quarry, which all have planning consent, but EA permits are yet to be secured.

4.126 The Council's latest Annual Monitoring Report 2021 (January to December 2021) states that there is no capacity gap for disposal and landfill in 2021, however an assessment of inert waste landfilled in 2021 does demonstrate that there was significantly less inert landfill capacity remaining at the end of the Waste Core Strategy's plan period than was projected, combined with significantly higher volumes of inert waste being landfilled. Whilst there was not a capacity gap identified the point of the AMR, it sets out a need to keep inert landfill capacity under review.

4.127 It is considered that void space will continue to decline until Chadwich Lane Quarry, Sandy Lane Quarry, Bow Farm Quarry and Pinches (4) Quarry are granted Environmental Permits, or until the pending undetermined mineral planning applications with restoration with imported inert waste are granted permission. Once these Environmental Permits, it is

4.130 I conclude that there is sufficient evidence before the Inquiry to determine that the Appellant would have sufficient supply of inert waste across the development period to meet restoration objectives and as such fulfil the requirements of a planning permission in this regard.



Quarry in October 2024. It is not disputed that the appeal proposal would add 4 years to the landbank and would therefore enable the Council to be unquestionably compliant with paragraph 21 of the Framework. However, the supply issue is clearly less acute than at the time of determination of the application and this does, in my opinion, create a distinction from the weight that would have been applied at the point of determination of the original application. The great weight that is required to be applied by paragraph 217 of the Framework amounts, in my opinion, to significantly more weight within the context of this assessment of very special circumstances.

5.6 The sustainability of the location with regard to the logistical marketplace

Whilst it is acknowledged that the appeal site is located to the north of the County and in principle would serve a different marketplace than other quarries located to the south of the County, the marketplace is the same as that responding to the mineral secured from the permission at Sandy Lane Quarry, which is located in the Bromsgrove area. Therefore, whilst the geographical spread of resources is a benefit, there is not an acute issue that requires supply to be spread proportionally across different marketplaces. As such, moderate weights are applied to the consideration.

5.7 The Appellant concludes that as the site is in close proximity to large-scale residential schemes, “quantities of inert waste would arise from these large-scale schemes and the potential transport to and use of this material in the restoration scheme, aligns with the ethos of achieving sustainable development”



6.0 Planning Balance and Conclusions

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 require that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

6.2 A summary of my considerations of VSCs and the weighting prescribed to them are presented within the table below:

| Harm  | Weight              | Factor promoted as VSC | Weight |
|---|---------------------|------------------------|--------|
| Inappropriate development, significant harm to spatial openness, significant harm to visual openness; conflict with GB purposes a) and c) | Ss93.7 (s- w)-0.8 ( |                        |        |





4. Barnwell Manor Wind Energy Limited Vs East Northampton District Council & Ors [2014] EWCA Civ 137

The Court held that in enacting section 66(1) of the Listed Buildings Act 1990 Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.