

Re-Determined Appeal

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

Appellant's Opening Submissions

1. This is an inquiry into the re-determination of an appeal against a refusal by Worcestershire County Council of an application for planning permission for a proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement. There would be extraction of approximately 3 million tonnes of sand and gravel from approximately 26 hectares (although the full extent of the red line application boundary is about 46 hectares) on land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster.
2. The proposal has the support of Government policy¹ which requires that 'great weight' should be given to the benefits of mineral extraction, including to the economy. This is all the more the case, where, as here, the Council agrees² that it cannot demonstrate a seven-year landbank of sand and gravel, something which is, according to Government guidance, a 'strong indicator of urgent need'³ and which means that the proposal also has the support of policy MLP14.
3. Located within a strategic corridor and area of search, the proposal also has the support⁴ of Policy MLP 1 which seeks to direct mineral extraction within 'Strategic

¹ NPPF para 217, CD11.07

² rID3, para 2.10, p.7

³ PPG at CD12.09, p.1

⁴ rID5, para 8.24

Corridors’; and Policy MLP 3 concerning the strategic location of development within ‘Areas of Search’.

4. The previous appeal decision was ‘finely balanced’ and was quashed by the High Court for failing to have proper regard to the biodiversity net gain benefits of the proposal.
5. The agreed position for this inquiry is that the proposal will result in a 74.16% biodiversity net gain (‘BNG’) and a 300.93% net gain in hedgerow units⁵. These gains greatly exceed the applicable policy requirement (which is merely that there should be positive net gains of no specified degree – para 180(d), NPPF 2023 and MLP31). They also greatly exceed the legal minimum of 10% net gain that is now required under the Environment Act 2021 for new planning applications, although it is important to remember that this requirement does not apply to this planning application. In light of all this, it is agreed between the main parties that the very significant biodiversity net gains that will be achieved by the proposed development should attract significant positive weight in the planning balance⁶.
6. Since the previous inquiry, there has been a material change in circumstances. Quarry plant and infrastructure has evolved over the course of the 5-6 years since the proposed development was first conceived. The Appellant is now able to access plant that is lower in height (by around 50%), lower in footprint (reduced from 2,752m² to 451m²) and lower in noise levels. Should the appeal be allowed, the Appellant would want to take advantage of these advancements in available plant for efficiency and environmental reasons. Accordingly, it is seeking to amend the scheme to best accommodate these beneficial changes. But, whether or not it is allowed to proceed with the amended scheme, the detailed expert evidence in this Inquiry will demonstrate that the proposal is acceptable in planning terms and should be granted permission.

⁵ rID5, paras 5.2.18 to 5.2.19

⁶ rID5, paras 6.1.4 to 6.1.5

7. The proposal would have 5 stages, lasting 10-11 years in total. The entirety of the western half of the Site (comprising Phases 1 to 3) and over half of the extraction footprint, would be extracted and fully restored within 5 years. The progressive restoration would result in long term improvements to landscape character, both in terms of historical continuity such as the reinstatement of avenue trees and the Broom Covert woodland, and the introduction of groups of parkland trees and acidic species rich grassland. Public access would be improved by the addition of new public rights of way.
8. The plant site area for the operation would be about 3.87ha and, as such, the footprint combined with the proposed access track and surrounding bunds would be relatively small in the context of the much wider agricultural landscapes that surround it.
9. The plant site will also be located on lower ground within the appeal site, set 7 metres below existing levels. The temporary plant site portacabins, processing plant and ancillary development would not be visible from publicly accessible locations as they would be set down at a lower level. The nature of the infrastructure proposed is typical for a sand and gravel quarry. The HGV movements would not amount to any material increase in traffic on the Wolverley Road.
10. As is usual with quarry development, there will be onsite storage of soil in the form of temporary bunds which will have a dual screening function and will be grass seeded with 1:3 outer slopes. Notwithstanding these being a typical quarry feature, it was this aspect of the proposal which led to the previous Inspector finding the proposal to be inappropriate development in the Green Belt, requiring very special circumstances to be demonstrated. However, the evidence and legal submissions in this Inquiry will show that that conclusion was in error and that, when properly considered against the caselaw and guidance, this appeal proposal has no impact on the openness or purposes of the Green Belt beyond that of a typical quarry and this means that it cannot be considered inappropriate development. Indeed, it will be

shown that this quarry's high environmental standards and restoration scheme are strong indicators of its appropriateness in the Green Belt.

11. Furthermore, even if this Inspector disagrees, it will be demonstrated that there are very special circumstances which clearly outweigh the harm by reason of inappropriateness and any other harm. On the Council's case the only potential 'other harm' is the less than substantial harm to the setting of a listed building and the Council accepts that, even according that harm 'great weight', it is outweighed by the public benefits of the proposal.

12. The proposal was the subject of a very detailed and carefully reasoned officer's report to Committee which recommended approval. It was subject to full consideration by many statutory consultees and all technical concerns were resolved satisfactorily. The Statement of Common Ground⁷ sets out the extensive list of expert consultees who have no objections to the proposal:
 - a. Wyre Forest District Council Conservation Officer
 - b. Wyre Forest District Council Countryside and Parks Manager
 - c. Environment Agency
 - d. County Public Health Practitioner
 - e. Worcestershire Regulatory Services
 - f. County Highways Officer
 - g. County Footpath Officer
 - h. Ramblers Association and Malvern Hill District Footpath Society
 - i. Sustrans
 - j. Canal and River Trust
 - k. Severn Trent Water Limited
 - l. North Worcestershire Water Management
 - m. Historic England
 - n. County Archaeologist
 - o. Natural England
 - p. Worcestershire Wildlife Trust

⁷ rID2, para 2.16

- q. County Ecologist
- r. County Landscape Officer
- s. Forestry Commission
- t. Woodland Trust
- u. Gardens Trust
- v. Hereford & Worcester Gardens Trust
- w. Hereford & Worcester Earth Heritage Trust
- x. Hereford & Worcester Fire and Rescue Service
- y. West Mercia Police
- z. Western Power Distribution
- aa. ESP Utilities Group Ltd
- bb. Last Mile
- cc. Cadent Gas
- dd. County Sustainability Officer.

13. Whilst the WCC initially raised nine reasons for refusal against the application, it has since withdrawn all but one. The only reason for refusal remaining is that relating to the impact of the proposal on the openness of the Green Belt. Importantly, WCC expressly accepts⁸ all of the following points:

- the proposal would not have detrimental impact on the local economy meaning that the Council will not be defending reason for refusal 4 (“unacceptable impact on the local economy”).
- the loss of 2 No. TPO trees would be sufficiently mitigated for, meaning that it will not be defending reason for refusal 5 (“*Loss of 2 Tree Preservation Order (TPO) trees*”).
- the proposal would not offer harm to the quality of bridleways located within and adjacent to the site, meaning that the Council will therefore not be defending reason for refusal 6 (“unsuitable bridleway next to the Wolverhampton Road (A449)”).

⁸ rID2 section 10

- the proposal would not offer harm to the highways network, meaning that the Council will not be defending reason for refusal 7 (“unacceptable impact on highways”).
- the proposal would not have a detrimental impact on the environment and wildlife, meaning that the Council will not be defending reason for refusal 8 (“*unacceptable general impact on environment and wildlife*”).
- the proposal would not have a detrimental impact on the health of the local population. The Council will therefore not be defending reason for refusal 9 (“unacceptable impact on health of local population”).
- the proposal, in combination with other development, would not cause harm with regard to noise or dust impacts to residential dwellings or Heathfield Knoll School and First Steps Nursery, subject to the implementation of proposed mitigation measures. The Council will therefore now not be defending reason for refusal 3 (“*Unacceptable impact on residential amenity and local schools*”)

14. Notwithstanding this position of the Council, due to continuing objections from the rule 6 party, the previous Inspector was required to give independent, detailed consideration to all these matters. Expert evidence was given in relation to them at the previous Inquiry. On each issue (and more), the Inspector agreed with both the Council and the Appellant and found no conflict with policy:

- a. IR96, p.18, noise
- b. IR106, p.20 dust
- c. IR117, p.22 air quality
- d. IR119, p.22 – no conflict with MLP28, MLP29, WCS14
- e. IR131, p.24 – conclusion on landscape and visual impacts and no conflict with MLP28, MLP33, WCS12, WCS14
- f. IR137, p.25 – benefits to PROW – consistent with MLP30, WCS8
- g. IR150, p.28 – highways impacts – no conflict with MLP39, WCS8
- h. IR 166, p.30 – benefits outweigh the less than substantial harm that would be caused to the setting of the heritage asset - no conflict with MLP 32, WCS 9, SP.21.
- i. IR 172, p.31 - no material harm to economic development interests or housing demand in the locality.

15. This Inspector will be invited to form the same conclusions on these issues on the basis of the extensive technical information in the ES documentation, which has been summarised and updated in the expert evidence produced for this Inquiry.
16. In conclusion, there is an urgent need for this scheme to provide the minerals necessary to support the policy ambitions for economic growth and housing development. The previous Inspector, the Council, and all the relevant expert consultees agree that there are no technical, landscape or amenity issues capable of preventing planning permission from being granted. The previous Inspector considered the question of very special circumstances to be ‘very finely balanced’ against the proposal. That balance must now be tipped the other way in favour of allowing the appeal. This is for two main reasons: First, properly considered, the scheme is precisely the type of development which national policy encourages as an exception from being inappropriate in the GB such that vsc are not required to be demonstrated; Second, even if vsc were needed, when properly considered, the biodiversity net gain is a benefit of significant weight, and, together with all the other benefits, tips the scales in favour of vsc being demonstrated.
17. For all these reasons, the Appellant will respectfully request that the appeal be allowed.

5 November 2024

JENNY WIGLEY KC

Landmark Chambers