

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** for:

“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

**Proof of Evidence of Christopher Whitehouse BSc (Hons) MRICS,
RICS Accredited Expert Witness**

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1.0 Introduction

- 1.1 I am Christopher Whitehouse, a Member of the Royal Institution of Chartered Surveyors (MRICS) since 2010. I hold a Bachelor of Science degree in Planning and Development Surveying from Northumbria University (2009) and I am an RICS Accredited Expert Witness in Planning (2014). I am also a member of the National Expert Witness Agency (NEWA).

- 1.2 I am the Managing Director of the planning consultancy NextPhase, an RICS Regulated Practice that I have owned and managed since its formation in 2011; having beforehand worked as a planning consultant in a Planning Consultancy.

- 1.3 I have over 15 years' experience in a broad range of planning matters, and across that time have worked extensively on planning issues associated with major residential, environmental, commercial and minerals developments.

- 1.4 I have acted as planning consultant for a variety of housing and commercial developers, investment funds and minerals and waste operators. I have also worked extensively across a broad range of planning appeals, including a number of Public Inquiries and Hearings, acting as both lead advocate and expert witness for Local Planning Authorities, Minerals and Waste Planning Authorities and appellants.

- 1.5 I am familiar with the appeal site, the wider area and the relevant national and local planning policy. I most recently undertook a site visit on 14th August 2024.

2.0 Background and Scope of Evidence

2.1 I have been instructed to appear as a witness at this Inquiry on behalf of Worcestershire County Council (“WCC” or “The Council”) to an appeal against the Council’s decision to refuse consent for application 19/000053/CM on 27th May 2022, for the following 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”

2.2 Following a High Court challenge to the Inspector’s original decision¹ the Court ordered that the appeal decision was to be quashed, and the appeal be re-determined, on the basis of a ground of challenge (Ground 1) against the approach taken by the Inspector to the weight to be attached to biodiversity net gain as set out in the decision². A second ground of challenge (Ground 2) alleging a breach of the Inspector’s duty under section 38(6) failed. On the 18th of April 2024, the Planning Inspectorate (“PINS”) confirmed that the appeal would be re-determined following another Public Inquiry.

2.3 I was appointed as the Council’s planning expert witness in relation to the original Inquiry and was subsequently formally instructed again by the Council on 29th February 2024, having satisfied myself professionally that I could support the Council’s case. A copy of my notice of appointment is included at Appendix WCC3 of this proof of evidence, as requested by the Inspector.

2.4 As set out in their Statement of Case for this appeal (CD13.29), the Appellant’s have submitted details of a revised scheme, including for a reduction in processing plant size and as such a reduction in height, or removal altogether, of some proposed bunds. The alternative submission includes revised plans and an Addendum Environmental Statement (“ES”) (CD15.01) and has been subject to additional public consultation. The details informing the alternative scheme, from hereon in referred to as the “Option 2” scheme (with Option 1 referring to the original scheme before the appeal) are in part captured in Chapter 4 of this proof of evidence but are otherwise set out within the updated Main Statement of Common Ground (“SoCG”) (rID2).

¹ The original decision for 3310099, dated 5th May 2023, dismissed the appeal.

² NRS Saredon Aggregates -v- SSLUHC & another [2023] EWHC 2795 (Admin)

- 2.5 In his written note dated 8th August 2024 following the Case Management Conference (“CMC”)(rID1), the Inspector, having regard to the fact that the Option 2 remained open to public consultation until 6th September 2024, concluded that it would be likely that Proofs of Evidence would need to address both the Option 1 and Option 2 schemes, and that PINS on behalf of the Secretary of State would assess compliance of the Option 2 scheme with the EIA Regulations following the end of the consultation period. The Inspector further set out that it was likely that he would issue a Pre-Inquiry Note at that stage inviting written submissions from the main parties setting out their respective positions, which would be considered in a round table discussion on the first day of the Inquiry.
- 2.6 The application was refused with 9 reasons for refusal; as noted in the Council’s Statement of Case (CD13.28), and in having regard to the proposed revisions detailed in relation to the Option 2 scheme, it remains the intention of WCC to defend only reason for refusal 2 (“unacceptable impact on openness of the Green Belt”) within this Inquiry.
- 2.7 The Council screened and scoped the application in compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“EIA Regulations”). It confirmed the application required an Environmental Impact Assessment and an ES was submitted by the Appellant. The subsequent Option 2 submission is supported by an Addendum ES and PINS will assess its compliance with EIA Regulations.
- 2.8 This proof of evidence will consider the issues captured within the Inspector’s Post-Conference Note from the CMC, where they refer to the Council’s case. These issues were set out as follows:
- (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.

2.9 Having regard to both the above and the Council's pursued reason for refusal, the structure of my proof of evidence maintains consistency with the main issues as presented by the Council within their Statement of Case. My evidence is presented under the following sections:

- Section 3 – Planning Policy Context
- Section 4 – Analysis of Main Issues
 - 4.1 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.
 - 4.2 In addition to the potential harm to the Green Belt, what, if any, other harm is there?
 - 4.3 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.
- Section 5 – Whether Very Special Circumstances exist.
- Section 6 - Planning Balance and Conclusions

2.10 The signed SoCG has been prepared between WCC and the Appellant and states matters of agreement and disagreement, provides both a site location description and a description of the proposed development in relation to both the Option 1 and Option 2 schemes. Additional topic-specific SoCG's have been requested by the Inspector within his Post-CMC note in relation to minerals and waste need and supply (and the availability of inert materials) and in relation to biodiversity (rID8 and rID5, respectively).

- 2.11 The Council reserves the right to consider and respond to issues raised by the Appellant in the submission of their evidence, through rebuttal proofs, if necessary, in accordance with the instructions raised within the CMC.
- 2.12 The evidence prepared and provided for this appeal in this proof of evidence is independent, has been prepared by me and is given in accordance with the guidance of my professional institution, the Royal Institution of Chartered Surveyors. As a Chartered Surveyor giving expert evidence, I am bound by the RICS Practice Statement "Surveyors Acting as Expert Witnesses, 4th Edition" (RICS, amended 2023). The opinions expressed are my true and professional opinions.

3.0 Planning Policy Context

3.1 The Development Plan

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework ("NPPF") or ("the Framework") (2023) and Planning Practice Guidance ("PPG") are material considerations.

3.2 The requirements in determining applications "in accordance with" the plan does not mean that an application must comply with each and every policy, but it is approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the courts, that Development Plans are a broad statement of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. The statutory adopted Development Plan of relevance to this appeal comprises of the following:

- The Worcestershire Minerals Local Plan (Adopted July 2022);
- Worcestershire Waste Core Strategy Development Plan Document 2012 – 2027 (Adopted November 2012); and
- Wyre Forest District Local Plan 2016 – 2036 (Adopted April 2022).

3.3 The main SoCG provides a list of Development Plan policies considered relevant to the appeal. The policy considerations of particular relevance to the Council's case are summarised within this Chapter.

3.4 Constraints

The site is located within the Green Belt. The Grade II listed North Lodges and Gateway to Lea Castle (1296589) is located approximately 270m to the north-east of the appeal site boundary.

3.5 Reason for refusal 1 of the planning decision refers to Policy 2 (Other Sand and Gravel Deposits) of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997) (Saved Policies). In the period since the decision notice was issued by the Council, the Worcestershire Minerals Local Plan has

been adopted and the County of Hereford and Worcester Minerals Local Plan has been superseded. Reason for refusal 1 refers specifically to Policy 2 of the superseded Local Plan. No policy within the adopted Minerals Local Plan provides consistency with Policy 2, and as such reason 1 is not defended by the Council within the appeal.

3.6 The Council have delayed the intended preparation of a Minerals Site Allocations Development Plan Document (DPD) to support the Minerals Local Plan by allocating “specific sites” and “preferred areas” for mineral extraction, due to uncertainties about changes to national policy and legislation. A review of the consultation outcomes of a Preferred Options draft of the DPD was paused and it is concluded that no weight can be afforded to it in terms of the determination of this appeal.

3.7 The main contribution of the Wyre Forest District Local Plan in relation to minerals extraction is through the designation of boundaries and extent of the Green Belt. The appeal site is clearly located within the Green Belt because of Policy SP.7 of the Wyre Forest District Local Plan and the associated Policy Map.

3.8 The Worcestershire Minerals Local Plan (MLP)

The MLP was adopted in 2022 and covers the period between 2018 and 2036. The MLP was prepared in accordance with the NPPF and as such there are no conflicts with national policy. Full weight can therefore be afforded to its policies.

3.9 Policy MLP 1 provides that WCC will secure most of its minerals over the life of the plan from its Strategic Corridors, and that development for sand and gravel and silica sand will be supported within the corridors but not normally elsewhere within the county.

3.10 Policy MLP 3 part b) provides that WCC will grant new mineral developments on windfall sites within strategic corridors where there is a shortfall in supply (as defined by part c)) and it can be clearly demonstrated that any viability, environmental or amenity constraints can be satisfactorily managed or mitigated to allow extraction of the mineral resource (part b) ii).

- 3.11 The issue of shortfall in supply, as per part c) of MLP 3, defines a shortfall to exist where:
- i. *there is a shortfall in extant sites and allocated specific sites and/or preferred areas to meet the scale of provision required over the life of the plan; or*
 - ii. *there are sufficient extant sites and allocated specific sites and/or preferred areas to meet the scale of provision required over the life of the plan but one of the following applies:*
 - *there is a demonstrated shortfall in the landbank or stock of permitted reserves demonstrated in the most recent Local Aggregate Assessment (for aggregate development proposals) or Authority Monitoring Report (for non-aggregate development proposals); or*
 - *there is a demonstrated shortfall in productive capacity in the most recent Local Aggregate Assessment (for aggregate development proposals) or Authority Monitoring Report (for non-aggregate development proposals); or*
 - *there is a demonstrated shortfall in supply of the relevant mineral for particular uses or specifications which would be addressed by the proposed development; or*
 - *there is a demonstrated shortfall for a particular geographic market area which would be addressed by the proposed development.*
- 3.12 It is the Appellant's case that there is an insufficient provision of extant sites and allocated sites to meet the scale of provision required over the life of the plan at the present time, and that, as such MLP Policy 3 part c) i) applies to the case.
- 3.13 Policy MLP 7 provides that WCC will grant planning permission for proposed mineral development where an "appropriate provision of technical assessment" has demonstrated that the development will, throughout its lifetime, deliver optimised benefits that include, at part a) *"the local economic, social and environmental context of the site"* and, at part c) i), take site specific opportunities to *"protect and enhance inherent landscape character"*.
- 3.14 Policy MLP 11 refers to the North West Worcestershire Strategic Corridor, within which the appeal site is located. It states that planning permission will be granted for mineral development within the Corridor that *"contributes towards the quality, character and distinctiveness of the corridor through the conservation, delivery and enhancement of green infrastructure networks"* and requires technical assessment to demonstrate such contribution throughout each stage of a site's life. Where very

limited or negligible contribution is made towards these priorities, permission will only be granted *“where the economic, social and/or environmental benefits of the proposed development outweigh the benefits of delivering the corridor priorities”*.

- 3.15 Policy MLP 14 provides that WCC will seek to maintain a landbank of at least 7 years throughout the plan period and sufficient capacity of sand and gravel will be maintained to *“at least meet the guideline in the most recent Local Aggregate Assessment”*. The policy provides scale of provision required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).
- 3.16 Policy MLP 15 identifies that planning applications for minerals development are required to identify the contribution that such a grant of permission would make towards maintaining a landbank of permitted sand and gravel reserves in the county.
- 3.17 Policy MLP 27 at part a) provides that WCC will support mineral extraction and/or engineering operations in the Green Belt where *“a level of technical assessment appropriate to the proposed development demonstrates that, throughout its lifetime, the mineral extraction and/or engineering operations will:*
- *preserve the openness of the Green Belt; and*
 - *not conflict with the purposes of including land within the Green Belt”*.
- 3.18 At part b) the policy provides that *“where any aspect of the proposed development is inappropriate in the Green Belt - including mineral extraction and/or engineering operations that cannot satisfy the tests in part (a) above - it will only be supported where a level of technical assessment demonstrates that very special circumstances exist that mean the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”*. The policy refers to the NPPF with regards to what is defined as inappropriate development in the Green Belt.

- 3.19 Policy MLP 30 provides that WCC will grant planning permission where minerals development will not, at part b) *“have an unacceptable adverse effect on the integrity and quality of publicly accessible green space”*.
- 3.20 Worcestershire Waste Core Strategy Development Plan Document (WCS)
The WCS was adopted in 2012 and covers the period between 2012 and 2027. The WCS provides no conflict with national policy. Full weight can be afforded to its policies.
- 3.21 Policy WCS 13 states that waste management facilities will be permitted within the Green Belt where the proposal does not constitute inappropriate development, or where very special circumstances exist.
- 3.22 Wyre Forest District Local Plan (WFLP)
The Wyre Forest District Local Plan (2016 – 2036) was adopted by Wyre Forest District Council in April 2022. It sets out the long-term vision and strategic context for managing and accommodating growth within Wyre Forest District, within which the site is located, until 2036.
- 3.23 Policy DM.22 provides that development in the Green Belt will not be permitted, except in very special circumstances, or unless the development accords with one of a list of developments defined as a) to g), of which g) states *“other operations, including changes of use which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it”*. Furthermore, the policy states that proposals both within or conspicuous from the Green Belt, must *“not be detrimental to the visual amenity of the Green Belt, by virtue of their siting, materials or design”*.
- 3.24 Policy SP.LCV1 provides a strategic allocation for the development of a “sustainable village of high quality design” known as Lea Castle Village, which over the plan period is expected to provide for 1,400 dwellings (600 already have permission, with a further 800 subject to an application still to be determined, under reference 22/0404/OUT), 7 hectares of employment land, a primary school, village centre, sports pitches, allotments and designated open space. The site is located to the immediate east of the appeal site, and within 250m of the proposed phase of working.

3.25 National Planning Policy Framework

The NPPF (updated in December 2023) does not change the fundamental premise of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF must be taken into account when preparing the Development Plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3.26 At the heart of the NPPF is a presumption in favour of sustainable development, for which three “*dimensions*” are identified, namely an economic role, a social role and an environmental role. The implication is that to achieve sustainable development, the economic, social and environmental gain should be sought jointly and simultaneously through the planning system.

3.27 National Planning Policy on the approach to Green Belt within both plan making and decision taking is set out in Section 13. The protection of the Green Belt is a component of the purpose of the planning system to contribute to the achievement of sustainable development.

3.28 Paragraph 142 indicates that the Government attaches great importance to Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.

3.29 Paragraph 143 notes that the Green Belt serves 5 purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

3.30 Paragraph 152 states that “*Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*”.

- 3.31 Paragraph 153 states that local planning authorities should apply substantial weight to any harm to the Green Belt. Very special circumstances (“VSCs”) will not exist *“unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”*.
- 3.32 Paragraph 154 states that a local planning authorities should have regard to the construction of new buildings as inappropriate in the Green Belt, with some exceptions and at Paragraph 155, identifies certain operations that are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. These include, at part a) mineral extraction and at part b) engineering operations (such as formation of screen bunds). This does not mean that a minerals development is automatically allowable in the Green Belt, as consideration needs to be given to how it affects openness, with an expectation of preserving it. However, the temporary nature of minerals developments must also be taken into account.
- 3.33 Paragraph 215 of the NPPF notes that minerals can only be worked where they are found. All mineral proposals also need to be considered in response to paragraph 216 of the NPPF, and in particular, those aspects which are relevant to this case are:
- a) *“provide for the extraction of mineral resources of local and national importance;”* and
 - f) *“set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality”*.
- 3.34 Paragraph 217 notes that when determining planning applications, *“great weight should be given to the benefits of mineral extraction, including to the economy”*, whilst stating that minerals planning authorities should, at b) *“ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality”*.
- 3.35 Paragraph 219 of the NPPF states that one of the means by which Minerals planning authorities should plan for a steady and adequate supply of aggregates is by maintaining landbanks of at least 7 years for

sand and gravel, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised.

3.36 Policies relating to “Any Other Harm”

The Court of Appeal in Redhill Aerodrome³ held that the words “*any other harm*” in the NPPF test did not only mean harm to the Green Belt; rather that it means any other harm that is relevant for planning purposes. As such, consideration is given to the policies contained within the Development Plan that are otherwise considered relevant, for the consideration of any other harm within this Proof of Evidence.

3.37 Policy WCS9 of the Worcestershire Waste Core Strategy states that proposals for waste management facilities will be permitted where the proposal, at b) ii, “*will not lead to substantial harm to or loss of significance of designated or non-designated heritage assets or their settings*”.

3.38 Policy SP.21 of the Wyre Forest District Local Plan states that “*development proposals should protect, conserve and enhance all heritage assets and their settings, including assets of potential archaeological interest, subject to the provisions of Policy DM.23*”.

3.39 Policy DM.23 of the Wyre Forest District Local Plan seeks to safeguard the historic environment through 6 separate points of policy, including a requirement, at point 3, for development proposals to avoid harm to, or loss of, a heritage asset wherever possible; identifying that the highest level of harm should require very robust justification, and any substantial harm should only be allowed in exceptional circumstances.

3.40 Additional paragraphs within the NPPF relevant to the appeal proposal

Having regard to matters in relation to conserving and enhancing the historic environment set out in Chapter 16 of the Framework, paragraph 205 identifies that when considering the impacts of

³ Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and others [2014] EWCA Civ 1386

proposed development on the significance of a designated heritage asset *“great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.

3.41 Paragraph 208 goes on to consider impacts of less than substantial harm to the significance of a designated heritage asset, noting that *“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”*.

3.42 Paragraph 209 of the Framework sets out the applicable tests for the significance of development on a non-designated heritage asset, identifying that *“in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”*.

3.43 Planning Practice Guidance (“PPG”)

The PPG is a material consideration. The most relevant of the considerations for the appeal are sections on Green Belt, Historic Environment, Minerals, Natural Environment and Waste.

3.44 Historic Environment

Section 66(1) of the Town and Country Planning Act (Listed Buildings and Conservation Areas) Act 1990 (as amended) imposes a duty on local planning authorities to have special regard to the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest which it possesses.

3.45 Other national policy and guidance documents are concluded to be material considerations in the determination of the appeal and this is agreed as common ground between the Council and the Appellant. This includes the following documents:

- The National Planning Policy for Waste (2014) (“NPPW”)
- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

3.46 Where specific reference is made to paragraphs within the policy and guidance documents within this proof it is noted, otherwise I confirm that the policy and guidance has been considered in full.

4.0 Analysis of Main Issues

4.1 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.

Paragraph 142 of the Framework states that *“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”*. The purposes of the Green Belt are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.2 Framework Paragraph 150 states that *“local planning authorities should plan positively to enhance the beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land”*.

4.3 Paragraph 152 states that *“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”* (“VSC”). In considering applications, substantial weight should be given to any harm to the Green Belt. The Framework adds that *“‘very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”*.

4.4 Paragraph 155 of the NPPF indicates that 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, including, at a) minerals extraction and, at b) engineering operations. In other words, mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that

the proposal both preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt.

4.5 What comprises 'mineral extraction' for the purposes of applying this policy is not defined in the NPPF. However, section 55 of the 1990 Act defines mining operations to include the removal of material of any description from a mineral-working deposit. With regard to the imposition of conditions for mineral working schedule 5 of the 1990 Act refers to the winning and working of minerals. Therefore, it is reasonable to conclude that 'mineral extraction' should include plant and infrastructure necessary to facilitate the winning and working of minerals. To that extent, it is considered that the plant and machinery included within proposal is limited to that necessary to facilitate mineral extraction.

4.6 Policy MLP 27 identifies that mineral extraction and/or engineering operations within the Green Belt will be supported where it can be demonstrated that, throughout its lifetime, the mineral extraction and/or engineering operations will preserve the openness of the Green Belt and not conflict with the purposes of including land within the Green Belt. Policy WCS 13 states that waste management facilities will be permitted in areas designated as Green Belt where the proposal does not constitute inappropriate development, or where very special circumstances exist. I conclude that Green Belt policies within the Development Plan, as they apply to the proposal, are consistent with the Framework.

4.7 ***Whether the Proposed Development Would Harm the Openness of the Green Belt***

As previously noted, Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt being described as their openness and their permanence.

4.8 The requirement to preserve openness means that proposals must not reduce openness or cause harm to the Green Belt and if they do, they must demonstrate very special circumstances as set out in the Framework. A part of these VSCs will be a need to demonstrate why any chosen method or approach is not able to avoid or minimise a reduction of openness.

- 4.9 It is important to define what openness is. The objective of Green Belt policy, in line with Framework Paragraph 142, is the prevention of urban sprawl, which means that openness is defined for its intrinsic quality and the avoidance of increased sprawl and not necessarily about sensitive receptors to such sprawl or potential landscape and visual impacts. *Turner*⁴ (CD12.05) determined that the concept of openness of the Green Belt *“is not narrowly limited to the volumetric approach suggested by [counsel] the word ‘openness’ is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent amongst these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents”*.
- 4.10 *Samuel Smith*⁵ (CD12.06) provided further analysis of openness beyond a broad support for *Turner*, stating that *“The concept of “openness” in para 90 of the NPPF [2012 version] 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 [Planning Practice Guidance 2] 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”*. Further it is stated *“[Openness] is a matter not of legal principle, but of planning judgement for the planning authority or the inspector”*.
- 4.11 It is a reasonable expectation that in assessing openness, decision makers should take into account the likely visual impacts of development on the openness of the Green Belt. It is reasonable to assume that in assessing openness, the decision maker should determine whether the proposal offers any visual or spatial effects on the openness on the Green Belt, and whether such effects are likely to be harmful or benign. It is then, that any visual harm caused to the landscape would also be caused to the Green Belt.

⁴ *Turner v. SSCLG* [2016] EWCA (CIV 466)

⁵ *Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant)* [2020] UKSC3)

4.12 Mineral extraction may not be inappropriate in the Green Belt as long as it preserves openness in accordance with paragraph 155 of the NPPF. It therefore comes down to the specific details of the proposals; determining the “tipping point” beyond minerals excavation that would preserve openness and not conflict with the purposes of including land within the Green Belt, depends on the particular circumstances of the proposal as a matter of fact and degree⁶. Relevant considerations could include the siting, nature and scale of the operational development within the local context, and include its cumulative context, along with its visual effects, the impacts of its duration and the reversibility of any impact on the openness and purposes of the Green Belt.

4.13 This position is further underpinned by advice in the Planning Practice Guidance (PPG), paragraph 64-001-20190722, which states that when *“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; and*
- *the degree of activity likely to be generated, such as traffic generation.”*

4.14 For planning judgements openness is often equated with *“absence of built development”*. Sprawl is a multi-faceted 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. A relevant term used in NPPF at Paragraph 143 c) is *“encroachment”* which is generally defined as a gradual advancement of urbanising influences through physical development or land use change.

4.15 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

⁶ As per paragraph 49 of Inspector’s decision for appeal 3278097, Land at Hatfield Aerodrome

to preserve the openness of the Green Belt and the effect on Green Belt purposes, so as not to be inappropriate.

4.16 The Appellant's predominant consideration of the impact on openness of the Green Belt rests on the fact that the proposal is operational for a temporary duration and is mitigated, in part, by engineering operations such as temporary soil storage/visual screening bunds.

4.17 For the purpose of assessing the impact of the development upon the openness of the Green Belt, I consider the following main issues:

- the siting, nature and scale of the operational development within the local context, include its cumulative context, along with its visual effects, the impacts of its duration and the reversibility of any impact on the openness of the Green Belt; and
- the impact of development on the purposes of the Green Belt; and
- if it is inappropriate development.

4.18 Later on in this proof of evidence, I will set out whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

4.19 *Existing character of the Appeal Site*

The site is generally undulating with a slight valley feature to the central west area at approximately 60 metres Above Ordnance Datum (AOD) running eastwards to a track at approximately 69 to 70 metres AOD. Levels to the south, central and northern portions of the western area of the site are approximately 67 metres AOD. The eastern area of the site features a central knoll (a small round hill) at approximately 83 metres AOD with land levels falling to the west to approximately 69 metres AOD, to the north to approximately 72 metres AOD and to the east to approximately 53 metres AOD. Land levels to the south of the knoll are at approximately 80 metres AOD.

4.20 The site is bounded to the south-west, west, and north-west by woodland, beyond which are residential properties accessed off Brown Westhead Park. The irregularly shaped northern appeal boundary is mainly comprised of agricultural fields interspersed with farm buildings and residential properties. The eastern boundary is comprised of the Wolverhampton Road (A449), beyond which lie agricultural fields, which form part of the Lea Castle Village allocation site. The southern boundary is comprised of a wall adjacent to the Wolverley Road (B4189), individual areas of vegetation and trees, and residential properties.

4.21 Footpath WC-624 runs east to west across the western area of the site, adjoining footpaths WC-622 and WC-623, which run north to south on the western boundary of the appeal site. Bridleway WC-626 runs on a north-south alignment in the centre of the appeal site, adjoining bridleway WC-625, which runs in a north-easterly direction adjoining the junction of Castle Road / A449.

4.22 The appeal site measures approximately 46 hectares in area and is located approximately 330m north of the settlement boundary for the town of Kidderminster, approximately 680 metres and 850 metres east of the villages of Wolverley and Fairfield, respectively, and approximately 350m south of the village of Cookley.

4.22 As detailed in Chapter 2, the Appellant brings forward two optional schemes within the Inquiry and I have been instructed to assess both. I assess Option 1 (the original scheme) initially against those main Green Belt issues, before assessing Option 2, making reference only to where the differences in the alternative scheme impact on my conclusions by comparison to Option 1.

4.23 ***Option 1***

The proposal seeks to extract approximately 3 million tonnes of sand and gravel (about 1.57 million tonnes of sand and gravel and 1.43 million tonnes of solid sands), from two distinct areas – the western and eastern areas, totalling approximately 26 hectares within the wider site. The depth of extraction is anticipated to be between 5 to 7 metres in the western area and 7 to 12 metres in the eastern area, at a maximum depth of 18 metres. The working method involves excavating the raw material, using a tracked excavator or rubber tyred loading shovel and loading it into dump trucks at the quarry face. In Phases 1, 2 and 3 (the western part of the site) the sand and gravel would be

transported to a proposed field hopper and conveyor located within the eastern part of Phase 2, where it would be conveyed under the existing track and public right of way (bridleway WC-626) to the proposed processing plant site. In Phases 4 and 5 the dump trucks would transport the excavated material to the processing plant via temporary haul road; the only exception to this is the excavation of mineral from the southern half of the processing plant site within the initial works phase; this will be transferred offsite and sold, or processed, elsewhere. The annual proposed output of sand and gravel is an estimated 300,000 tonnes.

4.24 The footprint of the processing plant site area measures approximately 3.8ha and would be located circa 7m below the existing ground level of 70.5m AOD. The plant site would be surrounded by a soil storage bund, providing visual screening, at a height of 3m to the north and south and between 4 and 5m to the west. The east provides for higher ground, up to 80m AOD. An overburden bund would be located to the northern processing plant area and have a height of 6m.

4.25 The processing plant area itself would provide for the following (see plan KD.LCF.021 in CD1.22):

- The mineral processing plant – measuring a total of approximately 43 metres wide by 53 metres long by 12 metres high.
- Site office and welfare facilities which would comprise of three portacabins, the two larger portacabins being placed one above the other to create double storey cabin, each measuring approximately 12.4 metres long by 4.2 metres wide by 2.9 metres high, resulting in an overall height of approximately 5.8 metres. This double portacabin would provide office, small kitchen, canteen and a single water closet (WC) facility on the ground floor, with an office and meeting / training room on the upper storey. Immediately beside this is a proposed single storey portacabin measuring approximately 3.8 metres long by 2.8 metres wide by 2.9 metres high, which would house three further WCs and a shower room.
- Wheel wash.
- Weighbridge, which would measure a maximum of 27 metres long (overall length, including ramps) by approximately 3 metres wide by 0.5 metres high.
- Stocks of product – stockpiles of product of 20mm, 10mm, coarse sand, fine sand and ultra-fine sand measuring about 5 metres in height.
- 2 cylinders (tanks) for a silt management / water cleansing system – measuring a maximum of 6 metres wide by approximately 3 metres high.
- Approximately 12 staff and visitor car parking spaces.

- 4.26 Vehicular access to the application site would be via a proposed new access and internal haul road onto the Wolverley Road (B4189) in the south-eastern area of the site. A kerbed central island would be provided within the access bellmouth to prevent HGVs from turning right onto the Wolverley Road (B4189) when exiting the site.
- 4.27 The land would be worked in a total of 6 phases (Initial Works, Phases 1, 2, 3, 4 and 5), beginning by working and setting up the processing plant site in the centre of the site, then commencing extraction in the western area working north to south, crossing over to the eastern area working south to north. The proposed development of the site is illustrated by plans KD LCF 003, 004, 005, 006, 007, 008, 009, 021, 022 (Core Documents CD1.24-30).
- 4.28 The proposal can therefore be summarised as comprising of the following key elements:
- new access onto the public highway;
 - a kerbed central island within the highway;
 - internal haul roads;
 - plant site including processing plant, stockpiles, weighbridge, wheel wash, water cylinders, car parking, offices and other ancillary facilities;
 - peripheral screening bunds; and
 - a mineral extraction area divided into 6 phases, including the initial works excavation.
- 4.29 The initial works phase would involve the following operations:
- creation of a new vehicle access onto Wolverley Road (B4189) with a short site internal road into the proposed processing plant site.
 - Soil stripping of the internal access route and processing plant site area and used to create soil storage / screening bunds around the processing plant site (bunds 1 to 5). Bunds to be seeded with floristic meadow mix. Storage area 6 topsoil to be placed onto an existing undisturbed field, located to the east of the proposed processing plant site (Phase 4) to a thickness of 300mm, and farmed.
 - Mineral from within the southern half of the processing plant site extracted and transferred off site “as dug” to another point of sale or another quarry for processing and sale.
 - The internal access road graded down from the east to the lower processing plant site level.
 - The silt management / water cleaning system established.

- Sand and gravel extraction from the remainder of the initial works area, processed by the proposed on-site mineral processing plant and sold.
- Planting approximately 120 trees along bridleways WC-625 and WC-626.
- The planting of a woodland block in the north-east corner of the site in Phase 5 together with the strengthening of existing adjacent hedgerows.
- A new public right of way created measuring approximately 2.3 kilometres around the perimeter of the site, going from the north-eastern corner of the site, along the western boundary of Wolverhampton Road (A449) located to the east of the site, along the northern boundary of Wolverley Road (B4189), which is located to the south of the site, and finishing in the south-western corner of the site, connecting to footpath WC-622.

4.30 Initial works for each phase include the removal of soil and overburden to expose the extractable sand and gravel underneath. The stripped soils would be loaded on to dump trucks for either direct placement in previous extraction areas as part of the progressive restoration or stored temporarily in soil bunds pending their subsequent reuse in the final restoration of the site. Any soil bunds which are to remain in-situ for more than 3 months would be seeded with a floristic meadow mix. Soil bunds would be constructed to a maximum outer slope of 1:3 and an inner slope of 1:2. Topsoil bunds would be a maximum height of 3 metres, subsoil bunds a maximum height of 5 metres and overburden bunds a maximum height of 6 metres. Once the overlying soils and overburden are removed, the exposed sand and gravel would be extracted and removed for processing on-site.

4.31 The land would be progressively restored using site derived and imported inert material to agricultural parkland, public access and nature enhancement. The applicant estimates that the western area of the site would be fully restored within 5 years of extraction commencing, and the eastern area being fully restored within 1 year after the cessation of mineral extraction, taking a total of 11 years to complete the whole development (extraction over 10 years, with 1 additional year to complete the remaining restoration).

4.32 To restore the site the applicant is proposing to import approximately 600,000 cubic metres of inert material (equating to about 1,020,000 tonnes), importing approximately 60,000 cubic metres of inert material per annum (equating to about 102,000 tonnes per annum). The applicant states that landfilling would involve the construction of a base and sidewall lining to provide engineered

containment for receipt of inert wastes. The landfill lining would be completed using suitable imported inert material. Other than soil cover, no engineered capping system would be required for areas of inert landfill. For Phases 1 to 3, inert materials would be conveyed under the bridleway from the plant site, where it would be loaded onto dump trucks and deposited in the quarry void. For Phases 4 and 5, the inert material would be directly deposited in the quarry void by dump trucks.

- 4.33 The restoration scheme includes the provision of an agricultural parkland with the planting of 7.5ha of new acidic rich meadow grassland, hedgerow strengthening and planting and the planting of native woodland blocks. This is illustrated on plans KD LCF 010 and 028, respectively (CD1.31 and CD1.32).
- 4.34 Based on exporting approximately 300,000 tonnes of sand and gravel in HGVs with 20 tonne average payloads, over 275 working days per annum (based upon a 5.5 day working week and allowing for the extended shut-down between Christmas and New Year), an average of approximately 55 loads per day would be required, resulting in 110 daily HGV movements onto the highway.
- 4.35 Dump trucks with a payload of up to 40 tonnes would be used to transport mineral within the site. The total number of onsite dump truck movements per day is anticipated to be between 54 to 72 movements (27 to 36 loads being taken to the processing plant per day).
- 4.36 Based on importing approximately 60,000 cubic metres (102,000 tonnes) of soils and overburden of inert waste in HGVs with 17 tonne average payloads, over 275 working days per annum, an average of approximately 22 loads per day are expected, resulting in 44 daily HGV movements to and from the highway.
- 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.

4.38 Large bunds are used to screen the working site from surrounding viewpoints. Whilst they may be defined as engineering operations with regard to paragraph 155 b) of the NPPF, they reduce openness. The processing plant may be considered a necessary part of minerals extraction, but given its size, it also reduces openness. The cumulative effect of these (bunds, haul roads, plant areas and associated activity), in combination with large stockpiles does increase the overall effect on openness.

4.39 *Visual Aspect of Openness*

The Appellant has not provided an assessment of the effects of the proposal on openness. The Appellant's Statement of Case limits its consideration to a conclusion that the proposals "*preserve openness...and do not conflict with the purposes of including land within it*"⁷ and states that whilst development would be "*visible, it would not be very visible, due to the topography, proposed temporary soil storage/visual screening bunds, existing boundary walls and proposed planting*"⁸. They conclude that "*the visual impact on openness does not make this development 'inappropriate'*"⁹.

4.40 The proposed development relies on the creation of soil storage bunds to reduce the visual impact of development from surrounding key viewpoints; the mitigation benefit from a landscape and visual impact perspective is noted within the Appellant's Landscape and Visual Impact Assessment (LVIA)(CD1.04) as a "*block*" to "*potential views of quarrying activities*"¹⁰. Core Document CD3.08 provides details of the individual soil storage bunds associated with the proposed development; noting the use of No.20 bunds during operations, ranging from 6m to 3m in height, save for bund 6 at 0.3m in height.

4.41 Bunds 1-5 are to remain in-situ on site from the initial creation of the processing plant area through until its decommissioning to complete restoration. Bunds 1 and 2, at 3m high, are located to the immediate north of curtilage of the dwellings South Lodges and Broom Cottage, and further seek to reduce views into the plant site from the site access. Bund 4, at 3m high, is located to the north of the plant site, to the immediate south of the existing public right of way and seeks to mitigate viewpoints into the plant area from the dwelling known as The Bungalow, and the Lea Castle Equestrian Centre.

⁷ Appellant's Statement of Case paragraph 4.18

⁸ Appellant's Statement of Case paragraph 5.5

⁹ Appellant's Statement of Case paragraph 5.5

¹⁰ Appellant's LVIA paragraph 7.11

Bund 3, at between 4m and 5m in height, runs along the entire western extent of the plant area, immediately adjacent to the existing right of way.

- 4.42 A series of photographs have been taken from key views along public rights of way and in proximity to the site. These are included at WCC1. It is concluded that the siting of Bunds 1-4 would reduce views across the site from **Key View A**, to the immediate east of the dwellings on Brown Westhead Park, at the intersection between the existing and proposed public rights of way. It would also erode views eastwards across the new public right of way. The existing view provides a vista extending to the highest land level within the site, the domed land to 82mAOD to the east of the proposed plant area, and the tree cover and chimney of Broom Cottage, to the southeast. The inclusion of the proposed bunds, particularly Bund 3, would substantially reduce the extent of this view eastwards across the site, for the majority of the lifespan of proposed development.
- 4.43 During Phases 1 to 3, the viewpoints eastwards across the site from this key view, would be further restricted, by the siting of Bund 8 (at 5m high) and Bund 10 (at 3m high) during Phases 1 and 2; Bund 12 (3m high) during Phase 2 and Bunds 13 and 16 (both 4m high) during Phase 3. The siting of Bunds 8, 12 and 16, due to their close proximity to rights of way, both permanent and temporary, will remove views eastwards across the site for substantial periods of time during the relevant phases, and erode the views already reduced by lifespan bunds 1-4.
- 4.44 The Appellant's revised submission includes for the provision of additional landscape photomontages (CD15.03-09) which also assess the original scheme (by comparison to that proposed in Option 2) and the proposed Year 1 photomontage from viewpoint Da and the proposed Year 1 and 4 photomontages from viewpoint Db reinforce these conclusions.
- 4.45 I conclude that the development will have a detrimental impact on the visual openness of the site from its western extents for the lifespan of the development. The impact would be predominantly experienced by the users of the existing and proposed public rights of way to the west of the site. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of great significance during the working of Phases 1 to 3.

- 4.46 **Key View B** is taken from the public right of way, northeast of the north-eastern corner of the site, looking south westwards, and is considered to be reflective of the general vista experienced from the right of way; from the dwellings at Castle Barns and North Lodges; and from the upper floor windows to the rear of the properties located on Westhead Road, in Cookley. Due to the higher topographic level of the viewpoint, long ranging views across the site are provided, taking in the tree cover afforded to the dwelling known as Four Winds to the immediate south of the appeal site and to the existing access track running from the Bungalow to South Lodges (that form the extent of Bund 3) with the tree cover of the woodland to the west of the site beyond.
- 4.47 Those far-ranging views westwards across the site would be eroded by the erection of Bund 3 for the predominant lifespan of development, although this would reduce views of Phases 1 to 2 of the operational works as a by-product of its inclusion. Bund 17, at 3m in height, would be erected prior to undertaking works in Phases 4 and 5. Its depth and location, immediately adjacent to the diverted right of way to the north east of the site, would reduce depth of views from the right of way, from Castle Barns and North Lodges and from the views experienced from dwellings at Westhead Road across the site in a southern and south-western direction across the lifespan of Phases 4 and 5 of the proposal. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of greater significance during the working of Phases 4 and 5.
- 4.48 The Appellant's submission does not provide a visual illustration of the impact of the erection of these bunds, with the original LVIA not providing any photomontages and the original landscape proof of evidence providing photomontages from 3 other locations.
- 4.49 **Key View C** is a pair of images showing the vista of the appeal site to the north west, north and north east from the existing vehicular access into the site, north west of South Lodges, and the location of the southern relocation of the public right of way. The existing views north eastwards extend to the brow of the land, to the east of the proposed Phase 4 area and northwards to the woodland beyond the Lea Castle Equestrian Centre. To the west, open views are provided across to the woodland adjacent to Brown Westhead Park, and to the higher landform of Wolverley in the distance.

4.50 The erection of Bunds 1-3 would block the views from the public vantage point in their entirety to the north east of the site, due to the height of the bunds and their proximity to the right of way. Any views beyond the bunds that could be taken in would be of the plant site, including the processing plant, offices and hardstanding. The view northwards would be reduced to a single aspect, towards The Bungalow, due to the extent and height of Bund 3. This would be further exacerbated during the works associated with Phases 1 and 2, where the erection of Bunds 9 and 10 (both 3m high) further reduce viewpoints northwards. No screening bund is provided to the east of Phase 3, and so during this period, the visual effects of operations would be experienced by receptors making use of the right of way, together with the occupiers of South Lodges. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area and across the working of phases 1 and 2; and of great significance during the working of Phase 3.

4.51 This conclusion is reinforced by the photomontages at viewpoints Ca, Cb, 15a and 15b, provided within the addendum landscape submission to offer comparison with the Option 2 scheme.

4.52 *Cumulative Context on Visual Openness*

The visual effects of the proposed development on openness of the Green Belt must also consider the cumulative impact on openness created in conjunction with other development. CD13.05 and CD13.10 provide the allocation masterplan for Lea Castle Village (as allocated within policy SP.LCV1 of the Wyre Forest District Council Local Plan) and the approved layout for planning consent 19/0724/RESE, forming part of the wider masterplan currently being built out, respectively.

4.53 **Key View D** is taken from the vehicular access junction to serve the Lea Castle Village development, adjacent to Park Gate Road. The view looks westwards across what will be a developed residential and village centre areas towards the eastern extents of the appeal site in the distance. Bund 18 is proposed to be erected to the east of the Phase 4 and 5 area, on land set down from the tallest brow of the view and between 4m and 5m in height. The view is representative of that experienced by cars and pedestrians along Park Gate Road, as well as from wider westward views towards the site from surrounding receptors, which will include occupiers of dwellings secured under 19/0724/RESE.

- 4.54 The current view provides an open westward view across the land either side of Wolverhampton Road, to the brow of the land bordering Phases 4 and 5, and to the tree cover beyond. Bund 18 will restrict views to the tree cover beyond the brow, creating a singular, uniform mass that reduces any perceived openness to the landholding beyond. In combination with the building out of the allocated area on land to the foreground of the view across the same development period, the combined impact on the perceived openness of the Green Belt will be significant across the period associated with Phases 4 and 5 of the proposed works.
- 4.55 Whilst the Appellant's original landscape proof of evidence provides for a year 10 photomontage viewpoint from this same view (referred to as *Figure 7*) its usefulness in assessing openness impact is limited for two reasons. Firstly, the location of the viewpoint is taken from the only safe pedestrian access point at Park Gate Road, which is the same viewpoint as taken in my own evidence. The view from this specific location towards the site is significantly blocked by an existing row of trees running parallel with Wolverhampton Road and as such struggles to fully represent the view experienced by vehicles traveling on Park Gate Road, who would not be impacted by the tree cover screening. Secondly, the photomontage provides no attempt to set out the visual impact of the Lea Castle mixed use development as would be likely be constructed, or be in the process of construction, by year 10 of the appeal scheme, and as such the photomontage is unhelpful in assessing the cumulative context on visual openness.
- 4.56 **Key View E** is taken from the entrance to a residential estate on Stourbridge Road, the location of which is detailed in WCC2. The dwellings located along Stourbridge Road have wide ranging views across the north west and to the north east from a higher vantage point. The view shows the appeal site to the north west, with the brow adjacent to Phases 4 and 5 and tree cover beyond in clear view, with the western extents of the Lea Castle Village masterplan area to the north east. The combined impact of the introduction of Bund 18 with associated operational movements on the appeal site, in combination with the building out of the Lea Castle Village allocation will, in combination, substantially erode the perceived visual openness of Green Belt from higher vantage points to the south of the site, of which there are a substantial number of residential receptors along Stourbridge Road. The combined impact on the perceived openness of the Green Belt will be of great significance across the period associated with Phases 4 and 5 of the proposed works. Again, the Appellant's submission does not provide a visual illustration of the proposed cumulative impacts from this viewpoint.

4.57 *Overall Effects on Visual Openness*

The inclusion of a substantial number of bunds to mitigate for the effects of the proposal on the landscape and visual impact of the area creates a change to the sense of openness on receptors (for both residential and recreational uses and/or road users) due to their extent and size, cutting off open views across the site.

4.58 The development is considered to cause a very significant detrimental effect on visual openness from western and southern viewpoints of the site during Phases 1, 2 and 3 of the works, and a very significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.59 The development is considered to cause a significant detrimental effect on visual openness from north-western viewpoints of the site during Phases 4 and 5 of the works, and a significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.60 The development is considered to cause a significant detrimental effect on visual openness, in combination with the allocated development at Lea Castle Village, across Phases 4 and 5 of the development, from wider views of the Green Belt from the east and southeast of the site

4.61 *Overall Effects on Spatial Openness*

Further to the visual dimension of harm to openness the proposal causes, the siting of the bunds themselves provides engineered features of incongruity, at odds with the natural landscape of the site, for substantial periods of time; creating a spatial impact on the openness of the Green Belt.

4.62 *Reversibility and Temporary Development*

The Appellant asserts, considering the conclusions of *Europa Oil and Gas Ltd*¹¹ (CD12.07) that the 10-year duration of development, would be temporary and reversible through restoration, and as such there would be no permanent harm. In this instance, it is considered that the substantial use of large bunds, which cause a spatial impact across the site for a period of 10 years would, in combination with development adjacent to the site, create an intensive impact on the Green Belt at a time when the site is considered to have a heightened responsibility in effectively performing its purposes as Green Belt land. I set out why the site has a heightened responsibility at paragraphs 4.70 and 4.71.

4.63 I note that it is the fundamental aim of the Green Belt to prevent urban sprawl by keeping the land permanently open [my emphasis]. The proposed development would mean that for at least 10 years the Green Belt is not open at the site. I conclude that the Green Belt cannot be permanently open if it is open only some of the time. As such I conclude that the proposal would negatively impact upon the permanence of the Green Belt, that 10 years is a substantial period of time when the site has a heightened responsibility and any harm that flows from the proposed development will therefore create an impact for a substantial period.

4.64 I conclude that the size, scale and spread of engineered bunds across the site causes harm to the spatial component of openness of the Green Belt, I do not think that the Appellant's rationale for determining that this impact is reduced, due to the development being temporary, is persuasive. I therefore conclude that the proposal would offer significant harm to the openness of the Green Belt in spatial terms.

4.65 The extent of proposed bunds across the lifespan of the development and the extent of works for Phases 4 and 5, which require in mitigation a substantial bund to be sited to the east, in combination with other development from far ranging views, affect openness to the extent that it "tips the balance" to make it inappropriate development.

¹¹ *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin)

4.66 Consequently, both visually and spatially, the proposed development would result in significant harm to the openness of the Green Belt.

4.67 *Green Belt Purposes*

The appeal site is located within the North West Worcestershire “Strategic Corridor” for solid sand and gravel and silica reserves as identified within the Minerals Local Plan. Whilst the majority of the Corridor is located within the West Midlands Green Belt, this does not mean that it is all of equal importance.

4.68 The appeal site sits in its entirety within land parcel N7 of Green Belt reviews Parts I and II (CD12.02 and CD12.03) undertaken by Wyre Forest District Council as part of their Local Plan Examination submission. 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.

4.69 Whilst the appeal site is contained within land parcel N7, the adjacent Lea Castle Village development sits within land parcel NE2, and land south of the site off Wolverley Road sits within parcels N5 and N6. The land parcels are concluded by the review to contribute differently to the purposes of the Green Belt.

4.70 The appeal site is 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.

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. The public right of way within the appeal site, adjacent to Castle Barns, provides clear views of Kidderminster to the south, on higher land, and Cookley to the north. The role of the appeal site in providing visual separation between the settlements is evident and would be undermined by the impact of the plant, equipment, buildings and

access and activity associated with mineral extraction together with the extent of use of the engineered bunds.

4.72 The appeal site protects against urban sprawl from viewpoints into Kidderminster from the A449 Wolverhampton Road as it approaches the town from the north, with the distinct lack of development to the north of Wolverley Road by comparison to the south of it serving as a visual barrier to sprawl from this vehicular gateway into the town.

4.73 From higher viewpoints, looking northwards and north eastwards across the site, the site provides mitigation to avoid visual coalescence between the villages of Cookley and Wolverley; providing a visual perception of openness between the two settlements.

4.74 The site thus provides a strong and direct contribution towards purposes a) and c) of Paragraph 143. Given both the appeal site's size and location, as an important parcel of land between Kidderminster, Wolverley and Cookley, it provides for a greater contribution to the purposes of the Green Belt than other land parcels within the Corridor. When considered in the context of the adjacent land parcel N7 being built out in its entirety to deliver the Lea Castle Village masterplan, its contribution to the purposes of the Green Belt is reaffirmed.

4.75 *Option 1: Green Belt Conclusion*

Insofar as I conclude that the tipping point of development has been exceeded by the harm caused to the openness of the Green Belt, I conclude that the appeal scheme is inappropriate development. Furthermore, the development would fail to check the unrestricted sprawl of built-up areas and would not assist in safeguarding the countryside from encroachment, and so would provide conflict with two purposes of the Green Belt, both to a significant level. I conclude that the harm to the Green Belt arising from these matters attract substantial weight against the proposal and that the proposal would be in conflict with policies MLP 27, WCS 13 DM.22 and the Framework.

4.76 **Option 2**

The proposed differences between the schemes are set out within the Appellant's updated Non-Technical Summary ("NTS") (CD15.13). As noted within it, "*the main changes associated with the proposed development to that of the previous scheme relates to the proposed Processing Plant and the use of bunds within development*"¹². The proposed processing plant height is reduced from 12m to 6.3m and its overall footprint reduced from 2,752 sqm to 451 sqm. The reduction in size of the plant, in combination with the proposed mitigation measures taken to screen it, lead me to conclude that, in isolation, it would not reduce openness. With regards to the initial works, the plant site area itself is not proposed to change; but Bund 3 is proposed to be reduced in height from 6m to 3m. Additionally proposed Bund 5 is proposed to not be introduced until phases 4 and 5, reducing the duration of its use to around 5 years.

4.77 Within the proposed Phase 1 works, Bund 7 is to be reduced from 6m, albeit that the updated phase 1 plan notes that the bund will be 4m and the NTS states it will be 3m. I have assumed that this is an error. Bund 11 is no longer provided. In Phase 3, Bunds 13, 14 and 16 are proposed to be reduced from 4m to 3m in height. In Phase 4, Bund 18 is no longer provided and Bund 19 is to be reduced from 4m to 3m and its footprint amended to allow for storage of soil at 3m in height. Outside of these amendments, the works and operations proposed by the scheme are unchanged.

4.78 Having regard to the proposed restoration, the only change within Option 2 relates to the early planting of a stretch of hedgerow and hedgerow trees adjacent to the eastern margin of Phase 4, which would take place at year 1 instead of at year 10, following the removal of proposed Bund 18 from the appeal scheme.

4.79 *Visual Aspect of Openness*

My conclusions in Option 1 in relation to **Key View A** are unaffected by the proposed changes in Option 2. The siting of bunds 1-4 would continue to reduce views across the site and erode views eastwards across the new public right of way. Whilst Bund 3 is reduced, the impact from the Key View A area eastwards is similar due to the topography of the land. During Phases 1 to 3, the restrictions of

¹² Paragraph 5.7, Revised Non-Technical Summary.

views eastwards across the site remain despite the proposed reduction in Bunds 13 and 16 during Phase 3.

4.80 The Appellant's revised submission includes for the provision of additional landscape photomontages (CD15.03 to 15.09), and the proposed Year 1 photomontage from viewpoint Da and the proposed Year 1 and 4 photomontages from viewpoint Db reinforce these conclusions.

4.81 I maintain the conclusion that the Option 2 scheme will have a detrimental impact on the visual openness of the site from its western extents for the lifespan of the development. The impact would be predominantly experienced by the users of the existing and proposed public rights of way to the west of the site. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of great significance during the working of Phases 1 to 3. Whilst these impacts would be reduced by comparison to the Option 1 scheme, I conclude that they remain significant.

4.82 The proposed amendments in option 2 do not affect my conclusions as they relate to **Key View B**. Whilst Bund 3 is reduced in size, its erection would still impact on far ranging views westwards across the site. Bund 17 is not proposed to change and so the impact on the view across the lifespan of Phases 4 and 5 remains the same. The impact on visual openness is considered to still be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of greater significance during the working of Phases 4 and 5.

4.83 The proposed amendments do not affect my overall conclusions as they relate to **Key View C**, although it is acknowledged that the reduction in the height of Bund 3 does offer a degree of reduction of "blocked" views by comparison to Option 1 above the height of the bund, providing some limited above-bund views of the landscape beyond¹³. Nevertheless, the views experienced on the right of way would maintain a single enclosed aspect view, northwards, which would be exacerbated during Phases 1 and 2, with Bunds 9 and 10 not subject to changed. This conclusion is reinforced by the photomontages at viewpoints Cb and 15a provided within the addendum landscape submission.

¹³ As illustrated by photomontages viewpoint Cb within the addendum landscape submission.

Again, no screening bund is provided to the east of Phase 3, and so during this period, the visual effects of operations would still be experienced by receptors making use of the right of way, as well as the occupiers of South Lodges.

4.84 I maintain that the impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area and across the working of phases 1 and 2; and of great significance during the working of Phase 3.

4.85 *Cumulative Context on Visual Openness*

The Option 2 scheme proposes the exclusion of Bund 18 and instead seeks to establish a hedgerow at Year 1 instead of at Year 10 as proposed in Option 1. By comparison to the bund, the hedgerow has a reduced impact on perceived openness to the land beyond it from **Key View D** by providing for softer, non-engineered screening by comparison to the bund. However, Phase 4 works on land set down from the brow of the land and in order to prove an effective screen, the hedgerow would need to sufficiently establish and grow in height by year 5 in order to screen views of the working quarry behind it. The Appellant's addendum photomontage from the view (viewpoint 4) provides only a year 10 and 25 view.

4.86 I conclude that when the works associated with Phase 4 commence, there will be a degree of visual impact on openness created by visibility of quarry operations. This, in combination with the buildout of the allocated area on land to the foreground of the view across the same development period, will impact on the perceived openness of the Green Belt and will be significant across the period associated with Phases 4 and 5 of the proposed works.

4.87 With regard to **Key View E**, I determine that the revised proposals in Option 2 provide no change to my assessment. Whilst Bund 18 would not form a feature of the development, the working operations of the quarry during Phases 4 and 5 would still be experienced as they are set down from the brow of the appeal site. The impact, in combination with the buildout of the Lea Castle Village allocation will still substantially erode the perceived visual openness of Green Belt from higher vantage points to the south of the site; and there are a substantial number of residential receptors along Stourbridge Road.

The combined impact on the perceived openness of the Green Belt will still be of great significance across the period associated with Phases 4 and 5.

4.88 *Overall Effects on Visual Openness*

The development is considered to still cause a very significant detrimental effect on visual openness from western and southern viewpoints of the site during Phases 1, 2 and 3 of the works, and a very significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.89 The development is considered to still cause a significant detrimental effect on visual openness from north-western viewpoints of the site during Phases 4 and 5 of the works, and a significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.90 The development is considered to still cause a significant detrimental effect on visual openness, in combination with the allocated development at Lea Castle Village, across Phases 4 and 5 of the development, from wider views of the Green Belt from the east and southeast of the site

4.91 *Overall Effects on Spatial Openness*

Further to the visual dimension of harm to openness the proposal provides, the siting of the bunds themselves provide engineered features of incongruity, at odds with the natural landscape of the site, for substantial periods of time; providing a spatial impact on the openness of the Green Belt that is not affected by the nature of the revisions in Option 2.

4.92 *Reversibility and Temporary Development*

My conclusions on the impacts of the development as a result of its timeframe are unchanged by the proposed revisions in Option 2.

4.93 I conclude that, both visually and spatially, the proposed Option 2 development would result in significant harm to the openness of the Green Belt. This adds to the harm caused to the Green Belt by reason of inappropriateness to the extent that it “tips the balance” to make it inappropriate development.

4.94 *Green Belt Purposes*

The amendments made to the proposals within the Option 2 scheme do not affect my conclusions that the site provides a strong and direct contribution towards purposes a) and c) of Paragraph 143 that would be impacted upon by the proposed development.

4.95 *Option 2: Green Belt Conclusion*

Insofar as I conclude that the tipping point of development has also been exceeded by the harm caused by the development to the openness of the Green Belt within the Option 2 scheme, I conclude that the appeal scheme is inappropriate development. Furthermore, the development would fail to check the unrestricted sprawl of built-up areas and would not assist in safeguarding the countryside from encroachment, and so would provide conflict with two purposes of the Green Belt, both to a significant level. I conclude that the harm to the Green Belt arising from these matters attract substantial weight against the proposal and that the proposal would be in conflict with policies MLP 27, WCS 13 DM.22 and the Framework.

4.96 **In addition to the potential harm to the Green Belt, what, if any, other harm is there?**

The Court of Appeal in *Redhill Aerodrome*¹⁴ held that that the words “any other harm” in the Framework test did not only mean harm to the Green Belt; it means any other harm that is relevant for planning purposes. Any other harm should be weighed in the balance when considering whether or not there are very special circumstances to justify the development. In understanding that the balancing exercise needs to consider these harms, consideration has to be given to the other planning harm concluded to be provided by the development.

¹⁴ Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 1386

4.97 The Impact on the Setting of Nearby Heritage Assets

This matter is not a reason for refusal and is not relied upon by the Council as such. It is however relevant to any consideration of planning balance that arises. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the decision maker when determining applications for development which affect a listed building or its setting, to have special regard for the desirability of preserving the listed building or its setting, or any of the features of special architectural interest which it possesses.

4.98 The Court of Appeal decision in the case of *Barnwell v East Northamptonshire*¹⁵ provides that in enacting Section 66(1) of the Act, Parliament's intention was that decision makers should give *"considerable importance and weight" when the decision-maker carries out the balancing exercise*". This gives rise to a strong statutory presumption against granting planning permission for development which would cause harm to the settings of listed buildings.

4.99 Furthermore, Paragraph 208 clarifies that *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.

4.100 Within the OR, the Council determined that the proposal would result in less than substantial harm to the significance of the designated heritage asset of North Lodges and Gateway to Lea Castle, a Grade II listed building¹⁶. Having undertaken a site visit and viewed the context of the heritage asset with the surrounding area, I agree with the Council's conclusions.

4.101 Insofar as the proposal is concluded to result in less than substantial harm to the designated heritage asset, this harm is required to be weighed against the public benefits of the proposal having regard to Paragraph 208 of the Framework. As noted within *Barnwell* the harm to a listed building should not be

¹⁵ *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137

¹⁶ Officers Report, paragraph 652.

weighed with equal weight to other opposing issues but given considerable importance of weight, and that such harm creates a strong presumption against the grant of planning permission.

4.102 The presumption is a statutory one, as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66(1). Even the lowest harm of the spectrum should be given special regard. In my view, the harm to the setting of the listed building arising from the appeal development should be given significant weight.

4.103 *Expectations of Paragraph 208 of the Framework*

In accordance with local and national policies, as the proposal causes harm to designated heritage assets, this harm must be weighed against the public benefits of the proposal. It is otherwise concluded that the proposed development would provide benefits in the form of addressing need for the release of new mineral reserves, contributing to the Council's landbank and that it would provide some economic benefits to the local economy and provide for net biodiversity gain.

4.104 I conclude that in applying Paragraph 208 of the Framework, the less than substantial harm to the settings of the designated heritage asset is outweighed by the public benefits arising from the proposed scheme.

4.105 I conclude that in isolation, against the test provided in Paragraph 208 of the Framework, the proposal brings forward sufficient public benefits that outweighs the less than substantial harm identified to the setting of the heritage assets.

4.106 **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.**

The Need for Sand and Gravel

Policy MLP 14 provides that WCC will seek to maintain a landbank of at least 7 years throughout the plan period and sufficient capacity of sand and gravel will be maintained to "at least meet the guideline in the most recent Local Aggregate Assessment". The policy provides scale of provision

required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).

- 4.107 Reliable assessment of the landbank can only be taken annually. The Local Aggregates Assessment (LAA) published in January 2024 covers the period up to 31 December 2022; the production guideline in the LAA is derived from the 10-year sales average plus 20%, with the 20% uplift.
- 4.108 The MWSocG identifies that the Council's reduction of the annual apportionment to 20% is a matter of disagreement between the parties¹⁷ and a matter the Appellant intends to present evidence on as part of the Inquiry.
- 4.109 The LAA states that *"none of the demand indicators suggest that the production guideline should be lower than the 10-year average, and some (trends in annual sales figures, the historic sub-regional apportionment and predicted infrastructure requirements) suggest that the production guideline should be increased above the 10-year average. Supply indicators (including replenishment rates, site allocations, industry interest) suggest that an increase above the 10-year average could be accommodated"*¹⁸.
- 4.110 In view of the above, the production guideline in the LAA is derived from the 10-year sales average plus 20%. The LAA states that *"this scale of uplift will support the continuation of recent supply levels and mitigate any potential impacts on the production guideline from the former County of Hereford and Worcester Minerals Local Plan (1997) being in place well beyond its expected implementation period (up to July 2022), which may have led to lower annual sales due to additional barriers to development rather than lower levels of demand. The 20% uplift will also support the anticipated scale of demand for housing and infrastructure development and allow some flexibility in relation to demand for HS2 and other development needs. This approach will be kept under review in future LAAs, particularly to monitor the impact of the Worcestershire Minerals Local Plan (2018-2036) which was*

¹⁷ Paragraph 4.1, MWSocG

¹⁸ Paragraph 1.6, Local Aggregate Assessment, published January 2024

adopted in July 2022 and to reflect greater certainty about demand for HS2 once the project moves into a period of peak demand (which is likely to be reflected in 2023 and 2024 sales figures)¹⁹.

- 4.111 The annual production guideline for sand and gravel identified in the LAA is, therefore, 0.667 million tonnes per annum. This is lower than both the sub-regional apportionment derived from the ‘National and regional guidelines for aggregate provision in England’ of 0.871 million tonnes per annum²⁰, and the previous approach undertaken by Worcestershire County Council which was to use the 10-year sales average +50%²¹.
- 4.112 I conclude that the Council’s reduction of the annual apportionment to 20% within the LAA was appropriate. Based on this production guideline and the stock of permitted reserves of 5.06 million tonnes, Worcestershire had a landbank of 7.59 years on 31 December 2022.
- 4.113 The MWSocG provides details of matters which inform the Council’s landbank. The most pertinent details are that between 31 December 2022 and 31 December 2023, the Council did not grant any new permissions for mineral extraction.
- 4.114 I conclude that it is reasonable to make the assessment of the Council’s landbank as it applied at the 31st December 2023, in accordance with the approach taken within the LAA, as any other approach would require a rolling assessment taken on a monthly basis; this would provide a reactive and overly-micro approach to assessing the market place, in conflict with an existing approach which accounts for the previous 10 years.

¹⁹ Paragraph 1.7, Local Aggregate Assessment, published January 2024

²⁰ Derived from the National and regional guidelines for aggregates provision in England. These guidelines were produced to cover the period 2001-2016 and updated for the period 2005-2020 and set out the level of provision which should be made by each Region. No sub-regional apportionment based on the 2005-2020 Guidelines was agreed, and no further National and Sub National Guidelines have been published by government.

²¹ This uplift was based on the consideration of demand indicators at the time; HS2 was considered to be a “strong indicator for increase significantly above 10-year average” and gross housing completions were also considered as a (weak) indicator for a production guideline above the 10-year average. At the time it was noted that sand and gravel supply from Worcestershire is unlikely to directly supply HS2 but there was concern that additional aggregate extraction in Worcestershire could be needed in order help meet the demands placed upon aggregate supply chains in the West Midlands.

- 4.115 I conclude that, based on the information available, it is reasonable to assume production guideline for sand and gravel set out in the LAA, at 0.667 million tonnes continued in 2023. On this basis, the landbank of permitted reserves on 31st December 2023 would be approximately 4.393 million tonnes of sand and gravel, equating to a landbank of 6.59 years.
- 4.116 This is a significant increase on the landbank position presented before the previous Inquiry, which concluded that the landbank of permitted reserves on 31 December 2022 was approximately 4.75 million tonnes of sand and gravel, equating to about 5.74 years.
- 4.117 Nevertheless, whilst the Council's current landbank position has improved since both the original determination of the appeal scheme and the previous Inquiry it still falls short of the 7 years landbank requirement.
- 4.118 Since 31st December 2023, the Council have granted planning permission for 250,000 tonnes of sand at the Former Motocross Site, Wilden Lane, under reference 21/000036/CM. The Council granted planning permission for 850,000 tonnes of sand and gravel at Pinches (4) Quarry on 1 October 2024, under reference 19/000056/CM. The MWSocG sets out the details of a number of planning applications that are yet to be determined, that if permitted would further contribute to an increase in the landbank. However, I conclude that no pre-determinative assessment can be made on the likelihood of the applications being approved and as such contribute to a future landbank.
- 4.119 I recognise that should this appeal be allowed, it would increase the landbank by approximately 4.50 years. However, should those other undetermined applications be permitted, they would also increase the landbank by approximately 1.84 years, further to the 1.27 years of landbank secured by the recently permitted Pinches (4) Quarry²².
- 4.120 I conclude that the approval of the appeal scheme would increase the landbank by 4.5 years and as such exceed the requirements of MLP 14, in a circumstance where the Council's current landbank falls

²² Paragraph 2.14 MWSocG

short of the required 7 years. Paragraph 217 of the Framework makes clear that *great weight* should be given to the benefit of minerals extraction and Paragraph 219 requires the Council to maintain a landbank of 7 years for sand and gravel. The proposal directly accords with both requirements.

4.121 The supply issue is clearly less acute than at the time of determination of the application and this does, in my opinion, create a distinction from the weight that would have applied at the point of determination of it. The appeal scheme would accord with policies MLP 3, MLP 14 and MLP 15 of the MLP and this, in conjunction with the *great weight* that is required to be applied by paragraph 217 of the Framework amounts, in my opinion, to *significant* beneficial weight in support of the proposal.

4.122 *Availability of inert material for restoration*

Within the original Inquiry, the Rule 6 Party expressed doubt as to whether there would be sufficient material available to the Appellant to achieve the restoration phasing in accordance with the submitted working and restoration scheme. Whilst this does not form part of the Council's case, the Inspector has requested, via instructions within his pre-CMC note, that parties provide a position on this matter.

4.123 The parties have addressed the details informing this issue within the MWSocG. To restore the site, the Appellant is proposing to import approximately 600,000 m³ of inert material (equating to about 1,020,000 tonnes), importing approximately 60,000 m³ of inert material per annum (equating to about 102,000 tonnes per annum).

4.124 A review of the environment permits issued to sites in Worcestershire by the Environment Agency (EA) for inert waste accepted and removed from sites is presented with the MWSocG. It identifies that 2 sites are permitted landfill sites accepting inert waste and the total inert waste accepted at the sites in 2023 was 118,925 tonnes²³. The remaining landfill capacity for those sites, as of end of 2023, was 786,011m³²⁴.

²³ Paragraph 3.4 MWSocG

²⁴ Paragraph 3.5 MWSocG

- 4.125 The Council conclude therefore that as of 2023, Worcestershire had 786,000m³ of inert capacity. Furthermore, additional capacity is expected by way of the proposed restoration with inert fill at Sandy Lane Quarry, Chadwich Lane Quarry, Bow Lane Quarry and Pinches (4) Quarry, which all have planning consent, but EA permits are yet to be secured.
- 4.126 The Council's latest Annual Monitoring Report 2021 (January to December 2021) states that there is no capacity gap for disposal and landfill in 2021²⁵, however an assessment of inert waste landfilled in 2021 does demonstrate that there was significantly less inert landfill capacity remaining at that stage in the Waste Core Strategy's plan period than was projected, combined with significantly higher volumes of inert waste being landfilled. Whilst there was not a capacity gap identified the point of the AMR, it sets out a need to keep inert landfill capacity under review²⁶.
- 4.127 It is considered that void space will continue to decline until Chadwich Lane Quarry, Sandy Lane Quarry, Bow Farm Quarry and Pinches (4) Quarry are granted Environmental Permits, or until other pending undetermined mineral planning applications with restoration with imported inert waste are granted permission. However, should those four sites be granted Environmental Permits, it is recognised that this would significantly increase the inert landfill capacity in Worcestershire by approximately 4.4 to 4.6 million tonnes.
- 4.128 Nevertheless, in a circumstance where landfill capacity is otherwise increased and inert waste supply affected, the Appellant has available mitigation, insofar as being able to redirect sufficient waste from their existing operation at Meriden Quarry, within the West Midlands, to the appeal site to enable restoration. Given that the total inert waste received by Meriden Quarry in 2023 was 688,442 tonnes, it clearly has the capacity to address any shortfall.
- 4.129 The Appellant raises a second point, with regard to the potential availability of inert waste from the Lea Castle Village development which I do not agree with; but insofar as they treat this as a benefit of the proposal, I address it in Chapter 5.

²⁵ Paragraph 3.17 MWSocG

²⁶ Paragraph 3.18 MWSocG

4.130 I conclude that there is sufficient evidence before the Inquiry to determine that the Appellant would have sufficient supply of inert waste across the development period to meet restoration objectives and as such fulfil the requirements of a planning permission in this regard.

5.0 Whether Very Special Circumstances Exist

5.1 For the purposes of this section, and with regard to the consideration of planning balance in chapter 6, I adopt a scale of relevant harm/benefit referred to in the previous chapters, namely: very significant (or substantial), significant, moderate, limited, or no weight.

5.2 I have otherwise concluded that the appeal proposal is inappropriate development in the Green Belt. In accordance with the Framework, VSCs need to be shown to exist if inappropriate development is to be approved. Paragraph 153 of the Framework states that *“very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”*.

5.4 As noted in their Statement of Case, it is the Appellants opinion that VSCs exist from the combined benefits of:

- The need for the release of new mineral reserves.
- The sustainability of the location with regard to the logistical marketplace, the spread of supply throughout the County and the potential inert waste that could be transported to site from surrounding residential development sites;
- The economic benefit of providing jobs, providing direct and indirect economic contributions to the local economy and to the economy through levy and taxation; and
- Restoration benefits from the site, including a significant increase in net biodiversity gain.

5.5 The need for the release of new mineral reserves

Paragraph 217 of the Framework makes clear that *great weight* should be given to the benefit of minerals extraction and Paragraph 219 requires the Council to maintain a landbank of 7 years for sand and gravel. The proposal directly accords with both requirements. However, the Council’s landbank position has markedly improved since both the original decision and the previous Inquiry, with a landbank of permitted reserves expected to be approximately 6.59 years as of 31 December 2023, and with the Council further granting planning permission for approximately 250,000 tonnes of sand at Wilden Lane in March 2024 and approximately 850,000 tonnes of sand and gravel at Pinches (4)

Quarry in October 2024. It is not disputed that the appeal proposal would add 4.5 years to the landbank and would therefore enable the Council to be unquestionably compliant with paragraph 219 of the Framework. However, the supply issue is clearly less acute than at the time of determination of the application and this does, in my opinion, create a distinction from the weight that would have applied at the point of determination of the original application. The *great weight* that is required to be applied by paragraph 217 of the Framework amounts, in my opinion, to *significant* beneficial weight within the context of this assessment of very special circumstances.

5.6 The sustainability of the location with regard to the logistical marketplace

Whilst it is acknowledged that the appeal site is located to the north of the County and in principle would serve a different marketplace than other quarries located to the south of the County, the marketplace is the same as that responding to the mineral secured from the permission at Sandy Lane Quarry, which is located in the Bromsgrove area. Therefore, 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, *moderate weight* is applied to the consideration.

5.7 The Appellant concludes that as the site is in close proximity to large-scale residential schemes, “*large quantities of inert waste would arise from these large-scale schemes and the potential transport to and use of this material in the restoration scheme, aligns with the ethos of achieving sustainable development*”. As such they conclude that this is a benefit. There is neither a confirmed agreement in place with an inert waste supplier from surrounding residential development sites that informs this appeal, nor is there confirmation that any development in the surrounding area has a need to export inert waste from their sites. With regard to sustainable movement of inert waste as a benefit of the proposal, neither the appeal site’s location nor the details provided within the appeal submission provide any degree of certainty that such a benefit could be achieved. As such, *no weight* is afforded to the matter.

5.8 Economic Benefits

The Appellant considers that significant weight should be ascribed to the benefit. The proposal provides the delivery of 11 full-time equivalent jobs, the direct and indirect benefits of which I conclude to provide a modest contribution to the socio-economy, which I ascribe *moderate weight*.

Whilst the Appellant also sets out that the proposal provides additional economic benefit through aggregates levy and other taxation processes, there has been no submission made by them which sets out how these benefits would be achieved and the significance of their contribution. I am not persuaded that additional beneficial weight can be assigned to the matter.

5.9 Restoration and Biodiversity

The Appellant's Statement of Case sets out that the restoration and biodiversity benefit of the proposal provides a combined benefit, which I agree with, given that the benefits of the restoration proposal beyond simply returning the land to its original form following minerals extraction, are provided by a biodiversity net gain that provides a likely 74.16% BU for habitat and 300.93% HU for hedgerows, through delivery of woodland, tree planting, acid grassland and waterbodies. This could be achieved with implementation and enforcement of planning conditions, and whilst the Appellant concludes that this benefit should be ascribed substantial weight, I consider that the extent of BNG proposed should be given *moderate weight* in the very special circumstances balance.

5.10 Summary and Conclusions on Very Special Circumstances

I ascribe significant weight to the need for minerals supply. Furthermore, I ascribe moderate beneficial weight to the sustainability of the appeal site in the marketplace, to the creation of jobs and to biodiversity net gain. I ascribe *no weight* to the potential for the site to obtain inert waste from sites adjacent to it, nor to proposed taxation benefits.

6.0 Planning Balance and Conclusions

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 require that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

6.2 A summary of my considerations of VSCs and the weighting prescribed to them are presented within the table below:

Harm	Weight	Factor promoted as VSC	Weight
Inappropriate development, significant harm to spatial openness, significant harm to visual openness; conflict with GB purposes a) and c)	Substantial Weight	The need for the release of new minerals reserves	Significant weight
		Marketplace sustainability	Moderate weight
		Economic Benefits	Moderate weight
		Biodiversity Benefits	Moderate weight
		Local inert waste catchment	No weight
		Taxation Benefits	No weight

6.3 I have concluded that the proposal is inappropriate development in the Green Belt, and this by definition will be harmful to the Green Belt. I have concluded that the proposal would result in significant harm to the openness of the designated area and conflict with two purposes of the Green Belt. The harm to the Green Belt arising from these matters attracts substantial weight against the proposal.

- 6.4 With regard to “*other harms*” I have concluded that harm to heritage assets attracts considerable importance and weight, however in my judgment, the less than substantial harm to heritage assets is outweighed by the public benefits provided by the proposal in the planning balance.
- 6.5 Set against the identified harm, significant weight is to be given to the supply of minerals to address need. Furthermore, I ascribe moderate weight to marketplace, biodiversity and economic benefits.
- 6.6 Whilst I acknowledge the benefits of the proposal, I do not consider that they clearly outweigh the substantial harm that would be caused to the Green Belt, including to its openness and its purposes. I therefore conclude that the proposal is contrary to the aforementioned policies of the Development Plan, together with Paragraphs 152 and 153 of the Framework.
- 6.7 I therefore conclude that the Inspector should be invited to dismiss the appeal.

Appendix A – Case Law Reference

Each judgement referred to in this proof has been prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on.

1. Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and others [2014] EWCA Civ 1386

The judgment held that the words “*any other harm*” in the Framework test did not only mean harm to the Green Belt. It means any other harm that is relevant for planning purposes. Any other harm should be weighed in the balance when considering whether or not there are very special circumstances to justify the development. In understanding that the balancing exercise needs to consider these other harms, consideration has to be given to the other planning harm concluded to be provided by the development.

2. Turner v. SSCLG [2016] EWCA (CIV 466)

Paragraphs 14, 15 and 16 of Turner are referred to in considering the concept of openness. Turner determined that the concept of openness of the Green Belt “is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt present.

3. Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant) [2020] UKSC3)

Paragraphs 22-26 are referred to. Samuel Smith concludes that there is not a clear distinction between openness and visual impact; it is a reasonable expectation that in assessing openness decision makers should take into account the likely visual impacts of development on the openness of the Green Belt. It is reasonable to assume that in assessing openness, the decision maker should determine whether the proposal offers any visual or spatial effects on the openness on the Green Belt, and whether such effects are likely to be harmful or benign.

4. Barnwell Manor Wind Energy Limited Vs East Northampton District Council & Ors [2014] EWCA Civ 137

The Court held that in enacting section 66(1) of the Listed Buildings Act 1990 Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.