every stage, other than in relation to the impact on the Green Belt (which is dealt with in detail below) the conclusion has been the same, that the impacts are acceptable.

4. The Statement of Common Ground records[5] all the many consultees[6] who were consulted and were satisfied with the proposal. And Mr Whitehouse agreed in cross-examination that those expert statutory consultees did not just wave it through, they gave the matters active and detailed consideration, often with exchanges of correspondence which raised issues that were then responded to, examined and resolved.

5. Because of this, the report to Members by the County Council's Head of Planning and Transport Planning recommended approval and set out how all technical issues had been satisfactorily resolved[7].

6. Notwithstanding this, the Committee decided to refuse the application and gave nine reasons. Section 10 of the SCG[8] sets out all those reasons for refusal that the Council initially resolved on and that have been withdrawn. Mr Whitehouse accepted that the decision to withdraw (on all but one reason) resulted from another round of active consideration by officers and reconsideration by members.

7. But this was still not the end of the consideration. The issues continued to be pursued by the r.6 party at the previous Inquiry and so were subject to yet further detailed assessment and hearing by an independent Inspector.

[5] rID2, para 2.16
[6] The only remaining expert consultee who objected was the tree officer (rID2, para 2.17, p.9) but CW accepted that the Council Landscape Officer was happy that the adequate tree protection could be achieved, see rPOE2.12, p.222 and CD10.1, OR paras 737 to 738, p.154)
[7] CD10.1 and see LT proof Appx 2 (rPOE2.12, pdf p.209 to 228), which CW agreed to be a fair and accurate summary.
[8] rID2, pdf 32 to 33

8. In each round of consideration, the conclusion was the same, namely that the appeal scheme was satisfactory and acceptable in all those respects.

9. Therefore, putting to one side the Green Belt issues, Mr Whitehouse was right to expressly accept in cross-examination, that, from his perspective,

> "this Inspector can be satisfied that all issues have been given detailed, active and thorough consideration by all relevant statutory consultees and expert bodies, by the Council and by the previous Inspector and have been found to be acceptable at every stage"[9].

10. I now turn to deal with the main issues identified by the Inspector.

(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.

Green Belt Policy

11. Mr Whitehouse accepted that the development plan policies (Policy MLP 27 of the Minerals Local Plan (CD11.03, p.155), policy DM22(g) (CD11.05, p.169) and policy WCS13 of the Waste Local Plan (CD11.04, p.80)) adopt the NPPF test of appropriateness as the test of whether mineral extraction (and waste fill) operations will be supported in the Green Belt. It follows that if it is determined that the proposal is not inappropriate in the Green Belt under the NPPF, it attracts development plan policy support from Policy MLP 27 and Policy DM22(g) and WSC 13.

12. Even if it is determined to be inappropriate development in the Green Belt, such development can be approved under the relevant policy in very special

[9] Expressly accepted by Mr Whitehouse in cross-examination

predominant area between the settlements of Cookley, Wolverley and Kidderminster is not the area containing the appeal site but is in fact the area near the canal between Wolverley and Cookley (i.e the canal area). That area will of course be entirely unaffected by the development.

16. In concluding 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", the previous Inspector placed some significant weight on the appeal site's role in the "visual perception of openness between

- ‘new or enhanced walking and cycle routes’ – ‘new public right of way created measuring approx 2.3km’[19]
- ‘improved access to new, enhanced or existing recreational and playing field provision’ – pocket parks

21. As to the impact of traffic and activity on openness, there will be hardly any awareness of the activity of the plant site itself which will be largely hidden below ground level and the extraction activity will be progressive with relatively small areas of activity at any one time, with the disturbance akin to that caused by farm machinery. There will be an increase in lorry movements along a short section of Wolverley Road to the east of the access road. However, as stated below (under main issue 6), the highest predicted increase in traffic from the operational phase falls well below the materiality threshold and represents less than the 8% margin representing the observed day to day variations currently experienced on local routes. For these reasons, Mr Whitehouse was wrong to suggest that the lorry traffic has a material impact on openness. It is not predicted to be material in itself, and, in any event, no-one has suggested that it falls beyond the level of lorry movement which is intrinsic to, and to be expected from, typical quarry development and which the NPPF author must have had in mind when setting out the exception from inappropriateness for mineral extraction development.

22. Whilst it is acknowledged that bunds can have an impact on openness, they are not built development and so they do not make an area more ‘built up’. They are an extremely common feature of quarry development; in fact Mr Furber had never come across a sand and gravel quarry development that did not include bunds (see also the examples at Appx 3 to 5 to his proof[20])

23. Indeed it is worth noting in the

not amount to inappropriate development in the Green Belt[27]

28. Finally on openness, it is agreed that this proposal is a quarry that includes minimal built development (3 portacabins), all set below ground level. As such it cannot realistically be said to constitute urban sprawl, particularly as the caselaw considered below establishes that the other aspects of quarry development can be an effective barrier to urban sprawl. As the counterpart to urban sprawl

extracted where they are found and would run directly contrary to the purpose of the exception from inappropriateness for minerals development in NPPF para 155(a).

(d) *to preserve the setting and special character of historic towns*

40. Mr Whitehouse was obviously correct to agree that this Green Belt purpose is not relevant to this case as there are simply no historic towns that would be impacted by the development. Even if Cookley or Wolverley could be considered to be 'historic towns' their setting and character would not be affected for the reasons given by the previous Inspector at IR68. Mr Partridge also sensibly accepted that Cookley and Wolverley are not 'historic towns' and that the appeal site is not in the setting to them.

(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

41. As to the final Green Belt purpose, sensibly no-one suggests that the urban regeneration purpose / aim of recycling derelict land is of any relevance to this appeal or type of development.

42. In conclusion, the appeal proposal will preserve the openness of the Green Belt in this location and does not conflict with any Green Belt purpose.

Does the appeal proposal represent inappropriate development in the Green Belt?

43. Under paragraph 155(a) of the NPPF, mineral extraction proposals are, by exception, not inappropriate development in the Green Belt so long as "they preserve its openness and do not conflict with the purposes of including land within it."

44. Whilst a lot of the inquiry has been taken up by consideration of impacts on openness and, in particular, the visual component of openness (see above), it is submitted that, on the basis of the correct interpretation of paragraph 155(a), absent any particularly unusual feature (such as an excessive amount of built development or excessive

degree of activity, beyond what is necessary for the proposed mineral extraction[33]),

definition preserves openness and falls within the NPPF exception from inappropriate development.

The Law on the Interpretation of Paragraph 155(a) of the NPPF

48. The High Court in *R (Europa Oil and Gas Limited) v. SSCLG* ([2013] EWHC 2643 (Admin), CD12.07) quashed a decision of the Secretary of State on the basis that the Inspector had failed to consider whether the proposal in that case (hydrocarbon exploration) fell within the above exception from inappropriate development. The Court interpreted the above exception in the NPPF as setting a premise as a starting point:

> "The premise therefore for a proper analysis is that there is nothing inhereiiproper analysi

where those operations achieve what is required in relation to minerals. Minerals can only be extracted where they are found […]

Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt." (***Europa***, CD12.07, paras 67 – 68)

[….]

In my judgment it is clear [that] the relevant policy, spells out factors of direct relevance to appropriateness: the temporary nature of the activity, the environmental standards maintained during operation and the restoration of land to beneficial after use consistent with Green Belt objectives within an agreed time limit, are all relevant to issues of appropriateness." (***Europa,*** CD12.07, para 71)

50. And the Court made further comment as to the purpose of NPPF para 90 (now para 155):

"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. It does not depend for its purpose on fanciful notions of drilling rigs at the bottom of a large quarry. For MC3 purposes, the temporary nature of development underlies the policy on appropriateness and its reversibility is crucial to it." (***Europa***, para 75)

51. In summary, it is submitted that the following principles can be drawn from the Judgment in ***Europa***:

(a) Development proposals for mineral extraction are not to be considered as inappropriate development in the Green Belt merely by virtue of the necessary presence of plant, buildings and other structures (including bunds) and/or by virtue of the operational activity of extraction.

(b) Because of their temporary duration and reversibility, mineral extraction proposals are usually not inappropriate development in the Green Belt, unless there is something about them which makes them atypical.

(c) Further if it is considered that good environmental standards will be maintained during operation and that there will be restoration of land to beneficial after use consistent with Green Belt objectives within an agreed timescale, then these will be strong factors indicating that the proposal is not to be considered as inappropriate development in the Green Belt.

52. The Judgment of the Supreme Court in *R (Samuel Smith Old Brewery (Tadcaster) v. North Yorkshire CC* ([2020] UKSC 3, CD12.06) also made some instructive comments about the appropriateness of mineral extraction in the Green Belt. Lord Carnwath drew attention to the fact that, in the previous national policy set out in PPG2, para 3.11, mineral extraction may be regarded as not inappropriate, subject only to "high environmental standards" and the quality of restoration:

> "Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored." (extract from para 3.11 of PPG2, set out at para 10 in *Samuel Smith*)

53. Lord Carnwath noted that in PPG2, the exception for mineral extraction had only been subject to these two issues (high environmental standards and restoration) and had not been expressly subject to an impact on openness proviso as it now is in the NPPF. Further, he specifically considered that the change from PPG2 to the NPPF was not "intended to mark a significant change of approaÞ l ‘ m A M

“I do not read this as

of the NPPF as interpreted by the case law is that a quarry without significant built development does inevitably maintain openness because it does not constitute urban sprawl (which is the counterpart, or converse, to openness).

56. It follows from all this that, once it is established that the associated buildings and other development are minimal, the key issues when considering the appropriateness of temporary mineral extraction in the Green Belt are the question of whether high environmental standards will be maintained and whether the land will be well restored.

57. In relation to this issue, the previous Inspector[39], the Council and all relevant statutory consultees agree that high environmental standards will be maintained and that the proposed site restoration is good quality and can be achieved and secured (see reps from Worcestershire Regulatory Services, Environment Agency, Natural England, Worcestershire Wildlife Trust, District Council's Countryside and Parks Officer, County Ecologist, County Landscape Officer, Woodland Trust and Forestry Commission and Hereford and Worcester Gardens Trust). This will include very significant biodiversity net gain, restoration in line with the MLP priorities, benefits to recreation by increased public access routes and pocket parks, restoration of historic parkland features and no policy conflicts in relation to noise, dust, air quality or health impacts (all set out in more detail under main issues 3, 4, 5 and 7). As set out above (at para 20), Mr Whitehouse also accepted that the proposal provides improvements akin to those listed as particularly relevant to the Green Belt in the PPG.

58. Further, it is clear that the effects will be temporary, and particularly so, because of the progressive restoration. Mr Whitehouse acknowledged that the western area gknowle23 770nkı

undisturbed (i.e phases 4 and 5, in the first five years) or restored (i.e phases 1 to 3, in the second five years).

59. All these factors, along with the relative lack of built development, should lead to the conclusion that the proposal is not inappropriate in the Green Belt. And this should be the case irrespective of any impacts on openness which are the inevitable effects of quarry development of this scale, particularly in circumstances where the main part of the proposed development is situated largely out of sight, 7 metres below existing ground level.

60. Lord Carnwath made clear the following in relation to mineral extraction (emphasis added):

> "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. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land." (*Samuel Smith* at para 22, CD12.06, emphasis added).

61. Finally, in relation to *Europa Oil*, Lord Carnwath commented as follows:

63. Whilst the Inspector in the previous inquiry came to a different overall conclusion on inappropriateness (see paras 59 to 87 of the Decision dated 5 May 2023 "DL"), it is submitted that the conclusion of the previous Inspector on this point should not be followed for the following reasons:

    (a) The Inspector's view of the site's "importance in fulfilling Green Belt purposes" and his view that "the site plays an extremely important Green Belt function" (DL60) was in the context of him recording that "the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open;" (DL61 and DL80). In attaching "considerable weight" to the site's function in this respect when addressing the issue of inappropriateness, the Inspector failed to properly appreciate the role that a quarry can have in <u>preventing</u> urban sprawl and thus in <u>maintaining</u> separation between settlements (one of the Green Belt's purposes). Properly considered, a quarry development is a "barrier to urban sprawl" (see Lord Carnwath quoted above – CD12.06, para 22) and consistent with these purposes of the Green Belt. This means that, far from supporting a conclusion that the development would be inappropriate in the Green Belt, the site's location between settlements and the nature of quarry development should have been supportive a conclusion that the development would <u>not</u> be inappropriate in the Green Belt.

    (b) The previous Inspector did not have the benefit of all of the visualisations provided to this Inquiry which show the localised and modest impact of the bunds upon the openness of the Green Belt, that would in the case of activity to the west of the bridleway, be limited to less than 5 years.

    (c) The previous Inspector's consideration of the visual perception of openness between settlements (IR82) may have been unduly influenced by the two-dimensions of a plan or map and without full consideration of the fact that there is only one view point (Viewpoint 8) beyond the appeal site from where there is any perception at all of the space between settlements and the proposed Lea Castle Village allocation. At this viewpoint 8, (i) even the appreciation of space between the settlements and the allocation gained from there is very limited; and (ii) the impact of the temporary extraction on

the site visible from that location will not obstruct open, panoramic views to the Green Belt beyond the site.

(d) The previous Inspector was not provided with a copy of the Secretary of State's decision in Ware Park in which the Secretary of State clearly concluded that the Inspector was wrong to consider that the presence of significant bunding in an open and visually exposed area of the Green Belt was capable of causing a mineral extraction development to constitute inappropriate development in the Green Belt (see above).

(e) The previous Inspector did not have the benefit of the amended proposals which demonstrate how the openness impact of the scheme can be minimised even further by modern plant of a reduced size which allows the imposition of conditions restricting the number and heights of the bunds without compromising on noise and visual attenuation.

(f) Contrary to the parameters established by the caselaw set out above, the Inspector did not consider the high environmental standards and the calibre of the restoration scheme in the context of considering appropriateness. Both ***Europa*** and ***Samuel Smith*** emphasise the importance of these factors in the consideration of the issue (see extracts set out above).

64. In light of all the above, it is accordingly respectfully submitted that the appeal scheme is not inappropriate development in the Green Belt and that there is no requirement for very special circumstances to be demonstrated. There is no good basis to depart from the considered conclusion of the Head of Planning and Transport Planning in his advice to committee:

> "It is considered that the proposal is in line with any 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

proposal should benefit from those exemptions as it comes within the intended scope[40]."

65. However, even if it were concluded to be inappropriate development it is demonstrated in the evidence (summarised under the main issues below) that the benefits are sufficient to constitute very special circumstances in this case, such that there would still be no policy conflict in allowing the appeal.

(2) The effects of the proposed development on the character and appearance of the area.

66. The starting point is that the Head of Planning and Transport Planning in his advice to committee had the benefit of a number of experts with qualifications in landscape and visual assessment. None of those experts consider that the proposed development will have any significant adverse impact on the character and appearance of the area and all welcome the restoration proposals. As recorded in the Statement of Common Ground:

> "It is agreed that a Landscape and Visual Impact Assessment (CD1.04) was submitted as part of the planning application. The County Landscape Officer has no objection to the proposal, subject to appropriate conditions requiring the implementation of a CEMP and LEMP, with a long-term aftercare period to cover a period of at least 10 years. Hereford & Worcester Gardens Trust also hold no objection to the proposed development; and the Head of Planning and Transport Planning concurred, on balance with the findings of the LVIA[41]."

67. Impact on landscape or character and appearance has never been a reason for refusal put forward by the County Council. Further, at the Inquiry, Mr Whitehouse readily agreed in cross-examination that the proposals comply with the relevant local landscape guidance[42].

[40] CD10.01, para 461, p.103 and see careful analysis from paras 440 to 462.
[41] rID2. Para 8.11, p.28
[42] At rPOE2.07, p.36

71. The r 6 party's closing (para 77) refer to the landscape being 'valued'. That is the case in the sense that local residents do subjectively appreciate it. However, there can be no question about it being a 'valued landscape'

enforceable as to the dimensions of the root protection areas which will be required for T9 and T10.

77. In light of all of the above, the Inspector is invited to agree with the previous Inspector that there will be no unacceptable visual harm during the extraction period and that the restoration scheme will deliver landscape benefits of at least moderate weight and that there would be no conflict with policies MLP28, MLP 33, WCS12 or WCS14 (IR129 to 131).

(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.

78. The Council withdrew its reasons for refusal in relation to visual outlook[54], impact on health[55], noise and dust (including impacts to residential dwellings and Heathfield Knoll School and First Steps Nursery)[56].

79. At the previous inquiry, the rule 6 party maintained a case on these issues, but that case was rejected on each issue (see DL119 and DL127)

80. At this Inquiry,

81. As a result, the Appellant's expert witnesses were not cross-examined in relation to these issues and their evidence (referenced below) was unchallenged. **exami** the TJ ptahiain tq0.00

82. [illegible] (the Appellant's landscape and visual assessment expert) considered the visual impact on residential amenity in his proof at paras 3.1 to 3.39[58]. In line with the view of the previous Inspector, he considered that the Equestrian Bungalow is the property that would be most affected. But, taking into account the separation distance to the screen bund, its height and temporary duration for only 7 9 months, there would only

most-81(th 0 0 1 299.57 664.78 Tm0 g0 G[(in)] TJETQq0.000008871 0

86. Some local residents (although not the rule 6 party) raised concerns about the potential health impacts of respirable crystalline silica ("RCS") and the risk of silicosis. This issue was considered by Ms Hawkins at paragraphs 6.3.1 to 6.3.10 of her proof.[62] She referenced HSE advice which is that "No cases of silicosis have

linear metres to run parallel with its existing route and approximately 30 m to the west within the adjacent field for a period of approximately 2 weeks. These minor temporary works will be publicised and discussed with the Council and users of the track to ensure appropriate measures are in place and the same procedures will be put in place when the tunnel is removed, which will take approximately 1 week[67].

94. It is obviously wrong for the r.6 party to suggest in closing that the bridleway through the site is to be used as an access road for HGVs (r.6 party, closing para 118). That does not form any part of the proposal.

95. As for the e*n[(e)-5(B pa)t withic djfootp-11(hETQq0.000008871 0 595.32 841.92 reW*nBT/F3 1

will be a rising landform, with a 1:3 grass seeded slope, and well set back from the track (as shown in photomontages for Viewpoint C[68]).

99. As to the concerns raised about dust impacts on public rights of way, these were considered in some detail by the Appellant's dust expert and her conclusions were that, during the operations, there would be a low risk of dust impacts with slight adverse effects at most, reducing to negligible at completion of the works in the western part of the site (phases 1, 2 and 3). Her overall conclusions remain that the proposed development would not result in significant or unacceptable adverse impacts[69]. Ms Hawkins' evidence was unchallenged[70]. In these circumstances it is simply not open to the r.6 party to assert that "exposure to ...dust… from operations would severely compromise amenity. There has been no assessment of how these individually, or cumulatively will impact upon horses."

unilateral undertaking[81] ensures that they can be secured as part of that scheme in perpetuity without necessarily needing to be formally dedicated as PROW. Further, as is usual with s.106 obligations, both the operator and the landowner are signatories, meaning that the obligation binds the land irrespective of change in

116. Mr Partridge's proof on heritage was hyperbolic and not credible, using terms like 'substantial harm', 'devastating' and 'obscene' in relation to heritage impact.[83] However, on cross-examination he acknowledged that he is not a heritage expert and he backed down on those extreme allegations, accepting that the only impact in NPPF terms would be 'less than substantial harm' to the significance of North Lodges and Gateway.

117. Mr Partridge placed emphasis on the North Lodges and Gateway being a 'local landmark'. Mr Sutton agreed with this point, but it is of course a feature of the asset which is appreciated from Cookley and will be entirely unaffected by the proposed development.

118. Mr Sutton (the Appellant's expert heritage witness) considered that the heritage significance of North Lodges and Gateway is derived from the architectural value embodied in its physical form and fabric, as well as its historical value to the development of the estate and parkland landscape. The appeal scheme will obviously have no impact on the physical fabric of the buildings and will only result in a change to the character of the wider associated former parkland landscape. This will have little impact on heritage significance because very little original character of the former parkland survives, with this element of significance of the setting of the buildings being very limited (when compared to the other elements of significance)

123. Mr Hurlstone's updated evidence[89] includes updated traffic data (June 2024) and updated collision data, both of which reinforce his professional opinion that the highway impact of the proposed development would be acceptable[90]. He has also reviewed the highway related points raised by the r.6 party and sets out his responses concluding that the impact of the quarry is acceptable and should not be refused on highway grounds[91].

124. Mr Webber, a local resident, sought to make much of the safety risks associated with material on the road (mud or sand) and gave the example of a site in Hagley Road. However, when questioned about that site, he had to accept that he had not reported the matter to the Police or to the highways authority. This was notwithstanding that he said he knew that the deposit of material on the road is a criminal offence (s.148 Highways Act 1980) and that he apparently knew that the highways authority has power to require its removal and/or to do the removal itself and recover costs from the offender (s.149 Highways Act 1980). In circumstances where the highways authority has these powers and does not object to the planning application and where there are adequate mitigation measures imposed by condition[92] this is a non-issue.

125. In terms of any effect on pedestrians, due to the routeing of HGVs to / from the east, the potential impact is limited to that corridor, where there is a single footway on the north side of the carriageway. Mr Webber made an assertion[93] that the footway is particularly sensitive because it is part of a route promoted as a 'safer routes to school walking route.' However, he did not produce any documents or other information to support this assertion. In fact, he is contradicted by the later written representation from Catherine Cape[94] which indicates that, far from being promoted as a safe route to school for use by school children, pedestrian use of that

[89] rPOE2.05
[90] rPOE2.05, para 4.4, p.9
[91] rPOE2.05, para 3.36, p.24
[92] Condition 19, rID9
[93] rID58, p.6
[94] rID134

route to school is currently discouraged and

129. As to the effect on horse riders, the proposed bridleway within the site allows for a circular / figure of 8 route off road. This is a betterment on the current situation, where the bridleway starts and ends on a busy road. Horse riders crossing the site access will similarly be protected by the measures which the highways authority consider can satisfactorily be put in place at detailed design stage

133. Mr Whitehouse sought to take a different position, and, to his discredit, this was on the basis of no evidence or reasoning whatsoever.

134. Mr Whitehouse accepted the following:

That the BNG levels set out above can be adequately achieved and secured[100]

That the BNG uplift is double that considered by the previous Inspector, with the hedgerow units being 3 times that considered by the previous Inspector;

That the BNG uplift is very significantly higher than what would be required of other schemes by the Environment Act 2021 (which does not apply here);

That the BNG proposed is of the type specifically identified in the MLP as being desirable and beneficial in the North-West Worcestershire Strategic Corridor (see text to MLP11 at CD11.03, p.106 to 110);

That all the relevant ecology expert witness consultees gave the proposal careful consideration and were supportive of the proposals, with the Council's own ecology expert considering that the BNG should attract significant positive weight.

135. Notwithstanding all this, Mr Whitehouse's position was that BNG should only be accorded moderate weight in the planning balance. In taking this view he departed from the view of the Council's own BNG Officer (who clearly has confidence in the integrity and significance of the BNG proposals) and Tf1 0 0 1 358.39

quarry will be a hereditament liable to business rates and that an aggregates levy of over £2 per tonne would be charged on exported material.

140.

give ‘great weight’ to economic benefits of mineral extraction relates to contributions to the economy generally, not to the local economy. And in all the circumstances, Mr Toland’s judgement that the economic benefits are of significant weight is to be preferred.

143. As to allegations of negative economic impacts, these were entirely unsubstantiated. Mr Lord had no evidence to substantiate his assertion that the “local economy relies on sectors such as tourism and leisure.” He had no evidence that this local area is particularly sensitive or has any more concentration of leisure, visitor attractions or tourism than anywhere else. The site is not in an AONB or National Park for example, both of which are areas that are more sensitive and likely to be more dependent on tourism. And, as noted by the previous Inspector (DL170), many mineral extraction operations *do* occur in those types of areas where their economies are particularly reliant on tourism.

144. Whilst there were generalised fears expressed about impacts on local businesses including the private school, there was no empirical evidence to demonstrate any negative impact and no evidence of a drop in pupil numbers, even though there was much exclamation (although no evidence) as to how the fear of this quarry was already deterring custom at local businesses. It was also telling that, despite the huge number of representations from local residents, there were in fact very, very few objections from local businesses.

145. Mr Lord made much of the proposition that people act on their fears and do not always act rationally. He relied on the argument that there could be a negative effect on businesses from people’s perception of harms, even if those perceptions were wrong. His point was that we cannot see inside people’s heads. That may be right but if there were any resulting material adverse economic impact, that effect *would* be measurable and demonstrable. He accepted that quarry development is not a new or unusual type of industry. Quarries have been operating for many centuries, if not millenia. If there were negative economic effects from quarries on local business, one would expect that some evidence would 5BT/F5(vi)4( )-89(w)30(mea)6(sur)2Tf162Q671 0

now, by someone, somewhere. However, Mr Lord had searched for this and admitted he could find nothing.

(9) The need for sand and gravel, having regard to likely future demand for, and supply of, these minerals, along with the availability of inert material for restoration

Minerals Demand and Supply

146. The policy in MLP 4 and NPPF para 219(f) both require a landbank of sand and gravel to be maintained of at least 7 years

147. Mr Whitehouse accepts that "it is reasonable to make the assessment of the Council's landbank as it applied at the 31 Dec 2023, in accordance with the approach taken in the Local Aggregates Assessment"[104]

148. As at 31 Dec 2023, and o

allow for any flexibility in development demand. When the main COVID year, 2020, is excluded (as Mr Whitehouse accepted is reasonable), the average sales figure for the last three years is 0.674mtpa[109]. That average figure (0.674mtpa) is in fact higher than the adopted (+20%) apportionment figure (0.667mtpa).

155. Mr Whitehouse accepts that the appeal proposal would increase the landbank by 4.5years (CW para 4.120, p.46). As such, he agrees that ‘great weight’ is required to be accorded to the benefits of mineral extraction, including to the economy, under

that there is an economic incentive on the operator to ensure that this happens on time (due to the money that is made from accepting inert fill).

166. There are currently only 2 EA permitted landfill sites accepting inert waste in Worcestershire and there is only one such site in the West Midlands Metropolitan Districts, Meriden Quarry.

167. The total inert waste received at Meriden Quarry in 2021 was 783,452 tonnes, 2022 was 727,882 tonnes, 2023 was 688,442 tonnes and for Q1 of 2024 a total of 202,848 tones. Meriden quarry is operated by the Appellants and therefore, if required, 60,000m3 per annum could be redirected from the source sites to Lea Castle Farm rather than to Meriden.

168. Mr Whitehouse expressly accepts in his proof that, given that the total inert waste received by Meriden Quarry in 2023 was 688,442 tonnes, there is clearly fill available from there to address any shortfall in available fill from elsewhere. (CW 4.128, p.48). Indeed, the Council agrees that a new site at Lea Castle would be an environmentally better solution to managing inert fill from the south and west of Birmingham than the sites at Meriden and Saredon (para 3.16, rID8).

169. Mr Houle sought to assert that the potential for inert fill to be diverted from Meriden would fatally undermine the Appellant's Transport Statement. However, this was premised on a number of fundamental misunderstandings:

170. First, Mr Houle appeared to assume that the inert fill would be transported from the Meriden Quarry itself, when of course it would be diverted direct from its source without pointlessly going to Meriden first. Waste currently going to Meriden is sourced from a wide geographic area using a variety of routes.

171. Second, Mr Houle had misread the Transport Statement[117]. He had wrongly assumed that "the traffic movement calculations assumed 154 HGV movements per

[117] CD1.09

day relate to the same vehicles that distribute sand returning to the site carrying inert fill." This is wrong. The Transport Statement explains at paragraph 5.11 that the export of minerals results in an average 55 loads / 110 movements per day. Paragraph 5.12 explains that the import of inert material results in an average of 22 loads / 44 movements per day. Therefore, the total traffic movements associated with these two activities (i.e the 154 movements relied on by Mr Houle) are entirely independent of each other and do not assume any back-hauling between exports and imports

red herring, particularly when the closing fails to acknowledge the position in the actual district in which the site is located!) . The site provides a sustainable destination for waste and is strategically located close to Wyre Forest's largest settlement (Kidderminster) which is likely to accommodate the largest amount of growth within the authority area.

175. As to the r.6 party's points in closing about the projects listed above (r.6 closing para 183), the Inspector is asked to check his notes of Mr Toland's responses in cross-examination and re-examination. In particular, in relation to (a), material would not need to travel past Telford, which is 20 miles directly west of the Interchange; in relation to (b), there are no closer disposal sites to the link road; and in relation to (c), the pipeline starts in Staffordshire, and therefore is not solely located in Derbyshire.

176. As to the r.6 party's reliance on aggregates being bulky in nature (closing para 188), this is completely irrelevant to the transportation of inert fill which is an entirely different material. No comparison between the nature of transportation of aggregates and inert fill was put to Mr Toland in cross-examination.

177. As to the r.6 party's assertion as to what is required by Policy ML26 (closing para 182), their reliance on the supporting text is misconceived. It is well established that the supporting /explanatory text to a policy does not form part of the policy and cannot introduce additional development plan policy requirements (see ***R. (Cherkley Campaign Ltd v. Mole Valley DC*** [2014] EWCA Civ 567, at para 16, attached).

178. Put simply, there is a decreasing void capacity, below that predicted by the Waste Core Strategy; there is an increase in construction projects likely to generate inert material; and there are abundant sources of inert waste that are readily available to the Appellant to divert to the site from other quarries as necessary. In light of all this, the Inspector is invited to adopt Mr Whitehouse's conclusion:

> "I conclude that there is sufficient evidence before the inquiry to determine that the Appellant would have sufficient supply of inert waste across the

alternatives (see *R (Peak District and South Yorkshire CPRE) v. SST* [2023] EWHC 2917 (Admin), particularly at paras 37 and 57)[125].

at this specific proposal) in the Minerals Local Plan (and with which the proposal complies – see under the relevant main issues above). Further, it is to be noted that a number of the points summarised by the r 6 party in closing in relation to those policies were not put to Mr Toland. Finally, the accordance with the NPPF policy on Green Belt and Minerals would strongly indicate that that important 'other material consideration' (national policy) also points towards a grant of permission.

185. Further, even if it is concluded (contrary to the detailed case of the Appellant) that the proposal is inappropriate development in the Green Belt, it is submitted that the appeal should nevertheless be allowed. In other words, even if this Inspector agrees with the previous Inspector's findings on everything, including Green Belt (save for the point on biodiversity net gain which was quashed by the Court) this appeal falls to be allowed. This is because, properly considered in the correct legal context, the very significant Biodiversity Net Gain is sufficient to tilt the (very finely balanced[126]) scales in favour of the proposal.

186. In this regard the Council's closing (at para 3) is obviously wrong to suggest that "refusal is inevitable for development which is decreed to be "inappropriate". If that were the case, then there would be no provision for VSC in policy. And the practical ability of a proposal like this to meet the VSC test is clearly shown by the previous Inspector in this case describing the decision as to whether to grant planning permission for what he considered to be "inappropriate" development as 'very finely balanced' (and that was even in circumstances where he reduced the weight accorded to the benefit of BNG on an erroneous basis).

187. Further, looking at the evidence entirely afresh, the benefits of the proposal are clearly sufficient to justify this development in the Green Belt, even if it is considered to be 'inappropriate'. For the detailed reasons set out above under the other main issues, there is a high degree of accordance with the development plan

[126] DL200

and the NPPF and there are very significant benefits of the proposal (to which high degrees of positive weight can be accorded) meaning that even if found to be

191. The two main parties also agree that, in relation to the ES Addendum and associated plans, there has been substantive compliance with regulation 25(3) of the EIA Regulations and that there are no outstanding requirements under those Regulations[127].

192. Some complaint is made by the r6 Party as to why the documents could not be hosted in the Council's Offices[128]. The reason for this is that Mr Aldridge had advised that the documents could not be made available at County Hall due to RAAC in the roof and legionella being discovered in the water system, meaning that all parties were working from home. In any event, all documents were available to view online, and the consultation ran for a full

opportunity to participate in the appeal and no procedural unfairness has been caused by the proposed beneficial changes to the scheme.

No need for a financial bond to secure the restoration.

195. The Council has never sought any financial bond to secure the restoration. The r.6 party witnesses accepted in cross-examination that:

> This is not a 'very long-term new project where progressive reclamation is not practicable'
>
> This does not involve a 'novel approach or technique'
>
> There is no 'reliable evidence of the likelihood of either financial or technical failure'.

196. Accordingly, (contrary to the impression given in their closing) the r.6 party witnesses accepted that a financial guarantee is not justified under the criteria in the PPG (at p.26 of CD12.19). This would be the case whether or not the operator was contributing into an established mutual funding scheme. As it happens the applicant's holding company (who is also the 'Operator' and a signatory of the Unilateral Undertaking[130]) is a member of the Minerals Products Association.[131] This means that there is an added extra (but not mandatory) layer of protection.

Hydrology and Bore Hole Testing

197. It is noted that interested third parties have raised some issues relating to hydrology[132]. However, this issue has been considered extensively by the statutory consultees who are satisfied with the proposals. Mr Harthill confirmed for the r6 party that he is satisfied with the bore hole testing required by the Environment Agency (EA). The EA confirmed[133] it is satisfied with the testing required to be

[130] rID227.03
[131] rID79
[132] See e.g rID178

the Appellant would be willing to accept a pre-commencement condition preventing development from commencing before a permit is in place (albeit without prejudice to its primary position that this is not necessary).