

AGGREGATES LTD

**LEA CASTLE FARM, WOLVERLEY ROAD, BROADWATERS,
KIDDERMINSTER, WORCESTERSHIRE**

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

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

**SUBMISSIONS ON AMENDED APPLICATION on behalf of
WORCESTERSHIRE COUNTY COUNCIL**

1. The appellant asks the Inquiry to consider an amended scheme alongside the original scheme determined by the Planning Authority.
2. Consideration of amended schemes at appeal is addressed in the Planning Inspectorate's Procedural Guide: Planning Appeals – England; Section 16 Amending the proposed scheme once an appeal has been made.
3. At 16.3, the relevant caselaw, and the two tests which emerge are set out:

“16.3 As per the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the “Wheatcroft principles” set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), two tests will be considered:

- Substantive - whether the proposed amendment(s) involves a “substantial difference” or a “fundamental change” to the application. If the Planning Inspectorate's judgement is that the amendment(s) would result in a “different application”, then it is unlikely that the amendment could be considered as part of the appeal. It is also possible that a series of small incremental amendments to a scheme could result in a “substantial difference” or a “fundamental change”
- Procedural – whether, if accepted, the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal (i.e. since consultation is a statutory requirement at the application stage, if the scheme is amended at appeal, it may be unfair on interested parties and consultees whose views and comments were about the original proposals, not the amended proposals). The change

need not be 'substantial' or 'fundamental' to require re-consultation. Even potentially beneficial changes may need to be subject to re-consultation, so that interested parties can consider whether that would be the case. The decision on whether to accept the amendment without re-consultation will be taken in the context that consultation is an important part of the planning system, the nature and extent of the changes and the potential significance to those who might be consulted."

WCC makes the following observations to be of assistance to the Inquiry:

4. There are no changes proposed by the appellant that would affect the description of development:

"Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement, on land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, Worcestershire".

Substantive.

5. The Council has analysed the specific proposed amendments in detail, and they comprise the following:

- Reduction in Processing Plant height (from 12 metres to 6.3 metres);
- Reduction in Processing Plant footprint (reduced from 2,752m² to 451m²);
- Bund 3 is to be reduced in height from 6 metres to 3 metres. Additionally, Bund 5 which was originally to be in place for the full 10-year duration of the scheme, will now not be introduced until Phase 4/5 and only required for approximately 5 years.
- Bund 7 which is to be located along the eastern boundary of Phase 1 is to be reduced in height from 6 metres to 3 metres.
- Bund 11 is no longer required.
- Bunds 13, 14 and 16 to be reduced in height from 4 metres to 3 metres.
- Bund 18 is no longer required

- Bund 19 is to be reduced in height from 4 metres to 3 metres. Minor variations proposed to bund footprint representing the interchange between Bund 19 and the former Bund 18 (now removed) to allow for storage of soils at 3 metres in height.
 - Elements of progressive restoration comprising placement of a stretch of hedgerow / hedgerow trees adjacent to the eastern margin of Phase 4, taking place during the Initial Works Phase (Year 1) as opposed to as part of Final Works (Year 10).
 - The processing plant would be a different scale, but still subject to conditions requiring details of the processing plant dimensions, materials, colour and finishes (Condition 10 of ID.51).
6. If each amendment is examined individually and in isolation it could be argued that there is a substantial difference. If the amendments are considered in the round and in the context of the application as a whole, they may be regarded as less “fundamental” or “substantial”.

7. Notwithstanding the above, whilst the appellant states the amendments have come about as “quarry plant and infrastructure has evolved over the course of the 5-6 years since the proposed development was first conceived”, WCC takes the view that the amendments are quite clearly aimed at undermining the reasons why the previous Inspector originally refused planning permission.

Procedural.

8. In terms of Test 2, WCC has assessed the requirements according to the case of R (Bramley Solar Farm Residents Group) v Secretary of State LUHC [2023] EWHC 2842. WCC has considered in detail the nature and extent of consultation upon the amended scheme, and measured it against the legal requirements of the DMPO which apply at application stage.

9. The following consultation arrangements applied to the current case:

- Worcestershire County Council uploaded the documents on the dedicated appeal webpage and on the planning application webpage, with summary of the consultation and deadlines, including the dates and location of the Public Consultation events.
- Worcestershire County Council sent the appellant’s notification letter to all consultees who were consulted on the planning application and notified of the appeal.

- The consultation ran for over 30 days from 5 August 2024 to 6 September 2024.
 - The appellant ran 2 public consultation events at Wolverley Memorial Hall on 7 August and 21 August 2024.
 - The appellant put a notice in the press (Kidderminster Shuttle) to advertise the consultation event at Wolverley Village Hall on 7 August, but as identified by the Rule 6 Party, Wolverley Village Hall does not exist, and it should have stated Wolverley Memorial Hall.
 - The appellant put a further notice in the Kidderminster Shuttle advertising the consultation event on 21 August 2024 with the correct venue.
 - There was a further post on Wolverley and Cookley Matters Magazine Facebook page on 6 August which advertised the additional public consultation event at the correct location.
 - The appellant put a notice in the press advertising the consultation on the further information, but this notice referred to the deadline for comments as 31 August (incorrect) and 6 September (correct). This was identified by the Inspector at the CMC.
 - The appellant arranged for the above press notice, with the same errors to go on Wolverley and Cookley Matters Magazine Facebook page.
 - As a result, the appellant re-advertised the consultation on the further information in the Kidderminster Shuttle on 22 August 2024, correcting the error.
 - The Rule 6 Party agreed to add a link to the Council's appeal webpages which advertised the consultation period and the public consultation events, on their Facebook page.
 - An officer of WCC walked the site to check for any site notices, and did not see any.
 - WCC understands that the appellant did not send letters to third parties who commented on the application and appeal.
10. There has not been strict compliance with consultation requirements under the EIA Regulations or the DMPO, but this is not required for an amended scheme.

Conclusion.

11. WCC does not oppose the consideration of the amended scheme at Inquiry. WCC notes, however, that it is the Rule 6 party that would be most affected by the procedural consultation requirements, and considers that it is really for the Rule 6 party to say whether they have been sufficiently notified of the amended scheme. WCC does oppose the granting of the original scheme, and/or the amended scheme, and will present the case accordingly.

Sarah Clover

Kings Chambers

Birmingham

21 October 2024