

WORCESTERSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by NRS Aggregates Ltd against the refusal of planning permission by Worcestershire 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.

Planning Inspectorate Reference: APP/E1855/W/22/3310099

County Council Reference: 19/000053/CM

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CLOSING SUBMISSIONS ON BEHALF OF  
WORCESTERSHIRE COUNTY COUNCIL

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Abbreviations

JWKC Ms Jenny Wigley KC

CW Mr Christopher Whitehouse

LT Mr Liam Toland

NF Mr Neil Furber

GB Green Belt

VSC Very Special Circumstances

## Introduction

1. This Inquiry results from the partially successful High Court challenge to the Decision of Inspector Normington<sup>1</sup>. There are some constants in this Appeal, including the Council's case.

2. Worcestershire County Council ("the Council"/"WCC") continues consistently to maintain that this application was properly refused on the ground of inappropriate impact on openness in the Green Belt ("GB"). This was represented in the original RfR 2. The various Statements of Common Ground fairly set out the areas of agreement between WCC and the Appellant, leaving one narrow but critically important issue. This is summarised in the Inspector's Main Issues as:

"(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."

3. There is no dispute that GB policies attract very significant weight, to the point where refusal is inevitable for development (3.)Tj (cw)-8 (a)4 (2e G)-2 (-6 (abcG)-2 ()-5 ( i)-6 (n)v)-4 (elc

its openness and are acutely aware of the difference that a quarry site would make. This is something that Inspector Normington noted:

DL59:

“It is clear from my site visit and from the evidence presented in the Inquiry that the local community recognise the contribution that the appeal site makes to the openness of the Green Belt”.

and

DL 72:

“The openness of the area was cited in representations to the Inquiry as an important element of this part of the Green Belt, and a factor that contributed significantly to the appreciation and enjoyment of the area.”

Policy

6. The Council's witness, Mr Chris Whitehouse [ CW] sets out the full analysis of all the relevant development plan policies and the reasons why ~~the proposal~~ conflicts. CW has assessed both the application as originally made, and, prospectively, as potentially amended for the purposes of this appeal (Option 1 and Option 2)

7. The interpretation and application of policy in this inquiry ~~are~~ in dispute. To a very large extent, the applicable policies ( DM.22; MLP 27; WCS 13) mirror the NPPF policy on the Green Belt.

8. The NPPF Green Belt principles are very well known. Certain forms of development are not inappropriate in the Green Belt ~~provided~~ they preserve its openness and do not conflict with the purposes of including land within it. “Openness” has been defined by the caselaw, as analysed carefully within the Parties’ evidence, and includes a spatial and a visual element. The relative importance of ~~its~~ elements is a matter for the decision maker.

9. NPPF Paragraph 150 confirms that a) mineral extraction and b) engineering operations, (which would include bunds) ~~may~~ be acceptable in the Green Belt, but only subject to the key proviso that they continue to maintain openness.

10. The PPG also gives guidance on what openness means, and what sorts of things could impact on openness ~~based~~ on the relevant caselaw

11. Everything, therefore, turns on the interpretation and analysis of openness. Caselaw defines what the word means in planning terms. It is for the planning decision maker to apply the definition to the facts of a case and make the value judgment.

12. This is what happened in the previous appeal with Inspector Normington. It is notable that no challenge was made to that Inspector's interpretation or application of "openness"

It is also notable that Inspector Normington's findings resonate with the Mere Park Decision as set out further below.

Typical.

16. The Appellant places enormous weight on the contention that this site is "typical". NF Summary Proof para 1.32 and NF 3.10 "Bunds are a normal quarry mitigation – measures to screen".

The Appellant asserts that it is not unusual to have bunds on a quarry site and this is undeniably

Consequently, I have determined this appeal on the basis of the scheme as considered by the Council.” [ Emphasis added].

18. It has been highlighted that the particular plant was not conditional on Option 1; nor was the scale or dimensions of the bunds. It would always have been open to the Appellant to substitute more modern plant and amend the bunds within the purview of Option 1.

19. Regardless of the date of when the Appellant was first in a position to amend their scheme, or the real reason why they have chosen to do so, the fact that they have chosen to do it mid-appeal has given rise to a conundrum of their own making. The Appellant’s proposal must be judged as to whether it causes the least possible impact on the Green Belt. C Whitehouse [CW] in his paragraph 4.8 confirmed that part of the VSCs will be a need to demonstrate why any chosen method or approach is not able to avoid or minimise a reduction of openness. Both the Appellant’s witnesses accepted that it was appropriate to design the proposal to minimise its impact on its GB location. NF para 2.48 and 2.49 refers to “Carefully designing” and the “improvement” comprised by Option 2.

20. CW paragraph 4.15 confirms that: “Taking into account the matter of a “tipping point,” it is expected that any approach to minerals development within the Green Belt would optimise design in balance with operational needs to seek to preserve the openness of the Green Belt and the effect on Green Belt purposes, so as not to be inappropriate.”

21. It cannot rationally be said of the original Option 1 proposal that it has “optimised design” in light of the tabling of the alternative reduced Option 2 proposal. It is clear that Option 1 is clearly capable of further mitigation. Whether the Inquiry accepts the reduced Option 2 scheme or not, that conundrum is now firmly on the table to be considered.

22. The bunds for this proposal are intensive for a relatively small quarry operation, and this is because the bunds are necessary for mitigation; of noise, dust and visual impacts in particular. JWKC said of the Option 2 improvements that “They are all beneficial changes”. However, there has been no analysis proffered by the Appellant of why these particular changes have been selected for the bunds or anything else what the justification was; or what the claimed benefits are, to openness. There is a comparative table of original bunds and Option 2 bunds, but this is quantitative, not qualitative.

23. In the Opening submissions, JWKC stated ( paragraph 6) “Should the appeal be allowed, the Appellant would want to take advantage of these advancements in available plant for efficiency and environmental reasons.”

Nothing has been set out as to what those reasons comprise. Nor is there any explanation as to why the Appellant cannot utilise the plant that they choose under Option 1 anyway.

24. NF Summary Proof paras 1.16 and 1.40 set out the extent of the reductions in Option 2, but there is no rationale in the evidence for why these particular reductions were capable of being made, or what benefits the Appellant claims that they afford, for the benefit of t operation, or the GB, or anything else.

25. The Council maintains its position that both proposals would do unacceptable harm to the openness of the Green Belt, and also to two of the purposes of including land within the Green Belt, namely checking the unrestricted sprawl of built up areas, and safeguarding the countryside from encroachment. With respect to those two purposes, the cumulative impact Gre33.990 Tw 3.

Samuel Smith Supreme Court [Carnwath LJ]:

22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.

23. The Appellant’s expert witnesses had no hesitation in agreeing that GB openness in principle, and the five purposes of including land in the GB are different and distinct concepts not synonymous. That is the significance of the word “linked” in the passage above.

24. Turner<sup>5</sup> Judgment para 23:

“At para. [22] Sullivan J said, “The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective”.

The loss of openness in principle is harmful; before anyone has looked in its direction. That’s before any consideration of any conflict with the five purposes. One of the characteristics of the GB is its openness ( and its permanence) regardless of which of the 5 purposes it serves, if any. It is possible for a site to fulfil the aim of the GB by being open, permanently, without additionally serving any one of the five purposes in particular. This, in fact, was the conclusion of Inspector Normington.

Double use of “sprawl”.

25. The word “sprawl” gets used twice in GB Policy. Once to describe the underlying aim of the GB ,and the second time to describe one of the purposes.

NPPF: 142. 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

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<sup>4</sup> CD13.18 See CD12.06 (Appendix W) Judgment, R (on the application of Samuel Smith Old Brewery



Samuel Smith Supreme Court [Carnwath para 22]:

“.....the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.”

“Counterpart” is an ordinary English word. This paragraph in the Judgment is highlighted to contradict the Appellant’s contention that any site that does not, in and of itself contain and comprise urban sprawl is automatically to be credited with the characteristic of “openness”. That clearly is not correct. If a quarry inevitably maintained openness because it does not itself comprise built development and therefore urban sprawl, then there would be no need for the Para 155 NPPF proviso. All quarries would qualify automatically for inclusion in the GB. But they do not.

26. All mineral sites are inevitably not the same. They are unique in terms of the operation, and in terms of site and location. The Appellant’s case is predicated on alleged impossibility. (para 55-56)

30. Openness has two elements: Visual and Spatial. Either or both may be relevant to

barrier to urban sprawl a quarry ~~may~~ regarded in Green Belt policy terms as no less effective than a stretch of agricultural land. [Emphasis added].

“May” is an important word: and it equally implies the converse, that it may not.

35. What this means is that the mitigation measures, such as bunds, may successfully address harm to landscape and visual amenity, but still do harm to the visual element of openness.

36. The Council levelled criticism at NF in cross examination at the last Inquiry in relation to the paucity of the assessment that he had conducted on GB openness, particularly the spatial element. The same criticisms were made at the current Inquiry. Even after the same points were raised in Inspector Normington’s Decision, and even after the revised Option 2 has been submitted, the Appellant has not given any further attention to this critical matter.

#### Temporary

37. The primary answer of the Appellant to the impact of the proposal on openness is that the proposal is temporary, and will be restored back to Green Belt. This is not, in fact, an analysis or answer to the impact itself. If temporary duration were the primary consideration for impacts of mineral sites on GB openness, then it would be assessed by focussing on an acceptable time frame for reasonable extraction of the amount of mineral that is there, because it can only be worked where it is found. That is not how mineral extraction in the GB is approached. It is a multi-layered approach, based on the need for the minerals, (relating to the Planning Authority’s landbank); the harm that the proposal will cause, the duration and remediability of the proposal, and other relevant factors. Duration does not trump all other considerations; it is just one factor out of several, and it is entirely possible that a mineral extraction proposal, even of short duration, could be refused permission.

38. Europa Oil makes it plain that temporary development can still be inappropriate development:

“Temporary duration

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development was irrelevant to its inappropriateness he would have been in error, as I shall come to”

39. This was also something recognised in the previous appeal Decision:

Inspector Normington:

“76. I recognise that the proposed duration of the development may not be considered to be lengthy in comparison to some mineral developments. Nonetheless, in the context of the visual and spatial components of the Green Belt, the operations could reasonably be considered as occurring over the medium/long term. In my view, the placement and retention of Bunds 1-5 in a prominent central position within the site for up to 11 years represents a significant period.”

“78. The adverse effects of the bunds on openness would be fully reversible in time. Nevertheless, the harm for up to 11 years could be considered as a medium term effect. In my judgement, bunds of the length, height and duration proposed in sustained open area would, in combination with the extraction operations, result in the partitioning of the site and would have a substantial spatial and visual adverse effect on the openness of the Green Belt.”

40. The duration of the operation might not be very long in minerals terms, but still be too long in GB openness terms. They are two different evaluations.

Ware Park:

Temporary:

“436. The temporary nature of the works should not be given much weight as that is the nature of mineral extraction. It is a consideration in determining the quantum of any harm, but cannot also be used as a factor to weigh in favour of a proposal since whether VSC exist.”

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<sup>8</sup> CD12.39 Secretary of State’s (SoS) letter dated 4 April 2019 in relation to an appeal by RJD Ltd and Gowling WLG Trust Corporation Limited for land at Ware Park, Wadesmill Road, Hertford (APP/M1900/W/17/3178839)

41. Ware Park– SOS Decision 19.

“ He has also considered the Inspector’s reasoning at 187366 in relation to the effect of the bunds and tree planting on the openness of the Green Belt and the setting of historic Hertford. In reaching his conclusion, the Secretary of State has taken account that the bunds could exist for up to 10 years, which for GLVIA3 in landscape terms marks a boundary between medium term and long term effects.”

42. The Planning Practice Guidance (PPG) paragraph 6-401-20190722 sets out the correct approach

“...assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- openness is capable of having both spatial and visual aspects. In other words, the visual impact of the proposal may be relevant, as could its volume
- the duration of the development, and its remediability, taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness
- the degree of activity likely to be generated, such as traffic generation”

“Activity” in this context is not to be equated with Highway or Transport impacts in NPPF terms.

43. NF at paragraph 2.37 of his Proof deals with vehicle movements, but only in the context of sensitivity of receptors. That is not the point in relation to the visual element of openness as set out above. He also conflates highway impacts, which is a different point again.

44. WCC continues to maintain that the Appellant has given insufficient consideration to the issue of the degree of activity. The effects on openness of this development on this site are exacerbated because this is not a static site, and the bunds in particular are not static features, and will not be assimilated into the countryside. The erection, maintenance and dismantling

the bunds have an impact on openness, over and above their ongoing presence in the landform for shorter or longer periods

45. It is important to note that the fact that activity (which is not a form of built development) can be assessed as being the converse of openness completely undermines the Appellant's argument that land that does not contain built development or urban sprawl inevitably comprises and maintains openness.

46. CW dealt with duration:

CW 4.37– “Notwithstanding final restoration; the description of works above identifies that there will be major development of the site over 11 years. The bunds, internal haul roads, plant areas and associated activity are all significant developments that affect openness. There would also be very significant lorry activity within a current provision of countryside land, together with an intensified access junction and associated highway movements.”

47. This has not been dealt with adequately by the Appellant, notwithstanding Inspector Normington's conclusions at DL 79 –

“79. Furthermore, although a phased development is proposed, the operations would be intensive and occupy considerable areas of the site at any one time for the purposes of extraction, infilling and bund placement/removal. I accept the Council's view that this is not a static site and that the bunds, in particular, are not static features. Although some will be grassed, they will nonetheless appear as engineered features that will not entirely assimilate into the landscape. The erection, maintenance and dismantling of the bunds has an impact on openness, in addition to their ongoing presence in the landform, for shorter or longer periods.”

48. This was also dealt with in the Ware PD Decision [CD 12.39]:

“366. Plant, equipment, access and activity associated with mineral extraction here would, to some extent, impair the openness of the area. But not enough in my view to exceed the threshold or tipping point for the purposes of applying paragraph 146. In view of the proposed bunds would have a greater adverse impact on the openness of the Green Belt. The scheme would include substantial lengths of bunds up to 3 m high to screen views of the operational phases of mineral extraction. These would be constructed and removed as required for each

phase, but at times the engineered structures would truncate open views from PRow within this part of the Green Belt. [61]

“367. The bunding around the stockpile and attenuation area would have a greater impact on openness because it would be between 4 m to 7 m high, and could exist for up to 10 years. *This is a significant period, which for GLVIA3 in landscape terms, marks a boundary between medium term and long term effects.* The bunds would surround a stockpile area that could provide for up to 50,000 m<sup>3</sup> of sand and gravel stored up to 5 m high. These bunds and stockpiles would be located on the eastern slopes of the valley facing towards a busy road. The bunds would be prominent structures in close up views from the B158, especially where roadside vegetation was removed to provide the visibility splays for the access junction. Replacement planting would take time to provide some screening, and views would remain through the widened access. [14,15,61,216,272,273,289] [ Emphasis added].

“368. The adverse effects of the bunds on openness would be fully reversible in time. *Nevertheless, the harm for up to 10 years could be considered as a long term effect.* In my judgement, bunds of the length, height and duration proposed in such an open area would have a substantial adverse effect on the openness of the Green Belt. [ Emphasis added].

49. As pointed out above, the duration of the operation in minerals terms and in openness terms are not the same thing.

Openness: Spatial Element

50. The Appellant’s Statement of Case [CD 13.29] limits its consideration to noting the conclusion in the Officer’s Report ( rather than reaching a conclusion of their own) that

p. 18 para 5.5 “Whilst the proposal would be visible, it would not be very visible due to the topography, proposed temporary soil storage / visual screening bunds, existing historic boundary walls and proposed planting, with any views being contained to a few receptors. It is considered that the visual impact on openness does not make this development “inappropriate”.”

That is a landscape visual impact conclusion. It is referring to the bunds as being part of the solution on visual impact, rather than a potential part of the problem.

51. In his Proof for the previous Inquiry<sup>9</sup> NF said:

OLD PROOF NF 2.28 –

“2.26 My assessment is structured into four parts. Firstly I cover the visual impact of the temporary built structures within the Plant Site, *which arguably as built development are the only scheme component that have the potential to have any impact on Green Belt openness*, secondly the access road and associated vehicles, and thirdly the phased mineral extraction and temporary screen bunds. Finally, I consider the cumulative impact of other relevant developments in the planning system since the ES was submitted [Emphasis added].

52. That was fundamentally incorrect in the last Inquiry, NF exclusively concerned himself with visual impact inferring that there was no spatial impact whatsoever from the bunds. It is notable that he does not maintain this position anymore, and he has amended his Proof to remove this paragraph.

The Bunds.

53. At NF para 2.6 he references the “soil storage bunds” but that is not all they are needed for. They are mitigation to “block” ( the term used in the LVIA) and “screen” ( the term used in NF’s proof) the views of the construction/excavation. This is an important element of the bunds. Straw bales are used to block and screen as well. They all clearly have an impact on the spatial element of openness, which still has not been adequately analysed. NF has been content to rely upon the LVIA conclusions on the impact of the development on landscape character and amenity

54. There are details of the bunds in the comparative table between Option 1 and Option 2. There is an assessment of the mitigation benefits of the soil bunds set out in the Appellant’s Landscape and Visual Impact Assessment (LVIA). But no one on the Appellant’s side has analysed the effect that the bunds themselves will have on openness. There was no separate conclusion in the ES ( LVIA) on GB openness. NF’s Proof simply extrapolates character and visual conclusions to an openness conclusion. That is a significant failing in the Appellant’s evidence.

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<sup>9</sup> POE2.04 08741 01 Landscape PoE Vol 1

<sup>10</sup> POE2.04 08741 01 Landscape PoE Vol 1







at NF 2.41 on views below the skyline. JWKC in the Appellant's opening submissions made reference to the plant site being located on "lower ground" ( paragraph 9). These points are only part of the issue, and mainly focussed upon the effect on visual amenity, not openness. At NF 2.42, the same error is repeated in referring to "Fleeting views from the road corridor", which is a point about sensitivity of receptors.

65. The Inquiry has heard CW's evidence and that of local people about what can and cannot be seen regarding the bunds, and from which viewpoints, and these will have been assessed on the site visits. It is, of course, possible to gain different impressions of the bunds from a myriad of different positions, and parties can maximise or minimise as they wish, but ultimately, this is a matter for the decision maker.

66. It goes without saying that CW for WCC completely disagreed with NF for the Appellant in terms of the visual impact of the development on GB openness. CW found very significant detrimental effects on visual openness, from every angle, having identified the viewpoints from which those effects will be experienced. CW identified that the bunds which are likely to have the greatest impact, around the plant site, are those that will be there the longest, for the duration of the development.

#### Visual and Spatial– Conclusions

67. In assessing the impact of the proposal on the visual and spatial element of openness, the precise location of the site is vitally important. The Council agrees with and relies upon the conclusions of Inspector Normington in this regard:

DL 82. "In forming the predominant Green Belt landholding between Kidderminster, Wolverley and Cookley, the appeal site provides a visual perception of openness between these settlements. As a consequence of the extent of the proposed extraction operations at any one time and the associated bund provision, I consider that the proposed development would exceed the paragraph 150 threshold for mineral extraction/engineering operations concerning the preservation of the openness of the Green Belt. In my view, the proposed scheme would not preserve the important spatial and visual components of the openness of the appeal site."



the release of Green Belt elsewhere and therefore supporting the wider aims of the Green Belt in this area.”

72. The release of the Lea Castle Village land from GB has nothing to do with the impact of the appeal site on the openness of the GB. ~~KB~~ was consistently more comfortable in his Proof in discussing the proposal at the end of its life, and the time of restoration (para 2.10 and 2.11), but less focussed on talking about the impacts of the site during its life ~~Temporary~~ duration and restoration quality ~~potential benefit~~, and it is something that could go into the planning balance ~~if the assessment of the site gets that far~~ ~~that they are irrelevant~~ considerations for an analysis of openness during the lifetime of the development.

73. JWKC made the same contention in the Opening submissions for the Appellant, by stating at paragraph 10 that “this quarry’s high environmental standards and restoration scheme are strong indicators of its appropriateness in the Green .” Belt That is not the right test. Appropriateness in the GB is tested by way of impact on openness during the operational lifespan of the quarry: not on what it will look like when it is all over and done.

74. As before, the Appellant has failed to acknowledge the heightened purposes that this site performs once the cumulative Lea Castle development is implemented fully. The remaining GB is rer2dB4n (w)-2..



DL 80. “The extent of the proposed extraction and restoration phases, due to their expansive nature within the confines of the site, would, in combination with the bunds, contribute to a loss of openness. This is particularly relevant in this case due to the important role that this

83. NPPF Paragraph 137 indicates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. GB sites restrict sprawl by staying open themselves. Therefore, anything that fails to keep GB land permanently open fails to restrict sprawl. This is the correct analysis.

84. JWKC said in cross examination of CW:

“Openness is the counterpart of urban sprawl. If it is not urban sprawl, ( in itself) then it doesn’t impact on openness.”

That is not correct, and that is not what the caselaw means. As indicated above, that is not what “counterpart” means. The underlying aim of GB policy is to “prevent” urban sprawl “by” keeping land permanently open. That is something different from the site “being” urban sprawl.

The Samuel Smith case does not say that a mineral site by definition ~~does~~ prevent sprawl, it says that a mineral site ~~may~~ be no less effective than an open field. This is going to be a very contextual assessment.

85. NF in his Proof 2.15 states that the site cannot “lead” to unrestricted sprawl because it is not connected to a built up area. ~~also says~~ that the site cannot be “read” as sprawl in itself. This is simply re-framing the question into one that the Appellant feels able to answer to their satisfaction, but “lead” and “read” is not what the purpose actually says. The terms used is “check” unrestricted sprawl. It has nothing to do with whether the urban sprawl is happening on the land itself. The Appellant asserts that in order to be capable of checking unrestricted sprawl of large built up areas, the site itself must (i) be connected to a large built up area and (ii) become part of that large built up area itself, with more built up development. There is nothing in the description of the purpose that justifies that interpretation. ~~isnt~~ happens, this ~~isnt~~ and will be “connected” to large built up areas ~~forming~~ the question (the (t)/ ( ne (t)2/ ( ne (t)



That is not the test.

87. JWKC also put to CW that: "Bunds are not urban sprawl". This appears to go back to NF's original case set out in his Old Proof for the previous Inquiry, that only plant, as built development, is capable of conflicting with openness, and bunds are not. NF rightly abandoned that line in this appeal.

88. In his Proof CW 4.14 states: "For planning judgements openness is often equated with 'absence of built development'. Sprawl is a multifaceted concept and thus has a variety of different definitions which may apply according to context. Sprawl is the converse of open and undeveloped land and may include an uncontrolled or cluttered urban fringe or development which adds to a loss of attractiveness or sense of untidiness. "

#### Encroachment

89. The terms "sprawl" and "encroachment" are highly related. Indeed, there is overlap between many of the five purposes of the GB.

90. NF Proof 2.16 starts to deal with safeguarding from encroachment but then, in fact, moves away from that topic to discuss the spatial element of openness generally.

91. CW at his Proof paragraph 4.22 refers to: "Encroachment' is generally defined as a gradual advancement of urbanising influences through physical development or land use

set for it in national policy to determine the extent to which it is contributing to those purposes. The report does not identify land for release or development.”

93. All of the North West Worcestershire Strategic Corridor (MLP) is located within the West Midlands Green Belt. This does not mean that it is all of equal importance or all achieving the same functions. NF 2.46 stated that this site is: “a very limited proportion of the wider GB”. This is a bad point. There is no indication of how the “proportion” is being measured, or based on how much of the GB in total. It also fails to recognise the particular ~~importance~~ of this site in the GB, which is not based upon a quantitative calculation.

94. The appeal site sits within land parcel N7 of Green Belt reviews Parts I and II (Appendices WCC1 and WCC2). 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

95. Review Conclusions: p. 107

“Parcel N7: Purposes of the Green Belt

(1) To check the unrestricted sprawl of large built up areas

Ribbon development - Does the parcel play a role in preventing ribbon development, Particularly along major transport corridors, and/or has the Green Belt already been compromised by ribbon development (significant role, moderate role, limited role)?

Openness - To what extent is the parcel free from development and have a sense of openness (strong, moderate, weak)?

CONTRIBUTION: - The parcel protects open land from potential development pressures associated with the A449 and creation of sprawl along this key road corridor. “

96. Note that the Review talks about the “sense of openness”. That is not restricted to what



Castle development, and before the allocation. So, cumulative effects were not taken into account. To get an up to date picture, the GB review would essentially have to be done again, to get an accurate picture of the contribution that this site now makes relative to the other development- existing and proposed. Clearly, even prior to those two development proposals, the appeal site was 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. CW agrees with the Review and LT disagree, but fail to explain why they are right and the Reviewers, or CW are wrong.

101. CW explained why he agrees with the assessment of the Review, and its relevance to this site:

CW Proof 4.71 "I agree with the conclusions of the review. The site sits at its narrowest within a 1.3 kilometre gap between the settlements of Kidderminster and Cookley. Views from the public right of way within the appeal site, adjacent to Castle Barns, provide clear views of Kidderminster to the south, on higher land, and Cookley to the north. The two settlements do not appear visually distinct, with the role of the appeal site in providing visual separation further undermined by the impact of the mass of the built development in combination with individual dwellings located across Wolverley Road, in Green Belt land parcels N5 and N6, which creates



“It is important that the need to establish VSC is not watered down. Clear and cogent analysis is required”and

Paragraph 21- Very special is not just the converse of commonplace.

109. ‘Very special doesnot have to be rare, but there does have to be something not only special about the circumstance, but *very* special. It is possible to combine several elements, so that together they are very special.

110. Wychavon [CD12.29] suggested that the special circumstances must be special in the

114. JWKC put to CW that the only reason the landbank provision had improved is because of the difference in the LAA calculation. There is no reason to make the calculation against anything other than the ~~update~~ applicable figure. ~~he~~ PPG states that where the level is below the 7 year requirement it ~~may~~ be taken as a strong indication of urgent need; not *must*. So – there is clearly a sliding scale.

#### Sustainability of Location

115. The Appellant has attempted to demonstrate that the market for their product will be different, and more receptive. CW does not ~~agree~~ concluded that the market will be roughly the same. CW's attribution of moderate beneficial weight to the sustainability of the marketplace is the right assessment.

116. At CW Proof 5.6, CW sets out that whilst the geographical spread of resources is a benefit, there is not an acute issue that requires supply to be spread proportionality across different marketplaces. As such, he attributes moderate weight to ~~the~~ *the* ~~ma~~

117. The NPPF sets a 'blanket' landbank for sand and gravel (minimum 7 years). It does not seek to make distinctions between different grades of product, and the different markets that it serves. Economics will drive the destination of the quarried material, and also for the inert waste fill, not just geographical location.

118. CW at Proof 5.7 concluded that the sustainable movement of inert waste was not demonstrated to be a particular benefit of the proposal, as neither the appeal site's location nor the details provi(t)-2 ( 0 Tc 0 T)4 (a)-vdicul, a,ck, asaiaalstion s pro7 cluded tio7 c0[(C)-3 ()1 (ti

120. The Inspector was not sure about the inert fill ~~but~~ “withstanding” that, he still thought it would take a long time to restore, which impacts on openness.

#### Economic Benefits

121. Moderate weight is attached to economic benefits, but there is no evidence that levies or taxation can provide any uplift to that weight.

#### Restoration and Biodiversity Benefits

122. At CW Proof 5.9, CW attributes moderate weight to the restoration and biodiversity benefits which is not as great as the Appellant claims. ~~It~~ fairly accepted that he had agreed with CW in the main SOCG that they differed on the weight to be given to the biodiversity net gain, notwithstanding the later acceptance by the ecologist in the ecology SOCG of significant weight. No point is taken by the Appellant on that.

123. JWKC said that there is a “massive increase” in the provision of, ~~BNG~~ there is no measure of “massive”. JWKC simultaneously asserts that “None of it is required by policy or legislation”. LT and JWKC in Opening sought to derive weight from the fact that Consultees were supportive of what they were being offered. They would have no reason to be anything other than supportive, but this does not translate into weight in the planning balance. The weight to be attributed is solely a matter for ~~the~~ decisionmaker.

124. There are no planning benefits, separately or cumulatively that could be given sufficient weight to amount to very special circumstances that would outweigh the harm to the Green Belt. The Appellant notes that Inspector Normington’s conclusions on the case last time was that it was “finely balanced”. That may be so, but nothing of any substance has changed on this occasion to cause the case to be resolved any differently. The ~~weight~~ attributed to the claimed benefits is broadly the same, ~~and~~ not outweigh the harm to the Green Belt.

125. CW’s assessment of the elements in the planning balance, and the VSC ( which are really identical), and the weight to be given to them is measured, balanced and reasonable, and is to be preferred to the assessment of the Appellants. CW accords with Inspector Normington.





