

Summary Note

Case Management Conference

10.00am 7 August 2024

Appeal Ref: APP/E1855/W/22/3310099

Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, DY10 3QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by NRS Aggregates Ltd against the decision of Worcestershire County Council (WCC).
- The application Ref is 19/000053/CM.
- The development proposed is a sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement.
- The appeal decision issued on 5 May 2023 was quashed by order of the High Court and the Inquiry is scheduled to re-open on 5 November 2024 to re-determine the appeal.

Introduction

1. The case management conference (CMC) was led by John Woolcock BNatRes MURP DipLaw MRTPI and conducted on-line using Microsoft Teams. There was no discussion during the conference as to the merits of the respective cases. Procedural and administrative matters were discussed to ensure that the Public Inquiry is conducted in an efficient and effective manner. Ms Wigley KC represented the appellant. Worcestershire County Council was represented by Ms Clover. Mr Aldridge spoke about admin matters. The Rule 6 Party, Stop the Quarry Campaign, was represented by Ms Davies. Others attending the CMC were associated with the main parties. An attendance sheet is attached.

Advocates and witnesses

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|----|-----------|-----------|---------------------------------------|
| 2. | Appellant | advocate | Jenny Wigley KC |
| | | witnesses | Rachel Canham [noise] |
| | | | Katrina Hawkins [air quality] |
| | | | Neil Furber [landscape and visual] |
| | | | Jeremy Hurlstone [transport] |
| | | | Robert Sutton [cultural heritage] |
| | | | Liam Toland [planning] |
| | | | [If necessary a biodiversity witness] |

Council	advocate witnesses	Sarah Clover Chris Whitehouse [all matters]
R6 Party	advocate witnesses	Sioned Davies will deal with the following topics Green Belt Character and appearance Public Rights of Way Employment/economy [Mike Lord] Need for/supply of sand and gravel and availability of inert material

Ms Davies referred to a number of other issues of concern to local objectors, such as amenity considerations, heritage assets, highway safety and biodiversity, but indicated that the R6 Party would not be calling evidence on these issues.

Requests to speak at the Inquiry have been received from:

Bill Southam
Mark Garnier
Katherine Evans

There was no information about others who wish to take an active part in the Inquiry - other than reference to the number of people who participated in the previous Inquiry and considerable local interest in the case. The R6 Party and Council are to assist in noting details about interested persons who wish to make statements to the Inquiry so as to assist in programming.

The appellant's request to consider an amended scheme in re-determining the appeal.

3. The Inspector referred to his email dated 10 May 2024 [Annex A to this CMC note]. He has seen the ES Addendum and is aware of the public consultation open from 5 August – 6 September [Press advert refers to comment by both 31 Aug and 6 Sept ?]. The acceptance of the amended scheme was not discussed, but there was discussion about how, procedurally, the matter should be dealt with. There was agreement about the likelihood that Proofs of Evidence (PoE) would need to address both the scheme as determined by the Council and the proposed amended scheme. The Inspector noted that PINS on behalf of the Secretary of State will assess compliance with the EIA Regulations – but not until after the end of the consultation period. The response to consultation would also influence how the Inspector proposes to deal with the request. It is likely that the Inspector will issue a Pre-Inquiry Note at that stage inviting written submissions from the main parties setting out their respective positions. It is anticipated that these submissions would be considered at a round table discussion on the first day of the Inquiry.

Engagement - format of Inquiry / Venue

4. This will be a face-to-face Inquiry. The venue is Stourport Manor Hotel. Retiring rooms will be available for the Inspector, Appellant, Council and R6 Party. Storage facilities will be available. Provision can be made for

200+ people to attend if necessary. WIFI and photocopying facilities will be available. An AV company will provide microphones and the intention is to live-stream proceedings via UTube. The Council would like advance notice if, exceptionally, an interested person can only participate remotely, as this would require hybrid proceedings that incur an additional cost.

Dates/times

5. The Inquiry will open at 10.00 am on Tuesday 5 November 2024 and on subsequent days will start at 09.30 am. It will sit for 4 days in the first week and on Thursday 14 and Friday 15 November in the second week. There was discussion about whether the scheduled 6 sitting days would be adequate. Hearing evidence about both the existing and proposed schemes might add to Inquiry time, whereas re-determination might mean that less time would be required on some issues. Overall, it was decided to continue at this stage with the scheduled 6 sitting days with the potential to review this as more details become available about the evidence to be considered at the event. The possibility of closing submissions in writing was raised.
6. The Inspector indicated that he would be available for an accompanied site visit on Monday 11 November. The Council is to reserve its minibus for the site visit. The Inspector will decide closer to the time whether it will be necessary. The time and date for an accompanied site visit will be confirmed either in the Inquiry Programme or when the Inquiry opens. The parties are to give early consideration to a draft itinerary for the site visit setting out what the Inspector may do unaccompanied.
7. The Inspector asked whether it would be likely that an evening session might be necessary to hear interested persons. Given that this would mean less sitting time during the day, it would need to be justified by a significant number of participants being unable to attend during the usual sitting hours.

Notification of appeal

8. The Council gave notice about the appeal on 24 April and written representations were received until 23 May. The Council is to make sure that a copy of the notification letter setting out details of the Inquiry, and a list of those notified, is sent to PINS no later than 18 October. Confirmation will also be required that site notices have been appropriately posted.

Main issues

9. The Inspector has noted the appellant's, Council's and R6 Party's statements of case, the officer report and the Council's decision notice. Based on the material currently submitted, the Inspector set out his initial thoughts on the main issues in paragraph 6 of his pre-conference note [Annex B to this note].

The main issue will be Green Belt policy and how it applies here – but if the Inspector is required to assess whether Very Special Circumstances exist then he would need to assess any other harm along with other considerations which weigh in the balance. That exercise would involve assessing the other matters in paragraph 6 of the pre-conference note.

The Inspector noted some of the matters in the ES Addendum currently out for public consultation refer to the findings of the Inspector in the quashed decision.

The Inspector now dealing with the re-determination advised that he is not reviewing the previous decision – that decision now has no legal effect – but it is a material consideration insofar as he would need to explain in his reasoning any differences he might have with the previous Inspector’s reasoning. The current Inspector is not bound by the previous decision, and he will hear the evidence afresh - taking into account the development plan and other material considerations as they are at the re-opened Inquiry – not as they were at the time the quashed decision was determined.

How other issues should be dealt with in this case will depend on the evidence adduced at the Inquiry.

The fact that the Inspector has not identified an issue now does not of course preclude anyone from raising the matter in evidence, and he might revise his views about the main issues once he has heard all the evidence.

PoE / SoCG / Suggested Planning Conditions

10. PoEs, summaries and any appendices are to be submitted on 8 October.
11. The appellant and the Council are to update the Statement of Common Ground (SoCG) dated February 2023 [CD13.27].
12. In addition, the Inspector requested submission of 2 other topic specific SoCG:
 - Minerals/waste SoCG to set out the position of the appellant and Council with respect to (1) the need for, and supply of, sand and gravel, and (2) the availability of inert material for restoration.
 - Biodiversity SoCG setting out the effect on biodiversity at each phase of the operation and post-restoration, updating any BNG assessment to the latest metric, and setting out respective positions on how biodiversity considerations should be taken into account here in applying planning policy and the planning balance.
13. The R6 Party will have the opportunity to comment on the SoCGs in PoE and at the Inquiry.
14. The appellant and the Council are to review the suggested planning conditions in ID51. The Inspector indicated that he would raise queries about suggested conditions, on a without-prejudice basis, in the lead up to and during the Inquiry, so as to save time at the event. He asked the appellant and Council to look at conditions requiring PRoW and Permissive Paths and how statutory provisions for these would apply here. Again, on a without-prejudice basis, the Inspector queried reference in the

suggested conditions to a post-restoration 30-year landscape/biodiversity management provision applying long after the end of the period proposed for a temporary planning permission. The review of suggested conditions should update, if necessary, the reasons for them, including references to any policy support. Suggested conditions should be in Word format and submitted at the same time as the proofs. The R6 Party and interested persons would be able to comment on suggested planning conditions during the Inquiry without-prejudice to their case.

15. Careful attention should be paid to the wording of the conditions, which will need to be properly justified having regard to the relevant tests. They should also avoid 'tail-pieces' (i.e. the phrase 'unless agreed otherwise in writing by the local planning authority'). As set out in the NPPF, planning conditions should be kept to a minimum and conditions that are required to be discharged before development commences should be avoided unless there is a clear justification. These will also need to be agreed in writing by the appellant.

Documents

16. All documents, including PoE etc, will need to be accessed electronically and available on the Council's appeal website. Notwithstanding that this will be a 're-opened' Inquiry, the Inspector would like to make it clear what documents were submitted at the first Inquiry and what were submitted at the re-opened Inquiry. Documents submitted in the lead up to and during the re-opened Inquiry will be given a Re-determination Inquiry Document (rID) number that will start a new series, rather than continue the numbering from the previous Inquiry. This CMC Summary Note should be rID1. The previous CD list can continue to be added to under the existing numbering - with additional sections included as required, e.g. CD15 for ES Addendum / revised drawings.
17. Any appeal decisions and/or legal authorities on which the parties intend to rely will each need to be prefaced with a note explaining the relevance of the document to your case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.
18. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and PINS does not encourage the provision of such. However, where they are necessary to save Inquiry time, copies should be provided at least two weeks in advance of the Inquiry. It is particularly important that any rebuttal proofs do not introduce new issues.
19. With the exception of the Government's Planning Practice Guidance, for which the full paragraph reference should be given, including its date, the Inspector will not follow links or look at websites, as these are liable to change. This means that he will need a separate electronic copy of any sites or relevant pages at the time the evidence referred to it.
20. The Inspector will need some documents in hard copy. These include the PoE, summaries and appendices, and any rebuttals, a useful plans bundle, and potentially extracts from other of the core documents. These can be handed in at the opening of the Inquiry.
21. All witnesses for each of the main parties must produce proofs of evidence. Under the Inquiry Rules these must arrive not later than 4 weeks before the start of the Inquiry. Electronic copies should be exchanged not later

than then, including a copy for the Inspector sent via PINS's case officer, Helen Skinner. To avoid unnecessary questions on expertise and instructions, all witnesses should include CVs and their letter of appointment.

22. Evidence should cover all relevant matters. However, the Inspector will be looking at the merits of the proposal afresh. Reference to details of any pre-application consultation, or the opinions or behaviour of anyone but the witnesses giving evidence, unless it is about a potential costs application, will not assist the Inspector to determine the appeal.

Inquiry programme

23. Unless there are good arguments for some other arrangement, the Inspector will adopt the following procedure. First, he will hear opening statements by each of the main parties. The order will be the Appellant, the Council and then the R6 Party. Those statements should be no longer than around 20/30 minutes each. Electronic copies in Word format should be available. Hard copies of those statements can be handed out on the day for the Inspector and for interested persons.
24. After opening statements, the Inspector proposes to hold a round table discussion about the request to deal with the re-determination on the basis of an amended scheme. In the light of that discussion, along with any consultation responses and written submissions by the main parties, the Inspector will then decide how to proceed.
25. Subject to numbers and likely length of submissions, the Inquiry will then hear statements from individuals who wish to be heard but do not otherwise wish to participate in the remainder of the Inquiry. However, until we have an idea of the numbers who might register to speak, we won't know how long that is likely to take. It would be helpful if the R6 party could keep the Council informed about the details of others who wish to make statements at the Inquiry if aware of any such requests.
26. There is a general preference for matters, where appropriate, to be dealt with at the Inquiry on a topic basis. However, this might depend on what witnesses are called about particular issues, and so it will not be possible to decide this in advance of knowing more about the way the parties propose to present their respective cases. Other than a discussion about the request to deal with the appeal on the basis of an amended scheme, and the without-prejudice discussion about suggested conditions, no other issues were considered appropriate to be addressed by means of a round table discussion.
27. After all the witnesses have given evidence, there will be a session dealing with suggested conditions and any legal obligations, but a preliminary session to look at these is likely to be useful so that there is plenty of time for any changes if necessary. Finally, arrangements will be made for closing statements in reverse order to the opening submissions. After hearing whether there are any other matters to raise, the Inquiry will then be closed.
28. At the accompanied site visit the Inspector cannot listen to any representations / discussion / arguments, but parties can point out physical features.
29. The Inspector will draft a Pre-Inquiry Note (PIN) dealing with further matters regarding the programme for the Inquiry.

30. Once proofs are exchanged, and subject to any PIN, the Inspector would like the advocates to discuss the time estimates with each other and draw up an agreed draft programme for the Inquiry and submit this to PINS. Other than in exceptional circumstances, the parties are expected to take no longer than the timings indicated, which will require the cooperation of both advocates and witnesses.

Timetable for submission of documents

31. PoE, rebuttals, SoCGs and other documents requested at the CMC should be exchanged electronically between the parties and sent to PINS. Dates for submission are set out in the table towards the end of this note.

Any other procedural matters including costs

32. No application for costs has been foreshadowed. If any application is to be made, the Planning Practice Guidance makes it clear that, as a matter of good practice, it should be made in writing before the Inquiry. The Inspector has the power to instigate awards of costs, regardless of any application, and that would be dealt with by written correspondence after his decision was issued.
33. Other matters raised by the Inspector:
1. Admin assistance at the Inquiry
The Council indicated that either Mr Aldridge or another officer would be able to assist the Inspector with administrative matters at the Inquiry, including acting as a contact for interested persons.
 2. Discussions with Environment Agency re Environmental Permit
Ms Wigley to take instructions.
 3. 30 July Written Ministerial Statement and NPPF open consultation
It was agreed that comment about the relevance/weight that should be attached to the 30 July Written Ministerial Statement and NPPF open consultation should be included in the general SoCG.
34. No other procedural matters were raised at the CMC.

Submission dates for various documents

13 September 2024	SoCG General SoCG Sand and Gravel / Inert Material SoCG Biodiversity
8 October 2024	Deadline for submission of: all PoE suggested planning conditions / obligations + reasons Core Documents list
18 October 2024	Deadline for submission of a copy of the Inquiry notification letter and a list of those notified (Council)
22 October 2024	Deadline for submission of any essential rebuttal proofs
29 October 2024	Deadline for submission of final timings / draft programme / draft site visit itinerary
5 November 2024	Inquiry opens 10.00 am

John Woolcock

Inspector

7 August 2024

Annex A

INSPECTOR'S EMAIL 10 MAY 2024

The appellant's Statement of Case indicates that the appellant intends to request that the appeal be dealt with on the basis of an amended scheme. Amendments to a scheme at the appeal stage can be accepted provided no one would be prejudiced by doing so and the principles set out in the *Wheatcroft* and *Holborn Studios* judgments were satisfied. It would be up to the appellant to demonstrate that this was the case for this EIA development in the particular circumstances that apply to this appeal. The Inspector will not be in a position to rule on this until anyone who wishes to do so has had an opportunity to make submissions during the Inquiry about the request to consider an amended scheme at the appeal stage and whether any prejudice would be likely to result. Up until the Inspector makes his ruling on this request the appeal will continue to proceed on the basis that it is the scheme that was refused by Wyre Borough Council that is the subject of the appeal. It may be the case that the Inspector will not be able to rule on this request as a preliminary matter at the opening of the Inquiry because relevant considerations could potentially arise during the later presentation of evidence to the Inquiry. In those circumstances the Inspector would not determine the request until all the evidence had been heard and the Inquiry closed. His ruling about the consideration of an amended scheme would then be included as part of his appeal decision. Given that proofs of evidence will need to be submitted 4 weeks in advance of the Inquiry the parties should be aware that if an amended scheme is proposed at the appeal stage it would assist the Inspector if the evidence submitted addressed both the scheme as determined by the Council and also the proposed amended scheme.

John Woolcock

Inspector

10 May 2024

Annex B

INSPECTOR'S PRE-CONFERENCE NOTE

1. The case management conference (CMC) will be led by John Woolcock BNatRes MURP DipLaw MRTPI. Attached as separate documents are instructions for joining the conference and the conference agenda. The CMC will be conducted on-line using Microsoft Teams.
2. There will be no discussion during the conference as to the merits of the respective cases and the Inspector will not hear any evidence. Rather its purpose is to ensure that all parties are aware of the options for holding the Inquiry and how to engage, and to give clear indication as to the ongoing management of this case and how the evidence will be presented at the Inquiry so that the event itself is conducted in an efficient and effective manner.
3. The Inspector will want to know details of the main parties that will be directly involved in the event, including details of advocates, witnesses and outlines of case extents.
4. He will also confirm how the Council intends to carry out notification of the event, and how Inquiry documents can be best managed, both for purposes of the Inquiry itself but also for accessibility for interested parties. He will need to confirm the venue and any facilities to support alternative ways of working.
5. The CMC will be an opportunity to discuss the appellant's request to consider an amended scheme at the re-determination stage.

Main Issues

6. The Inspector has noted the appellant's and Council's statements of case, the officer reports and the Council's decision notice. Based on the material currently submitted, the Inspector considers that the main issues are likely to be:
 - (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 minerals, along with the availability of inert material for restoration.
- (10) Planning policy matters and the planning balance.

Other matters may be raised at the Inquiry.

7. You are requested to give consideration in advance of the CMC as to whether the identified matters encapsulate those most pertinent to the outcome of the appeal, reaching agreement through discussion, if possible, at the CMC. The Inspector may revise his views about the main issues in the light of evidence to the Inquiry.

Dealing with the Evidence

8. The Inquiry will focus on areas where there is disagreement. With that in mind, the conference will explore how best to hear the evidence in order to ensure that the Inquiry is conducted as efficiently as possible.
9. The Inspector requests an update on the Statement of Common Ground (SoCG). This should address all matters agreed between the main parties. To that extent it may also include matters of disagreement clearly set out to inform the production of proofs of evidence. Further topic specific SoCG may be required. An agreed timetable for a SoCG will be reached at the CMC.
10. At the CMC, the Inspector will also address the preliminary list of issues above and will investigate whether any of these matters can be addressed utilising a round table rather than the formal presentation of evidence and cross-examination.
11. The Inspector will wish to consider the likely extent of interested party participation. It is important that interested persons can participate if they wish to do so. How this can be achieved will be discussed at the CMC.
12. You are requested to give the above careful consideration in advance of the discussion at the case management conference. Any request for evidence to be heard other than as currently envisaged can be discussed then. All the above points are included on the case management conference agenda.
13. A summary note will be produced after the call.

John Woolcock
INSPECTOR
30 July 2024

Annex C

CMC ATTENDANCE LIST

Council	
Sarah Clover	Spokesperson
Steven Aldridge	
Chris Whitehouse	
Laura Williams	
Appellant	
Jenny Wigley KC	Spokesperson
Liam Toland	
Rule 6 Party	
Sioned Davies	Spokesperson
Mike Lord	