RULE 6 PARTY – STOP THE QUARRY CAMPAIGN

SUBMISSIONS ON THE 2024 SCHEME AMENDMENTS

Land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, Worcestershire

Application reference: 19/000053/CM

Appellant's name: NRS Aggregates Ltd

Appeal reference: APP/E1855/W/22/331009

Introduction

1. The Rule 6 (R6) Main Party objects to the appeal being considered on the basis of a significantly and fundamentally changed scheme. The objection is based firstly on the inadequate consultation carried out with the public, including those who objected to the original application and to the subsequent appeal, and secondly on the proposed amendments, which involve a substantial difference and a fundamental change to the application.

The legal test

2. The Wheatcroft Principle, establishes that a permissible change to a planning application is one that does not make the application "*in substance not that which was applied for*". For all appeals, in the interests of fairness and ensuring that decisions are made locally where possible, it is important that what is considered by the Secretary of State is essentially what was considered by the local planning authority. The appeal process should not be a means to progress alternatives to a scheme that has been refused or a chance to amend a scheme so as to overcome the reasons for refusal. In the first instance materially changed schemes should be resubmitted to local planning authority as a fresh. There is also the requirement for the scheme before the Inquiry to be adequately advertised.

3. This is set out in the Procedural Guide: Planning appeals – England Updated 17 September 2024 states; (with emphasis added)

> *"3.1.1. <u>If an applicant thinks that amending their application will overcome the LPA's reasons for refusal, they should normally make a new planning</u>*

application. The LPA should be open to discussions on whether it is likely to view an amended application favourably.

3.1.2. Making an appeal should not be used as a bargaining tactic but only as the last resort. The person making the appeal ('the appellant') should be confident at the time they make their appeal that they are able to make their full case.

16.1 The appeal process should not be used to evolve a scheme and there are no provisions within the Rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage.

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."*

4. The Planning Inspectorate Good Practice Advice Note 09 includes the advice,

"3. For all appeals, in the interests of fairness and ensuring that decision are made locally where possible, it is important that what is considered the Secretary of State is essentially what was considered by the local planning

authority. The appeal process should not be a means to progress alternatives to a scheme that has been refused or a chance to amend a scheme so as to overcome the reasons for refusal. In the first instance materially changed schemes should be re- submitted to the local as a fresh planning application."

5. WCC's SCI requires that any material changes to the submitted application may result in a re-notification or re-advertisement of the application. This will include notifying all those members of the public who sent in representations on the original proposals.

The Rule 6 Party's Position

6. We do not consider that the planning application subject to this appeal should be Wheatcroft / Holborn Studios amended. Wheatcroft / Holborn Studios' line of authority does not give an opportunity to progress a different scheme to that which was before the LPA for determination - there are some changes to this scheme, including relating to plant and machinery, which change how the Site should be worked. The appeal system should not be an opportunity to evolve a scheme – still less is it an opportunity to evolve a scheme from the application stage to seek to make changes to respond to a previous Inspector's decision, which found the scheme proposed to be unacceptable.

7. The R6 party now understand that the proposed changes relate to the plant that will be used and, therefore, the bunding and the pattern of working the site. There is no justification for how or why that plant is now proposed when it could have been proposed as part of the earlier scheme.

8. To the extent that the Rule 6 Party have been able to grapple with the changes, its position is that the proposed changes do not change the overall unacceptable effects, including those related to noise, dust, landscaping, impacts on PROW users, etc. Those were issues that concerned local people last time around and upon which detailed evidence was called at the inquiry. Moreover, no justification has been put forward to explain how or why the plant was not proposed earlier; this plainly has knock-on implications for the scheme, and the R6 Party is concerned that people will not know or understand what the changes are.

9. *Holborn Studios* is also concerned with the question of fairness. There are now so many documents that local people feel that they cannot engage properly with what is proposed. Generally, a wide net should be cast during consultation to encourage people to engage with the application. There are concerns from this perspective, including that there has been a limited degree of public consultation, and that local people were told about the wrong venue as to when and where the public consultation would take place. They were not told what the re-consultation was about. Many assumed it was a re-consultation on the same scheme ahead of the new Inquiry, rather

than a fresh consultation on a new scheme. Even the planning witness who appears for the R6 says that he was not directly notified of the changes and has grave concerns that others would not appreciate that there have been changes or know or understand what those changes are. We simply do not know whether all the Interested Parties (of which there were very many) will have been able to grapple with this material. The consultation merely informed those who attended of the proposed changes. No Statement of Community Involvement has been produced setting out any comments received and responding to any comments.

10. The R6 Party are not aware whether immediate neighbours were notified or whether site notices were erected. This is despite the scheme potentially having very significant consequences for those interested parties.
11. The application was subject to numerous changes prior to the previous appeal and updates and amendments to the EIA, with no single accessible document produced. The Planning Register now records 342 separate documents forming part of the application, including 24 forming part of the latest post-determination submission. Each additional document running to several pages and multiple maps and plans. The amended ES addendum runs to 102 pages, the NTS a further 31 pages. Clearly, such extensive documentation can only be necessary for a substantial and fundamental change to the application. Indeed, the necessity for a new EIA would indicate these changes are not insignificant.

12. Finally, there are no consultation responses from statutory consultees available on the portal. That too hampers the ability of local people to know or understand what the changes are, and whether or not the changes are likely to be acceptable. If there is any means by which local people disagree on that material, that has not been explained either.

Conclusion

- The proposed changes are significant and fundamental.
- All interested parties have not been sufficiently consulted so as to cause unlawful procedural unfairness to those involved in the appeal.
- If the applicant thinks that amending their application will overcome the LPA's reasons for refusal and local concerns, they should make a new planning application.
- What the Inspector is being asked to consider at this new appeal is not essentially the same scheme that was considered by the LPA and by interested parties at the application stage.
- The Appeal should be considered on the basis that was determined by WCC and the original Inspector.

Bill Houle FRICS on behalf of the Rule 6 STQ Group October 2024