IN THE MATTER OF

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

PLANNING APPEAL REF: APP/E1855/W/22/3310099
Re-convened Inquiry

CLOSING SUBMISSIONS
ON BEHALF OF THE R6 PARTY

INTRODUCTION

1. Lea Castle Farm ("**the Site**") is precious to local people, steeped in history, and regularly used by a large proportion of the local community.[1] Many residents have come to this inquiry with a story to share about their experience of Lea Castle, and many of those experiences bear directly upon issues that concern this inquiry.

2. This is not a field isolated from populations, unused by local people. Quite the opposite is true: we have heard that it is *a 'highly permeable'* Site. It is well-used. From a Green Belt point of view, that is important in assessing the impacts on openness (both from a spatial and visual perspective). It is also important for assessing landscape impacts more broadly. Its location is directly related to the amenity impacts (air quality, noise, dust, transport).

3. This Site sits adjacent to the two rural villages and the built-up area of a large town. If this was a Site located away from local populations or less well-used by local people, all of these concerns would require less consideration. It is precisely because of where

[1] See the evidence of Ms Hatch rPoE3.06 which demonstrated that in one day alone there were 306 individuals who used the path; extrapolated over 12 months that would equate to 22,309 people.

this Site is located that the appeal scheme requires careful scrutiny and which the R6 Party say makes it fundamentally objectionable.

4. These submissions will come on to assess how and why that is important in due course by reference to the Inspector's CMC Note[2]:

    a. 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.

    b. The effects of the proposed development on the character and appearance of the area.

    c. 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.

    d. The effects of the proposed development on Public Rights of Way ("**PRoW**") and access.

    e. The effects of the proposed development on heritage assets.

    f. The proposed development's effects on highway safety, particularly for vulnerable road users.

    g. The effects of the proposed development on biodiversity.

    h. The effects of the proposed development on employment and the economy.

    i. 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.

    j. Planning policy matters and the planning balance.

[2] rID1, the following matters will be addressed.

5. Before turning to the substance of the R6 Party's case on those main issues, it has grievances about how the Appellant has sought to introduce a revised scheme through the appeal, relying upon '*Wheatcroft' / 'Holborn Studios'* as a means to evolve a scheme through the course of the appeal.

6. The Procedural Guide sets out that notwithstanding the general principle to not allow schemes to evolve where amendments are proposed during the appeals process, the Planning Inspectorate needs to consider whether there are exceptional reasons to accept them. No such reasons exist in this case.

SCHEME AMENDMENTS

7. In the interests of fairness and ensuring that decisions are made locally where possible,[3] it is important that the Secretary of State considers what the local / mineral planning authority considered.

8. As per the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the "*Wheatcroft principles*" set out in Bernard *Wheatcroft v Secretary of State for the Environment* (1982), two tests will be considered; substantive and procedural to allow amendments to a scheme.

9. The appeal process should not be a means to advance alternatives to a scheme that has been refused and is not a chance to amend a scheme to overcome the reasons for refusal. First, materially changed schemes should be resubmitted to the local planning authority as a fresh application.[4] That is the starting point in this case.

10. There is also the requirement for the scheme before the Inquiry to be adequately advertised. The PINS Procedural Guide[5] expressly states that a new application should be prepared where it is thought that amending the scheme will overcome the reasons for refusal. The Procedural Guide should not be used as a bargaining tactic but only as

[3] rID14 - §2.
[4] Ibid.
[5] See rID14, extract from the Procedural Guide - §16.1.

a last resort.[6] It should also not be used to "*evolve a scheme",* and there are no provisions within the procedural rules that an amended scheme can be submitted.

Substantive

11. Whilst the Council states that no changes proposed by the Appellant would affect the description of development, this is clearly a materially different scheme. The proposed layout, controlled by conditions specifying approved drawings, describes the development. It does not matter that the description of development has not changed.

12. The Procedural Guide acknowledges that small, incremental changes can result in a "*substantial difference*".[7] This is where the scheme will amount to a substantial difference and should, therefore, not be permitted. Even potentially beneficial changes can cause prejudice. Any attempts to rely upon the changes being beneficial (in the RTD) do not overcome either the substantive or procedural limbs.

The amendments

13. The application was subject to numerous changes prior to the previous appeal with updates and amendments to the EIA, and no single accessible document produced. The Planning Register now records 342 separate documents forming part of the application, including 24 forming part of the latest post-determination submission. Each additional document runs to several pages with multiple maps and plans. The amended ES addendum runs to 102 pages, the Non-Technical Summary a further 31 pages. Clearly, such extensive documentation can only be necessary for a substantial and fundamental change to the application. Indeed, the necessity for a new ES Addendum would indicate these changes are not insignificant. That, as Mr Partridge explained, is an indication of a change which is more than merely minor.

The appropriateness of the scale.

[6] Procedural Guide, §3.1.2.all referenced in the note at rID4 §3.
[7] See rID14, §3.

14. The processing plant would be a different scale, and each of the ten amendments, when examined individually and in isolation, could be argued to represent a substantial difference. The R6 Party struggles to understand, therefore, how, when considered cumulatively, they may be regarded as less than "*fundamental*" or "*substantial*".

15. The R6 Party consider the amendments are quite clearly aimed at undermining the reasons why the previous Inspector originally refused planning permission. Despite Mr Toland's reassurances that this is not the case, there is no evidence at all which corroborates his view that this equipment was not available at the time when the previous application was formulated.[8] No evidence at all is put forward to substantiate that position, even now that interested parties have challenged that view.

16. If, as the Appellant states, the technology has so drastically improved within the timeframe of this application and that "*quarry plant and infrastructure has evolved over the course of the 5-6 years since the proposed development was first conceived*", a new application should be submitted for consideration. An appeal is not the forum to evolve the scheme.

Procedural

17. There is also the requirement for the scheme before the Inquiry to be adequately advertised. The Procedural Guide refers to the second limb to which the Inspector needs to have regard, namely procedural fairness. The relevant section is repeated below:

> *"Procedural – whether, if accepted, the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal (i.e. since consultation is a statutory requirement at the application stage, if the scheme is amended at appeal, it may be unfair on interested parties and consultees whose views and comments were about the original proposals, not the amended proposals). The change need not be 'substantial' or 'fundamental' to require re-consultation.*
> *Even potentially beneficial changes may need to be subject to re-consultation, so that interested parties can consider whether that would be the case. The decision on whether to accept the amendment without re-consultation will be taken in the context that consultation is an important part of the planning*

[8] As explored in XX with Ms Clover.

system, the nature and extent of the changes and the potential significance to those who might be consulted."

18. The Planning Inspectorate Good Practice Advice Note 09 includes similar advice:

"3. For all appeals, in the interests of fairness and ensuring that decision are made locally where possible, it is important that what is considered the Secretary of State is essentially what was considered by the local planning authority. The appeal process should not be a means to progress alternatives to a scheme that has been refused or a chance to amend a scheme so as to overcome the reasons for refusal. In the first instance materially changed schemes should be re- submitted to the local as a fresh planning application."

19. WCC's own Statement of Community Involvement (2021) states as follows:

"3.18 Any material changes to the submitted application may result in a re-notification or re-advertisement of the application. This will include notifying all those members of the public who sent in representations on the original proposals."

20. The Appellant claims that what has happened in this case accords with what happened in *Bramley Solar Farm Residents Group v SSLUHC*. Bramley states that where scheme changes are sought, the onus is on the Appellant to demonstrate that no one is prejudiced.

21. Para 12 of *Bramley* explains who was contacted in that case:

"• neighbours living in close proximity to the site;
• members of the public who responded to Basingstoke and Deane Borough Council when the planning application was lodged;
• local councillors who responded to the planning application;
• the Local Planning Authority; and
• statutory and non-statutory consultees that responded to Basingstoke and Deane Borough Council when the planning application was submitted:
• Bramley Parish Council
• Silchester Parish Council
• BDBC Biodiversity, Landscape, Historic Environment, Trees, Transport
• Hampshire County Council (HCC) Highways
• HCC Historic Environment

• HCC Flooding
• HCC Archaeology
• Environment Agency
• Hampshire Countryside Access
*• Hampshire Environmental Protection Team *J.P.L. 585*
• Historic England
• Natural England
• Ramblers Association
• British Horse Society
Each party will be sent a letter explaining what is happening and the changes proposed. This letter will include a link to a dedicated website which will include information relevant to the proposed changes and details of how people can respond to the Appellant. Hard copies of information will be made available upon request. The letters will be posted by Royal Mail. The LPA and statutory consultee will be sent information by email."

22. This case differs markedly from what happened in *Bramley*. The reasons for that are summarised below.

23. **First**, we are ultimately concerned with the question of fairness. There are now so many documents that local people feel that they cannot engage properly with what is proposed. Whilst this is generally a consideration forming the basis of a "*substantive*" concern, this also bears upon the procedural fairness point given that there is now so much additional material for local people to grapple with. It is not a small, inconsequential amendment which local people can get to grips within a short period of time. There are changes to the scheme and how it can be worked.

24. **Second**, generally, a wide net should be cast during consultation to encourage people to engage with the application. There are concerns from this perspective, including that there has been a limited degree of public consultation, and that local people were told about the wrong venue when informed about where the public consultation would take place.

25. Any material changes to the submitted application may result in a re-notification or re-advertisement of the application.[9] This will include notifying all those members of the

[9] As referred to in the RTD and R6 Party note §3.18

public who sent in representations on the original proposals and this repeated in WCC's Statement of Community Involvement ("**SCI**") Updated in October 2021. Failure to re-notify and re-advertise would be contrary to what the SCI requires.

26. In *Bramley*, it was clear that all the people who had previously responded to a consultation and who had made representations to the local authority were recontacted. They were not contacted at all in this case (as there were no letters/emails which were sent out).

27. Directly contrary to what happened in the *Bramley* case, no site notices were erected either. No letters were sent to third parties who commented on the application, including to neighbours. Accordingly, the consultation does not meet the requirements of the Procedural Guide or the SCI. The R6 Party say that this fails to meet the terms of the DMPO too.

28. One might question why this matters. The fact that no site notices were erected is significant as those people who regularly walk/ride over the site who are not neighbours or Facebook users who could be affected by the scheme and would not necessarily know that there is going to be an amended scheme to be advanced for determination at the reconvened inquiry.

29. There is no evidence that parties who initially were consulted on the application – or those who commented on the original application – have been asked for their view. Similarly, all those who wrote to WCC or to PINS or those who attended the public inquiry to speak would not necessarily know about the changes to the proposed scheme.

30. Even Mr Partridge who appears for the R6 (and is also a local resident) says that he was not directly notified of the changes and has grave concerns that others would not appreciate that there have been changes or know or understand what those changes are.

31. That is all sharply contrasted with the position in *Bramley,* where those who were initially consulted as part of the original application and those who commented (i.e. those who could be said to have an interest in the application) were also contacted as part of the re-consultation exercise.

32. **Third**, the evidence put forward in Mr Toland's appendix[10] is that those who were appointed to undertake the consultation, Alder Mill Enterprise Limited, worked on the basis of facilitating face-to-face discussions with large, printed materials, a slide deck, a website and printed copies and CDs available on request.

33. We simply do not know whether all the Interested Parties (of which there were many) will have been able to grapple with this material. The consultation merely informed those who attended the consultation events of the proposed changes. There is no suggestion that those who did not attend would have known that this was a re-consultation or what it was about, as they were simply not notified.

34. **Fourth**, there is a concern about what exactly people who did know about the event were (and were not told). Many were not told what the re-consultation was about. Some assumed it was a re-consultation on the same scheme ahead of the new Inquiry[11] rather than a fresh consultation on a new scheme.

35. Some people who attended said that they did not feel the need to attend as they were labouring under the misapprehension that this was not a consultation on a revised scheme but rather a general consultation on the scheme which had already been considered.[12] For this reason, they did not attend or comment on the revised scheme. Even those who did attend the public consultation said that it was not obvious that this was for a revised scheme. One can sympathise with that view, not least given that the submitted material asks for comment in very general terms on the scheme.[13]

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[10] See page 4 of Appendix 1 sets out what was undertaken. Namely: *"Members of the public were invited to inspect the electronic copies of the further Information online on Worcestershire County Council's Planning website: www.worcestershire.gov.uk/eplanning using application reference: 19/000053/CM, from 5th August 2024 until 6th September 2024. Documents were also able to be viewed at: www.worcestershire.gov.uk/leacastlequarry."*
The online consultation website www.leacastlequarry.co.uk was launched on 15 August 2024, which provided the online consultation platform. This closed on the 13th of September 2024. This was advertised within the Shuttle newspaper, on Wolverley and Cookley Facebook and also on the Stop the Quarry Facebook page."

[11] Evidence of Interested Party during the RTD. In addition, that chimes with what R6 Party members have been told.

[12] Ibid.

[13] It is worth considering the questions presented as part of the material – none of them relate to the proposed revisions. In addition they are largely framed as leading questions for example, in relation to the economic impacts, "Do you think this is good for the economy?"

36. The questions are also framed in a one-sided way, they are not balanced, allowing for genuine feedback from interested parties.[14]

37. **Fifth**, there is a concern about timing which manifests itself in a number of ways.

38. There was a very limited time over which the re-consultation exercise took place in the locality (2 days). Moreover, the Appellant was the one who undertook the revised consultation and the comments from the relevant consultees were not published in a section on the inquiry website. Local people who wanted to see what the Council's statutory and other consultees had to say about the scheme amendments would not find those amendments available during the consultation. They have to know where to look for those – in the Appendices of Mr Toland's Proof. That would likely not be the most intuitive place to look.

39. Moreover, and perhaps more problematically, these were only produced when the proof was produced, one month before the inquiry opened – not when the consultation was ongoing or was open. In other words, if the R6 Party or anyone else wanted to comment on what the statutory consultees had said, those responses were adduced only with the Proof. This was just four weeks before the inquiry opened[15] – which was after the deadline for consultation responses had passed.

40. One can (again) compare and contrast that with the position in *Bramley*, where the Appellant in that case notified the parties before the planning appeal was submitted. In this case, that would have been several years ago. That matters, because the R6 Party's position may have been changed, had it known what the relevant statutory consultees would have to say about the proposals – and had that been published in time for the exchange of evidence.

41. **Sixth**, there is a concern about the circulation of the newspaper, the Kidderminster Shuttle. Local people say that this is a low-distribution online platform.[16] It could have been circulated in a number of other publications but was not.

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[14] Ibid.
[15] Note Mr Toland's Proof is dated October 2024.
[16] RTD

42. **Seventh**, the Council and Appellant have produced a joint note on whether or not Regulation 25 duties have been discharged.[17] As set out in the Note provided by the R6 Party in response[18] to that agreed between the Council and the Appellant, it cannot be said that the legal requirements in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regs**") have been complied with, not least given that the documents were not hosted *"in the locality"*.[19]

43. The documents were not hosted in the same county council area but in Warwickshire. The county is not even contiguous with Worcestershire. It is some 44 miles away (1 hour 9 minutes' drive in the car on the opposite site of the major conurbation of Birmingham). Google Maps indicates that it would take over three hours (one way) on public transport from Lea Castle Farm to the location in which the documents were hosted.[20]

44. This also means that the documents were not hosted in the locality for at least 30 days, given they were only hosted in the locality at the public exhibitions for a (maximum) of two days. This is not sufficient to discharge the duty in the EIA Regs, nor does it give sufficient time for the documents to be viewed/read by members of the public. That has the very real potential to cause material prejudice.

45. That is significant in a case such as this, where the changes are of a substantial and technical nature. Members of the public need adequate time to digest changes, not least to enable them to participate fully in the inquiry. There is no explanation for why the documents could not be hosted in the Council's Offices or the local library (for example, in Kidderminster, a 9-minute drive from the Site).

46. For evidence about the level of engagement of local people here, one only has to look to the number of responses received. The original SoCG listed 2030 letters of representation received during the application period. Many more attended the inquiry and made representations during that period. This is a case where local people have had a very high degree of engagement from the outset.

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[17] rID71
[18] rID232
[19] See §3 of the rID232 which sets out the fuller explanation of this issue by reference to Reg 25.
[20] rID232.

47. That is starkly contrasted with the number of people who responded by email/letter to the revised consultation.[21] These included a District and Town Cllr, the Town Clerk of Kidderminster Town Council, the Parish Council, and then two of the R6 Party witnesses – Mr Bill Houle and Ms Rebecca Hatch. In addition, Mrs Marilyn Mcdonald who is the occupant of the bungalow, and only approx. 8 others. It is difficult to square the (very) extensive number of communications received the first time around with the (very) limited number of responses in the re-consultation. That may have been because people simply did not know or understand what the revisions were proposing.

48. For all of these reasons the R6 Party say that the scheme amendments should not be accepted. It would be substantively and procedurally unfair to do so.

MAIN ISSUE 1: GREEN BELT

Inappropriate development

49. Whilst mineral extraction itself can potentially be considered appropriate development in the Green Belt, this is contingent on preserving openness and avoiding conflict with Green Belt purposes.

50. Mr. Partridge argues that even the mineral extraction component fails to meet these tests, making it an inappropriate development. The soil storage bunds fail to sit below the *"tipping point*", thereby taking the development from being "*appropriat*e" to "*inappropriate*" development in the Green Belt. The tipping point is determined by the nature of the develpoment and the environment in which it sits: a quarry in one location which may be acceptable wil not necessarily be acceptable in another.

51. Mr Partridge has highlighted that in Land at Ware Park, the Secretary of State considered that the plant, the equipment, the access and the activity associated with the mineral extraction works did have an impact on openness.[22] Ultimately, of course, that is a question of fact and degree, but relevant considerations include the **siting**, the **nature** and the **scale** of the operational development and its local context, along with

[21] See Mr Toland Proof appendices.
[22] Partridge Proof, §9.7.

the **visual effects, duration and reversibility** of any adverse impact upon the openness and purposes of the Green Belt.[23] That was the approach taken by Inspector Normington who ultimately concluded that the "*tipping point*" would be exceeded in this case.[24]

52. Having regard to those factors in relation to both proposed schemes, this "*tipping point*" would clearly be reached.

    a. On **siting and the local context**, the location is clearly sensitive, sitting right at the heart of a number of established and new communities. Plainly, this is a well-used site. That compounds the harm, given the sheer number of people who are likely to be affected by the changes. Nothing has materially changed in that regard since Inspector Normington's decision other than the Lea Castle Village site being more developed.

    b. The **nature** and **scale** of the development is also worth considering. Though it is phased, as Inspector Normington found, the operations would be intensive and would occupy considerable areas of the site at any one time, for the purposes of extraction, infilling and bund placement/removal.[25] There have been no changes to how the site will be worked – there will be traffic crossing important PRoWs. The erection, maintenance and dismantling of the bunds impact openness, in addition to their ongoing presence in the landform for shorter or longer periods.[26] The introduction of extensive bunding, particularly along PROW (rather than distant to those footpaths/bridleways) is stark. They are not modest or distant features. Though the scale of some has reduced slightly in the revised scheme, that is unlikely to make a perceptible difference given that they are still large bunds. The same is true of both the first and revised scheme.

    c. The **visual effects** will clearly be harmful – those are addressed extensively below. There will be a clear foreshortening of views – some will be completely blocked acoss the site in both directions for substantial periods of time. Inspector Normington found that the bunds, in particular, would be of such a

[23] See excerpt at §9.8 of Mr Partridge Proof.
[24] Decision Letter of Inspector Normington §71.
[25] Decision Letter of Inspector Normington §79.
[26] Ibid.

substantial length and range in height from 3m to 6m. These would "*truncate"* open views from the PRoW within this part of the Green Belt. The bunds would have a greater adverse impact on the openness of the Green Belt, he found.[27] On the revised scheme, though some heights have been reduced, that is a modest reduction overall, and they would still materially restrict views in any event. The changes to the scheme will therefore be immaterial in terms of the harmful effects that they will have on users of the PRoW.

d. In terms of **timing**, Inspector Normington was sufficiently troubled by the placement and retention of the bunds in a prominent central location within the site for up to 11 years which represents a "*significant period"*.[28] Harms for 11 years could be considered medium/long term, he said. Even with the changes to the scheme, nothing has changed about the centrality of the bund placement or the duration bunds will be maintained. There is no reason to come to a different view. The adverse effects of the bunds over the 11-year period would be considered a medium to long-term effect[29] in this case to.

53. Having undertaken an in-depth analysis of what was proposed, Inspector Normington found that the proposed development would exceed the threshold for mineral extraction/engineering operations concerning the preservation of the openness of the Green Belt.[30] This, combined with the further analysis of the harms arising to the Green Belt in both spatial and visual openness terms, means that there is no good reason to depart from the view of Inspector Normington that the bunds, in particular, breach that *"tipping point"* and, together with their effects, and the extent of the activity, there would be such an impact that this would <u>not</u> constitute "*appropriate*" development in the Green Belt.

[27] Decision Letter of Inspector Normington §74.
[28] See Decision Letter of Inspector Normington, §76.
[29] Decision Letter of Inspector Normington §77.
[30] Decision Letter of Inspector Normington §82

Purposes

54. All parties agree that impact upon Green Belt purposes are a separate and additional material consideration that needs to be considered.[31] This is in addition to the consideration of spatial and visual impacts upon openness, considered in greater detail below.

55. In relation to purposes:

    a. On **Purpose (a),** the Site must be seen in the context of Kidderminster, the administrative capital of the Wyre Forest. The Green Belt Review expressly considered the contribution of parcel N7 to this purpose, noting that the parcel "*protects open land from potential development pressures associated with the A449 and creation of sprawl along this key road corridor*".[32]

    The Appellant seeks to argue that this does not constitute "*sprawl"*, but that is to fundamentally miss the point. The development does not itself need to constitute sprawl to engage purpose (a) – that is because it is there to check (i.e. to limit/ prevent) the unrestricted sprawl. That is precisely the role of the Site.The Appellant has also sought to argue that because the Proposed Development does not itself constitute "*sprawl*" then it cannot harm this purpose. That would be to mis-read the purpose in §143(a). It is to check sprawl. If it is a development which is harmful in Green Belt terms, it does not need to be sprawl itself to be harmful to that purpose.

    b. On **Purpose (b),** preventing neighbouring towns from merging, it is clear that the site has, historically, played an important role in keeping the neighbouring settlements of Cookley and Wolverley from merging into one another. Similarly, it plays an obvious role in separating Cookley from Kidderminster. The R6 Party accept that neither Cookley nor Wolverley are "*towns*" on a strict definition. However, the Green Belt Review did look at the importance of

[31] Toland XX.
[32] CD12.02, page 20.

separating Cookley from Kidderminster.[33] Inspector Normington highlighted that there was a visual perception of openness between these settlements.[34] Though there is no breach of the strict wording of purpose (b), its role in separating settlements is a material consideration which it is considered should be taken into account.

c. On **Purpose (c),** plainly there will be encroachment into the countryside resulting from the Proposed Development. There will be built form on what was previously open countryside. The important role of the Site in that regard too is recognised in the Green Belt Review[35] where it is said that the larger parcel (N7) forms the open countryside separating the town from Cookley. It is also noted that the land has an "*open aspect*" and that the Green Belt contributes to the maintenance of the openness by preventing incremental development in an accessible location, both from Cookley to the north and more generally across the parcel.[36]

d. On **Purpose (d),** the setting and special character of historic towns, the R6 Party notes that there is a clear delineation of the historic parkland. It is separated by two significant gatehouses. Egress through one gatehouse means that one ends up in Cookley, and exit through the other results in the approach to Wolverley. The Site is enveloped too by a historic wall – which features in the annual 'round the wall' race. This is a Site which has been of central importance to the setting and special character of both settlements (though again, the R6 Party notes that they are not towns), which were built through the iron industry.

56. For these reasons, the R6 Party considers there to be conflict with the purposes of the Green Belt – per §143 of the NPPF.

<u>Spatial Openness</u>

[33] Note Green Belt Review CD12.02, where it is said that there is no role in the wider N7 Parcel, but that locally this is the principal land separating Cookley and Kidderminster.
[34] See Decision Letter of Inspector Normington §82
[35] CD12.02, page 20.
[36] CD12.02, page 20.

57. The Appeal Site is surrounded – or is likely soon to be surrounded on all sides by built development. To the north is Cookley, to the Southwest is Wolverley, to the south is Kidderminster. It is bounded by built development of Sion Hill (which, it is noted, has been built out since the Green Belt Review was undertaken).[37]

58. There is soon to be built form to the East on the Lea Castle Village site. Inspector Normington accepted the position of the R6 Party that the Appeal Site and its immediate environs will likely form the remaining area of Green Belt between those settlements.[38] That only magnifies the Appeal Site's importance in fulfilling the Green Belt purposes.

59. The contained nature of the Site also emphasises its importance in fulfilling Green Belt purposes.[39] That has only been magnified since the issuing of the Decision Letter by Inspector Normington, where the development has further progressed on the Village. Accordingly, the role of the site in spatial terms has been enhanced. For this reason, Inspector Normington found that the appeal site plays an "*extremely important Green Belt role"*[40]. The R6 Party would invite the Inspector to agree.

Visual openness

60. This is a highly permeable site. Unlike other sites in and around the area which may be considered for minerals workings in the Green Belt, we are not only talking about the importance of the views into/out of the Site. It is essential to consider the experience of openness from within the site. That is an important part of how visual openness is experienced in this locality.

61. Many people have spoken about experiencing the Green Belt openness because this is a site with defined linkages with the wider footpath network. That, too, was the case at the last inquiry, where Inspector Normignton recorded that the site is relatively open and there are external and internal views from the PRoW that crosses the Site. Its spatial position between settlements is visually recognisable.[41] It is this area's openness that

[37] This was accepted by Inspector Normington at Decision Letter §59.
[38] See Inspector Normington at Decision Letter §59.
[39] Inspector Normington Decision Letter, §60.
[40] See §200.
[41] Ibid, §72.

has been cited as an important element of this part of the Green Belt; a factor which Inspector Normington found had "*contributed significantly to the appreciation and enjoyment of the area"*.[42]

62. In visual terms some of the greatest visual impacts of the entire scheme are going to be nearest to the most sensitive of users – recreational PRoW users of the footpaths and bridlepaths. That is because there will be bunding including alongside the most sensitive of the footpaths (the arterial route), throughout the course of the development. There will also be plant and workings adjacent to the PRoW. This is not a scheme where those works will be happening at a distance or away from those users. There will be an immediacy about them.

63. In summary, some of the worst impacts can be summarised as follows:

    a. During **Phase 1**, there will be a bridleway diversion. However, there would be nothing stopping those on that diverted bridleway from seeing the minerals workings in Phase 1[43]. There will also be the large bund erected in front of the equestrian centre and the bungalow. There will be heavy plant and machinery travelling along the haul road, and likely crossing the bridleway into the Phase 1 area. From the outset, the degree of activity likely to be generated is all a relevant factor when one is thinking about how there will be impacts upon "*openness*".[44]

    b. During **Phase 2**, the diverted section of the bridleway is noted. At that stage, too, there will be clearly visible aspects of the mineral's workings and/or experience of walking directly alongside the bunding (See Bund 12). There will be considerable bunding sustained even on the arterial bridleway through the site, entirely foreshortening views on both sides of the PROW.

    c. In **Phase 3,** mineral workings will also be clearly visible, even at the main arterial route near to the immediate entrance into the Site. That is a view of activity which is clearly likely to impact the experience of openness.[45] Despite

[42] Ibid. §72.
[43] See CD15.17 and the light blue line by way of example,
[44] See CD12.42, page 2.
[45] Ibid.

bunding being a means of mitigating visual impacts, there will not even be bunds to shield the open view for that section of the PRoW during Phase 3. Plainly, that will have a detrimental experience on the users of the PRoW (and it is not assessed in the LVA) despite being alongside the arterial bridleway and readily visible to all those entering the Site from the South Lodges. That is surprising to say the least.

It does not appear that the unmitigated impacts of travelling along that part of the bridleway from a noise, dust perspective, etc, have been properly assessed either, given that there is no bunding proposed whatsoever, despite that having been used as a justification to reduce amenity impacts elsewhere on the PRoW network. If there are unmitigated impacts from that location, then plainly, that will be harmful to users of the PROW.

d. During later phases (from **Phase 4),** the bunding will be extended outwards all the way along the northern stretch of the 625(B), the footpath that extends from the arterial route through to the Northern gatehouses (Bund 17) That has not been assessed fully or thoroughly either. Neither have the impacts upon PROW users to the south, as they move from the South Lodge to the East, nor South Lodge to the West, where the users of the PRoW will be experiencing bunding alongside the PRoW.[46]

64. There has also been a lack of assessment of the impacts on pedestrians walking along Wolverley Road, who are able to see into the site from various locations. The Inspector needs only to look to Viewpoint 29[47] to see how that openness is currently experienced by looking over the wall and into the Site.

65. By way of illustration, all of these have the potential to materially impact the experience of openness and impact the user from a landscape and visual impact perspective (covered in further detail below). The extent to which there has been an analysis of the impacts from an openness point of view can be repeated as a harm to the Green Belt as well as harm in landscape and visual amenity terms.

[46] Mr Furber XX
[47] Mr Furber figures, page 45

66. The R6 Party, therefore, agree the analysis of Inspector Normington was accurate when he stated at §80 that:

> "*the extent of the proposed extraction and restoration phases, due to their expansive nature within the confines of the site, would, in combination with the bunds, contribute to a loss of openness. This is particularly relevant in this case due to the important role that this area of Green Belt performs given its spatial position between existing and proposed built development as set out above."*

67. As the Council discussed with the Appellant there has been no meaningful engagement with how or why the Inspector ought to come to a different view in the evidence of either Mr Furber or Mr Toland

MAIN ISSUE 2: 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.

Landscape and visual amenity

68. The Site represents a significant historical landscape - rolling hills set within landscaped parkland that formed the grounds of an 18th-century mansion built by one of the era's most powerful industrialists who lived in the locality. There is no evidence to suggest that this historic landform has changed since this time when Mr Knight chose to site his castle in this particular location.[48]

69. There are a number of harms which are material considerations in the determination of this appeal.

70. **First**, the site's distinctive topography rises to Broom Covert (noted to be a woodland) to the east of the main entrance driveway. It rises to approximately 85 meters before

[48] Mr Furber XX.

falling easterly to Wolverhampton Road (55 meters) and westerly towards the sports ground (65 meters). This hill forms a prominent and significant landscape feature, which Mr Partridge has explained is locally distinctive and a historic landform associated with the development of the parkland estate. Mr Knight *chose* to site his castle in this location.

71. **Second**, the Site's character is defined by its historic containment within estate walls and entrance gatehouses. The numerous historic specimen trees (including the Wellingtonia referred to throughout the inquiry) were planted as part of the parkland design and are important in reading this in its historical parkland context. In Mr Partridge's view, these are a part of the historic, attractive parkland landscape. Mr Furber agrees that they play a role in our understanding of the particular landscape characteristics of this Site.

72. **Third**, the Site sits within the wider Sandstone Estatelands Character Area ("**LCA**"). This is characterised by open, rolling landscapes with ordered patterns of large arable fields, straight roads and estate plantations. There are no references to quarry or minerals workings within the LCA. There are no references to bunds, steep banks or flat landscapes either. The arable use of the land exemplifies precisely the characteristic landscape of the appeal site.[49]

73. Mr. Partridge argues that the appeal site exemplifies this landscape character perfectly, and the proposal would destroy this character on this Site by plainly removing our understanding of it completely during operation and then eroding it during the restoration phase.

74. The scale of landscape impact can be understood by the proposal to remove 1.7 million cubic metres of material and replace it with only 0.6 million cubic metres. The Appellant's concept restoration plan, which shows transects from the site from East to West, shows at its lowest that there would be 12-13m drop from the current landform. This is a substantial difference to the landform. The existing and proposed cross sections illustrate the effects Mr Partridge considers the restoration would have on the

[49] As explored with Mr Furber in XX.

landscape – replacing rolling countryside with what he characterises as a "*desolate flat crater*",[50] similar to the land at Court Quarry west of Wolverley Road.[51]

75. Moreover, on restoration, the R6 Party are still concerned about the impacts upon character and appearance of the area. One might question how, in light of that analysis, the conclusion in the ES could possibly be defensible. Moreover, Mr Furber also confirmed that his analysis was entirely predicated on the basis that all of the inert fill material is found.[52] Suffice to say that if there is a reduced amount of inert fill, then his analysis may well differ.

76. In terms of policy compliance, Mr. Partridge highlights Policy **MLP 33,** which requires mineral developments to conserve and enhance landscape character and distinctiveness throughout their lifetime. He argues that the proposal fails this test as it would:

    a. Result in significant change to key landscape characteristics identified in the Worcestershire LCA.

    b. Introduce landscape features that conflict with and dilute the inherent landscape character.

    c. The proposed restoration would deliver what Mr. Partridge describes as "a *flat crater with a raised access route.*"

77. Mr. Partridge draws on the views of statutory consultee responses to the Lea Castle Farm EIA Scoping Opinion, which confirmed various features that contribute to its status as a landscape which is valued, including (i) the estate's containment within historic walls; (ii) its post-medieval designed landscape character (iii) distinctive structural features and historic buildings; (iv) strategic Green Infrastructure links; and (v) its transition between different landscape character types.

78. He also draws parallels with other appeal decisions where Inspectors have given significant weight to artificial landform changes and their permanent impact on

[50] §4.20 Mr Partridge Proof.
[51] Ibid.
[52] Mr Furber XX.

landscape character, particularly citing the Pave Lane Quarry case[53] where permanent landform changes were found to outweigh any restoration benefits.[54]

79. One only has to look to the montages produced for a clear understanding of how the landform would be changed throughout the scheme's lifetime. Mr Furber now recognises that for many of those viewpoints where the impacts can be properly illustrated, there would be an introduced artificial landform.[55] By way of example, at:

    a. Viewpoint 15a on the intersection between the arterial PROW heading west, the view is completely blocked by a large bund and straw bales – that is the same for both the original and the proposed scheme.[56]

       It is a stark contrast to what is there now. However, it does not illustrate how one would experience that for <u>full</u> sections of the PROW, given those impacts are so immediate. Even at Year 4[57]the bunding looks completely alien in this landscape.

    b. Viewpoint 15b, there is hardly any difference between the original and revised scheme in terms of impacts. Both are harmful. This will be the impact on the McDonalds' commute as they enter from the arterial route, into their property.

    c. One only has to look at Viewpoints Da[58], Db[59] to see how the landscape will be dramatically transformed too. Those impacts would largely be sustained along long stretches of the PROWs. They are not limited to short sections of the PRoW.

80. There are also a number of areas where there is <u>no assessment and no mitigation at all</u>.

81. In Phase 3 for example, there is no bund at all, so users of the PROW will be able to look across and have a clear view into the workings of the scheme. It is very surprising

[53] §4.28 of Mr Partridge Proof of Evidence
[54] §4.28 of Mr Partridge Proof of Evidence
[55] As discussed with Mr Furber in XX.
[56] Mr Furber Figures, page 21.
[57] Mr Furber figures, page 22.
[58] Mr Furber Figures
[59] Mr Furber Figures.

that is not addressed in Mr Furber's Proof at all.[60] In circumstances where Mr Furber accepts that the impacts of, for example, increased traffic can have a material impact on openness, that harm would be even worse where one can clearly trucks in parts of the site with stockpiled sand. It will also undoubtedly have an impact upon the enjoyment of users from the PROW.

82. The fact that it is not mitigated serves only to underscore how poorly thought through this design response has been. In XX, Mr Furber sought to suggest that this might be cured with bales placed along that frontage. However, there is no assessment about how that could work with operation of this scheme and there has been no assessment of how harmful that would be. In a case such as this – where openness and landscape and visual impacts are a critical issue – it should not take the Rule 6 Party to point out such deficiencies with the scheme proposed for them to be considered by the Appellant.

83. There are also a number of critical issues with the evidence base where there is no analysis, yet it is likely that there will be materially harmful impacts. This would include the PROW from the middle of the Site as it extends to Cookley. No visual has been produced of the impacts of the bunds.[61] There is also no analysis from the impacts including from the South of Phase 3. The impacts upon not only existing PROW users but also those users of new PROW are also a material consideration which Mr Furber does not grapple with.

The Reliability of the ES

84. The ES suggests that there will be no change to the overall site Concept Restoration Scheme in respect of either levels or landform. That conclusion (in the ES) does not convey a balanced view, nor does it convey an accurate picture of what is proposed. On any analysis clear that the levels and landform will change as a result of the Proposed Development.[62]

[60] Furber XX.
[61] See rPoE2.08 Mr Furber Figures, p54.
[62] The Inspector will note the conclusion: "As set out above, there will be no change to the overall site Concept Restoration Scheme in respect of levels or landform." in CD15.01 ES Addendum, page 11.

85. There are other critical concerns that the R6 Party have with the extent to which the ES can be said to be balanced.

86. The Inspector will recall the exchange with Mr Furber where it is relevant to look at the current baseline.[63] The original author of the ES looked at the impacts of scrambling. That happens on the eastern extremity of the Site. It is away from the PROW, and the nearest receptor to that activity would be on the roadside. It is essentially an activity which involves scrambling motorbikes moving around the Site – it is a transient activity. Of course, this would cause noise and disruption and is only for 14 days a year maximum. For that activity, the ES concludes that it has the potential to be a <u>significant adverse effect.</u>

87. Compare and contrast that with the view that the author of the ES takes with respect to the impacts upon the PROW users. It is worth looking at the conclusions with respect to Viewpoint 15.[64] This is where there will be impacts upon the PROW users looking across the field and where the views will be completely removed for a <u>much</u> longer period than 14 days. This is a location from which openness will be severely curtailed, and visual amenity will be affected. How can it possibly be the case that the impact from scramblers will be significantly adverse, and yet this longer, more significant change will not be?

<u>The view of the District Council</u>

88. It will also not be lost on the Inspector that though WCC were the first-instance decision-making body, there were key objections from the District Council ("**WFDC**"), which is an important statutory consultee. They note[65] that there would be an area of working where there would be a significant impact on visual amenity of the Green Belt, and that there was an area of working where there would be a significant effect on the immediate landscape which will cause a significant loss of openness.[66]

<u>Trees and Historic Landscape</u>

[63] ES Appendix A, LVIA, p58.
[64] See rPoE2.08 MrFurber figures, page 21.
[65] CD4.38
[66] Ibid. page 6.

89. The development would result in significant tree loss that would fundamentally damage the historic parkland character. The District Tree Officer objected due to the loss of mature trees and detrimental landscape impact. Trees 12-21 would be threatened by the extent of the impact of the proposed develpoment along the central arterial way.[67]

90. The proposed replacement planting cannot replicate the amenity and ecosystem services of large mature and veteran trees. The tree protection conditions require 15x diameter standoffs[68]. For an illustration of what that means see CD5.22 (and tree officer comments at CD6.09), regarding T22.[69] That illustrates a large area of undisturbed land to be taken out of action to maintain the tree. For trees of the diameter of T9 and T10 (1500mm and 1480mm) this equals 45m and 44.4m, respectively. There has been no assessment of how that would work, particularly when those trees are right in the middle of Phase 3 workings. The Appellant pointed out that the ground below T22 was around 4m[70]; the ground below the TPO T9 and T10 would be around double that.[71]The deeper workings mean that they will stand higher as an island in the middle of sand extraction.

91. Given that what is required for T22 is before the inquiry, there is no detail about how this can be managed for T9 (TPO) and T10 (TPO), even despite trees forming a fundamental part of the historic features of the estate. Their loss would harm appreciation of this historic landscape. The extent to which there is work on the avenue approach has the potential to disturb those trees, too. Stand-off distances on such trafficked sections will be difficult to achieve. The R6 Party agreed that the arboriculture officer was right to express some scepticism about the solution put forward. If there is harm (given the way in which the mineral is likely to be worked around them), then there would be both landscape and heritage harm.

92. In conclusion, Mr. Partridge presents the landscape impacts as fundamental and irreversible. The development would permanently erase a historically significant designed landscape and replace it with an artificial landform entirely at odds with the

[67] CD4.35 – Wyre Forest Arb Officer Comments.
[68] CD1.06
[69] 1200mm x 15 =- 18000mm on either side (18m stand off on either side which is equivalent to 36m in total).
[70] CD5.20
[71] CD1.04 pdf page 87.

established character of the area. The restoration proposals would not mitigate this harm, instead creating a permanently altered landscape that fails to preserve or enhance the site's distinctive character.

Other amenity impacts

93. No further specialist evidence is advanced by the R6 Party in respect of the impacts upon living conditions of nearby residents in relation to outlook, noise, dust, air quality and health. However, that does not mean that there are no considerable concerns that the R6 Party have; in particular, with the evidence put forward, including the impacts upon Mr & Mrs McDonald in the Bungalow, the impacts upon the PRoW users, and equestrian business, which both Ms Canham and Mr Toland concede have not been readily considered.[72] In addition, the impacts upon the Heathfield Knoll School, which is very close to the appeal Site boundary, requires careful consideration, particularly in light of Defra's updated guidance on PM2.5, on the careful siting of quarries next to schools and other sensitive receptors.

94. The assessment of amenity impacts has been inadequate. There has been:

    a. No assessment of noise impacts on PROW users – despite recreational users needing to be taken into account in MLP28 and MLP30;[73]
    b. No assessment of dust impacts on PROW users –the potential receptors identified are all those who are near the Site boundary but beyond it;[74]
    c. There has been no assessment of traffic impacts within the site boundary, including on those users of the PRoW.

95. It is also evident that these environmental effects have been looked at in isolation. There has been no assessment of how these effects will combine or have the potential to cause impacts together. In short, whilst each individual effect could be below the

[72] XXof Ms Canham and XX of Mr Toland.
[73] Ms Canham XX.
[74] See §5.3.5 of Hawkins Proof. See also §5.3.12 where the receptors for disamenity dust have been considered 5.3.12 Receptors considered in the original Dust Impact Assessment comprise those nearest the Site boundary, including the Bungalow, South Lodges, Broom Cottage, properties on Brown Westhead Park and Castle Barns and Heathfield Knoll School and First Day Steps Nursery. Other receptors such as Lea Castle Equestrian Centre, Keepers Cottage and Strong Farm are effectively subsumed by these closer receptors, it is said.

limit, MLP28 expressly requires the applicant to demonstrate that throughout its lifetime the cumulative effects of multiple impacts from the site[75] be considered.

96. MLP28 requires that regard be had not only to residential occupiers but to *"sensitive receptors*" (as defined in the Glossary of the Plan[76]), including people in their places of recreation (that was accepted by Ms Canham[77]), as well as businesses including those in agriculture and tourism.

97. There is no monitoring proposed for those in those locations from noise, dust, wider amenity consideration for those on the PROW or operating the equestrian centre (which have particular requirements given that the environment needs to be appropriate for horses).[78][79]

98. This has knock-on impacts on how those effects are controlled. There will be no control from a noise or dust perspective from any of those people or horses using the PRoW. Noise and Dust monitoring (including for disamenity dust[80]) will only occur at the site boundaries.

99. No monitoring means that there will be no limits on their effects, and there will be no control on making those effects acceptable should those effects prove to be unacceptable during operation. In short, the quarry can operate in a way which is as noisy, as dusty, or as populated with quarry machinery crossing the proposed PROW/ "permissive ways", and there will be no sanctions. The controls do not operate to control effects other than at the site boundary.

100. Mr Partridge agreed in XX that there was no individual breach of Policy **MLP28**[81]. That is an entirely reasonable position to take as he cannot positively assert that there is such a breach without evidence to substantiate his position.

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[75] MLP18, page 157.
[76] See CD11.03, page 247
[77] Ms Canham XX.
[78] See the limits from a noise point of view are those in Condition 29 and are the nearby properties.
[79] The limits proposed in Condition 31 does not include express consideration of those using the site for recreation.
[80] It is noted that there are no limits for disamenity dust. However, the
[81] Mr Partridge XX.

101. What is clear is that there is a lack of evidence. There simply has been no consideration of these effects on recreational users, nor has there been an assessment of impacts on the equestrian centre (or indeed any of the other businesses which Mr Lord has included in his evidence since the first inquiry).[82]

102. Policy **MLP 30** states that mineral development will be permitted where it is demonstrated that throughout its lifetime, the development will not adversely affect the integrity and quality of the existing public rights of way network and maintain or enhance access to and the quality and recreational value of, the existing public rights of way network and wider access network.

103. Noise, dust, and traffic impacts can all adversely affect the integrity and quality of the existing PRoW (and those can fall short of an amenity complaint). If that is not monitored, or controlled, there cannot be said to be compliance with MLP30.

104. Inspector Normington found in the absence of any compelling technical evidence to the contrary on amenity impacts that the appeal proposals would not result in unacceptable levels of dust on the amenity of nearby existing or proposed sensitive land uses. However, one cannot assert that there will be policy compliance without any evidence, or any condition to support the conclusion.

105. Policy **SP16** is also relevant to consider on this issue.

106. Mr Partridge notes the findings of Inspector Normington that in terms of noise, dust or poor air quality, the proposed development would not a have a "*significant adverse effect*" on the amenity of the area or the living conditions and health of those living nearby or using recreational features.

107. Mr Partridge notes (quite rightly) that the absence of significant adverse harm is not the policy test nor is it any comfort to local people.[83] The policy test is to minimise negative health impacts and maximise opportunities for healthy, active lifestyles and to experience a high quality of life. That more ambitious standard is not materially

[82] This includes the equestrian business, but also those other business which have been mentioned by Mr Lord since the first inquiry.
[83] Mr Partridge Proof, §3.47.

addressed in the evidence of the Appellant, and on the basis of the evidence before the inquiry, the environmental effects will not be controlled to limit adverse effects, let alone encourage people to continue to walk, cycle, or ride through Lea Castle thereby furthering the aims of SP16.

108. In this regard, there is very clearly a breach of MLP30 and SP16, which weigh heavily against the grant of planning permission.

MAIN ISSUE 3: PUBLIC RIGHTS OF WAY

109. The Appellant's proposals regarding PRoW and access suffer from fundamental legal and practical deficiencies that substantially undermine their claimed benefits.

110. The PRoWs in this locality are evidently well-used and are special to local people.[84] We have heard from many of them who have come to explain how they use the PRoWs for their enjoyment. The Appellant does not have any evidence to contradict with that put forward by Ms Hatch which demonstrates how well-used the footpaths and bridleways are.

111. The British Horse Society provides detail on the valued link to access quieter lanes and the wider bridleway network[85].

Legal Status and Enforceability

112. The Supreme Court in *DB Symmetry v Swindon BC*[86] has confirmed that public rights of way cannot be dedicated by planning conditions. This creates a legal barrier to securing the Appellant's proposals. The proposed conditions cannot legally require the dedication of new public rights of way.

[84] See evidence of Ms Hatch for detail about those surveyed.
[85] See appendix to Ms Hatch's evidence.
[86] rID234

113. The UU which has now been signed[87] does not secure the "*permissive paths"* as anything other than permissive – and so they cannot be afforded any weight in the overall planning balance.

114. The Inspector will note that Schedule 1 (2) requires that the aims and objectives of the Landscape and Ecological Management Plan ("**the LEMP**") to be submitted and will require the provision and maintenance of the public access routes as shown on the approved restoration scheme. The proposed restoration scheme includes permissive paths, rather than PRoW. It was suggested during the evidence of Mr Toland that the permissive paths would be upgraded to PRoW but that is not what the UU achieves. It does not change the status from "*permissive paths*" to PROW as was suggested may be possible during the evidence of Mr Toland.

115. It also does not require the paths be maintained in perpetuity (or even for 30 years), despite that being the stated purpose.[88] It also does not say that public access will be maintained over that period either.[89]

116. Even if the routes could be secured (which they cannot), they suffer from serious practical deficiencies. The proposed crossing of operational haul roads presents clear safety risks. Their location adjacent to 50mph roads makes routes unsuitable for equestrian users. The wall along the A449 is low[90]. Riding alongside that wall with the traffic from the road would be dangerous. That is an area which the speed limit goes from 40mph to 50mph. Normally, a car would need to pass a car at 10mph.

117. Ms Hatch, as the only equestrian expert before the inquiry, gave unchallenged evidence that the southern boundary route would require travel alongside the 60mph Wolverley Road and A-road. That too is wholly unsuitable. This would be unsafe given the requirement for vehicles to pass horses at 10mph.The crossing arrangements at the site entrance remain unresolved. That is in the context of there being hundreds of lorry movements per day over that PROW. Moreover, the "*upgrade*" of bridleway 624(B) is meaningless as it is already a bridleway.

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[87] rID227 – dated 1 December
[88] In respect of the LEMP it is only the "work and maintenance schedule for 30 years".
[89] That can be contrasted with the purpose of the UU – in §3.2 where the proposed pulic access routes are maintained beyond the duration of the development.
[90] Mr Toland XX.

118. The BHS raise concern that the construction and production will include HGV return journeys and therefore impacts on the volume of traffic on the road network. This has the potential to impact bridleway users beyond the site.[91] The BHS also notes that the bridleway is described as the "internal access road".[92] This, they note, has the potential to cause further difficulties given that the access road will make the road higher risk for vulnerable road users in the absence of speed restrictions or other traffic calming measures.[93] The narrowness of the road was also a cause for concern with the potential for conflict between HGVs and equestrians.[94]

119. Exposure to noise, dust and visual intrusion from operations would severely compromise amenity. There has been no assessment of how these individually, or cumulatively will impact upon horses.

120. The County Council have not commented on the appropriateness of the proposed "*permissive*" routes. There is, therefore, no technical evidence before the inquiry supporting their suitability.

<u>The dearth of detail on the conveyor</u>

121. A conveyor is proposed under the arterial bridleway, which is also the main access to the equestrian centre and is frequently used by those riding horses, as well as those walking. Ms Hatch gave detailed evidence on why, in her view this was a wholly unsuitable response.

122. At the 11th hour, Mr Furber explained that he has seen a conveyor working at a quarry site with a bridleway.[95]Examples of conveyors adjacent to A roads cannot be compared. Mr Furber does not have any expertise as an equestrian, nor is he able to give any evidence about the likely amenity impacts arising from such activity.[96] There

[91] rPoE3.06, page 35
[92] Ibid.
[93] Ibid.
[94] See analysis on the widths of HGVs – ibid, page 35.
[95] Mr Furber EiC
[96] Mr Furber XX.

is simply no justification for these being raised through Mr Furber's evidence, given that it is not a new issue – many of the concerns were raised by Ms Hatch during the last inquiry and these concerns have been detailed in her Proof. He confirmed that he does not ride horses, and therefore with respect is not qualified to provide any view as to the appropriateness of the conveyor in this location.

123. The use of the conveyor is not an issue which can be left to condition given that it affects the arterial route through the site (and the operation of mineral workings shifting material from one side of the site to the other). It goes to the principle of the acceptability of the scheme. Even with the proposed revisions, the conveyor was not proposed to be changed, so it can be inferred that there is no other solution on the table to address the R6 Party's concerns.

124. Ms Hatch explained how in her view, this would be dangerous for horses, as "*flight*" animals. They are likely to be startled by sudden noises (see the explanation of the BHS[97]). The fact that the conveyor might make a constant noise, and therefore the horses could become accustomed to it is no answer. That is because just the other side of the bunding to the East, there would be the full plant area (with all the noise that would create), and on the other side of the proposed straw bales to the west, there would be the field hopper which would inevitably create an intermittent sound. Ms Canham had not looked at the noise impacts from the hopper too.[98] It is also not clear whether this had taken into account the conveyor working in reverse, where the material on the conveyor will not be sand but rather inert material being brought onto the site. This could amount to a very substantial number of the overall conveyor movements.

125. Ms Canham acknowledged that she had not assessed the impacts upon users of the bridleway,[99] including the specific impacts on horses. Indeed, she had not considered the impacts on the Equestrian Centre (or the particular requirements of that business) at all. With respect, considering the impact on those who live in the bungalow is not the same. If horses and riders are also not able to safely cross the conveyor, that

[97] rPoE 3.06
[98] Ms Canham XX
[99] She had only looked at the residential receptors beyond the site.

would also be a serious issue for the business, given that they would not be able to take horses out along frequently used bridleways.

Equestrian centre

126. As Ms Hatch explained, horses can hear sounds at a different frequency. There is no evidence that the Appeal Site, or the Equestrian Centre will be safe for horses, or those riding them. None of these impacts have been considered by the Appellants, again, despite the issues having been raised for several years. If this creates an environment which is unsafe for horses, there will be knock on (further) impacts upon the Lea Castle Equestrian Business. Failure to assess the impact means that the Appellant has not even turned their mind to what mitigation may be necessary. That is a fundamental principle of planning law; the agent of change must be the one to mitigate the effect. Closing one's eyes to the potential for impact is not the same as asserting that there is no impact. Plainly there is a real risk of impact arising both given that the impacts on the equestrian centre have not been assessed, and given that there is the potential for the horses trekking around the Site to be cut off on somewhat of an "island" if they are unable to use the bridleway.

Highways Act 1980

127. The length of the bridleway is only one relevant factor when they are thinking about whether or not the highway is "*substantially less convenient*" – see the Highways Act 1980. That means that there must be no diminished public enjoyment throughout the life of the development. Mr Toland accepts that public enjoyment of the path is a highly relevant factor.[100]

128. If the path is noisier, it would be substantially less convenient. If it is dustier, it would be substantially less convenient. If the gradient changes, it will be substantially less convenient. If it requires you to navigate past a busy road, that would be substantially less convenient. Despite the issue being raised by Ms Hatch in evidence throughout the first inquiry and again in this inquiry, the Appellant has not addressed the issue.

[100] Mr Toland XX.

129. On the evidence before the inquiry, there is no mitigation proposed to minimise impacts on PRoW users and therefore there would be an inevitable breach of the Highways Act 1980 too.

MLP30

130. The points regarding MLP30 are relevant, but are not repeated here. However, over and above the requirements of the Highways Act, MLP30 requires mineral development to maintain the integrity and quality of the existing public rights of way network throughout its lifetime. The evidence before the inquiry demonstrates clear and serious conflict with this important policy requirement on the basis that there is no assessment and no control over noise, dust, internal traffic, or cumulative impacts of the same. This would result in a clear conflict with Policy MLP 30 and that provides a clear reason for refusing permission. It is a policy in the minerals plan, there to protect valuable public rights of way from inappropriate mineral development. In this regard, the Proposed Development falls hopelessly short of demonstrating that that standard has been met.

Pocket parks

131. Finally, the pocket parks. These largely either duplicate existing accessible areas or would be compromised by their location across access roads, including on the main arterial way. They are largely to be found in urban areas. To reach them, one would have to travel along permissive routes.[101] The concerns surrounding access are noted but are not repeated here. The pocket parks offer no meaningful benefits beyond existing provision.

Assessment in the Planning Balance

132. These assessment gaps are not mere technical oversights. The evidence of Ms Hatch, demonstrates that the development would fundamentally compromise both the integrity and quality of the existing PROW network. The combination of operational

[101] See CD15.23 by way of example.

impacts - including dust, noise, visual amenity and safety concerns - would diminish the network's utility value.

133. When properly analysed, the PROW "*benefits*" proposals carry no meaningful weight in favour of the development. The PROW proposals are not legally secured. They would be practically unsuitable even if they could be. They would cause significant harm during operations.

134. No weight can be given to the "*provision*" of existing PROW as these are already in existence, and are well used. Similarly, no weight can be given to permissive paths that could be withdrawn at any time. Significant negative weight should be given to operational impacts on existing PROW, and in particular the conflict with MLP30 and SP16.

135. Rather than supporting the proposal, the PROW evidence provides a further clear reason for refusing permission. This matter alone would justify dismissing the appeal. However, when combined with the other serious deficiencies in the Appellant's case, it reinforces the conclusion that planning permission should be refused.

MAIN ISSUE 4: THE EFFECTS OF THE PROPOSED DEVELOPMENT ON HERITAGE ASSETS.

136. A number of consultees focus on the site's important role from a heritage conservation point of view. This includes the Wolverley and Cookley Historical Society, the CPRE, Historic England, the Parish council.[102]

Designated heritage assets

137. The Grade II listed North Lodges and Gateway to Lea Castle are nationally important heritage assets that would be harmed by this development: their Grade II status confirms their heritage importance. Even the Appellant accepts there would be

[102] See Mr Partridge Proof page 23 and 24.

"*less than substantial harm*". In accordance with well established case law such harm must be given "*considerable importance and weight*" in the planning balance.

138. The Appellant's analysis fundamentally misunderstands how these assets are experienced and appreciated. The lodges cannot be properly understood in isolation from their historic parkland setting (despite Mr Sutton seeking to downgrade the role that the wider parkland plays in the appreciation of the gatehouses). The existing parkland and Wellingtonia can be viewed through the North Lodge Gateway. They are clearly part of the formal approach and designed views are integral to their significance; the Proposed Development would fundamentally disrupt this historic relationship by severing the historic parkland from the gateway to that parkland; without the parkland, we lose the ability to understand them fully in heritage terms.

The Wall

139. The fact that Mr Sutton could not assist the inquiry with whether or not the walls are part of the curtilage of the lodges is surprising.

140. Notwithstanding the fact that he struggled to engage with the question about whether or not the wall formed part of the historic curtilage of the North Lodges, he was able to agree that all of the ingredients of the test for whether or not a structure qualifies as curtilage were relevant and met in this case.[103] This includes the physical layout (they are connected and therefore have a clear interrelationship), they were in the same ownership, and the use and function were clearly, collectively, to demarcate the extent of the historic estate land.[104]

141. There are clear linkages not only with the gatehouses but the wall which surrounds the parkland. This emphasises the role that the wider estate parkland plays in our understanding of both gatehouses and the wall given that it envelops that land.

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[103] As Mr Partridge explained in his evidence

7.9 Historic England advice is that in general any structure attached to a building, such as adjoining buildings or walls, will also be covered by the listing if the structure was ancillary to the principle building at the date of the listing. Even extensions or alterations to listed buildings made after listing from part of the listing building and are subject to the protection regime. Classification

[104] See the tests in Mr Partridge Proof.

Again, by eroding that land within the parkland, we lose our ability to understand what the wall's function is. It would, instead be a wall surrounding a quarry.

Non-Designated Heritage Assets

142. The harm extends to important non-designated heritage assets too: the South Lodge, while not nationally listed, is locally listed, and makes an important contribution to understanding the designed approach. It should be treated in a similar way to the North Lodge (particularly given its architectural and functional similarity) , given that it was part of the entrance sequence to the parkland estate, along the main arterial bridleway. Again, without the parkland being retained as a legible parkland feature, the significance of the South Lodge will be drained away somewhat.

Cumulative Impact

143. The true heritage harm can only be understood by considering the assets as an ensemble. The lodges were deliberately positioned to create a formal approach sequence; this relied on the carefully designed parkland setting beyond. Mr. Partridge's evidence demonstrates that even after restoration, the parkland character would be permanently altered.

144. This compounds the harm. The direct harm to the significance of the listed North Lodges, harm to the non-designated South Lodge, damage to the historic wall, and permanent alteration of the parkland makes it more difficult to appreciate these assets.

Legal and policy implications

145. This heritage harm must be given great weight in the planning balance: the statutory duty regarding listed buildings cannot be discharged through temporary or partial mitigation; the NPPF requirement for *"great weight*" applies even to "*less than substantial*" harm. Finally, the permanent alteration of the historic parkland setting cannot be fully remediated given that the parkland character will not be restored. As

Mr Partridge has explained, the fact that the profile of the land has remained unchanged and will not be restored is a significant harm. That is also further harm to be weighted in the overall planning balance.

MAIN ISSUE 5: THE PROPOSED DEVELOPMENT'S EFFECTS ON HIGHWAY SAFETY, PARTICULARLY FOR VULNERABLE ROAD USERS.

146. The R6 Party does not call specialist evidence in relation to the impacts upon highway safety or vulnerable road users but would urge the Inspector to consider the evidence on this issue carefully, not least given that there are a range of vulnerable road users in very close proximity to the Site. This includes the pedestrians on the Wolverley Road, and also the children of Heathfield Knoll School.

147. Mr. Partridge's evidence on transportation matters raises important sustainability concerns. He notes that the site scores poorly against the Minerals Local Plan Sustainability Assessment objective for traffic and transport, which aims to "*Reduce the need to travel and move towards more sustainable travel patterns.”*

148. A failing identified by Mr. Partridge is the absence of any sustainable transport alternatives. Despite the Sustainability Appraisal (“**SA**”) noting that many mineral sites can potentially utilise water-borne transport due to their proximity to waterways, this site lacks a riparian frontage and makes no provision for water-based transportation. This leaves heavy goods vehicles as the only option for moving extracted materials.

149. While Mr. Partridge acknowledges that employee and visitor trips may be relatively small in number, he emphasises that the movement of extracted material will generate significant HGV movements. The reliance solely on road transport, without any sustainable alternatives, leads him to conclude that the site should score a *"Significant negative impact*" in sustainability terms.

150. This aspect of Mr. Partridge's evidence forms part of his broader critique of the scheme's sustainability credentials and contributes to his overall conclusion that the development would be unsustainable.

151. There are also real highway safety concerns regarding the clashing of users between those using the PROW and the bridleway and those who are turning into the Site. Those have been addressed above.

152. Finally, there are also concerns regarding the inadequacy of the conditions proposed by the Appellant, including the right in, left out arrangement. That will be inadequate to prevent the traffic leaving or entering the site from moving through Wolverley given that there are no effective enforcement mechanisms to route vehicles away from the very narrow lock and bridge in Wolverley. This is a real concern for those who live in Wolverley given that it is wholly unsuitable for HGVs.

MAIN ISSUE 6: BIODIVERSITY

153. The R6 Party also do not present any evidence in respect of the particular impacts upon Biodiversity.

154. The site's location falls within an area that scores a "*significant negative impact*" for biodiversity and geodiversity in the Minerals Local Plan Sustainability Appraisal.[105] The site is in proximity to important ecological assets, including the Staffordshire and Worcestershire Canal and River Stour Local Wildlife Sites.[106] Statutory consultees have noted this in consultation responses, summarised in Mr Partridge's Proof.

155. The evidence of statutory consultees referenced by Mr. Partridge underscores the ecological sensitivity of this location. The site contains valuable semi-natural habitats, lies close to SSSIs, and is in an area known to support protected species, including dormice and bats.[107] Regard needs to be had to the fact that there will be a disruption to that ecosystem with the introduction of a quarry over a period of 10 years.

156. While Biodiversity Net Gain ("**BNG**") is now a requirement under Policy M**LP 31,** it is worth noting that the previous Inspector reduced the weight attached to the BNG provision in part, because it was a national policy requirement. Though the weight should not be reduced on the basis that it is now a legal requirement (but was not when

[105] See SA Objective 2, see §4.4 of Partridge PoE.
[106] See page 19 of Mr Partridge PoE.
[107] §4.27 of Mr Partridge Proof.

the application was submitted), it is worth noting that MLP31 requires proposals to conserve, enhance and deliver net gains for biodiversity in any event.

MAIN ISSUE 7: EMPLOYMENT / ECONOMY

Evidence Base

157. The economic case has evidential deficiencies. No specialist economic evidence has been presented. The claimed economic benefits are overstated while negative impacts are ignored: the 11 direct jobs must be weighed against potential job losses in other sectors. The £6 million annual contribution claim lacks detailed substantiation. There is no consideration of displacement effects from existing quarries or the fact that that is likely where the labour would be drawn.[108]

158. The evidence of Mr Lord regarding negative impacts stands largely unchallenged. The Appellant's case on local economic benefits rests on fundamentally flawed assumptions about how quarry operations generate local value. When properly analysed, many of the claimed benefits would accrue nationally rather than locally, and there are a litany of potential concerning economic impacts. In particular:

i. No assessment has been undertaken of potential business devaluation in proximity to the site, notwithstanding the fact that the Lea Castle Equestrian Business sits largely in the centre of the appeal site.[109] That also overlooks the impact which has already been experienced by the Equestrian Centre.

ii. There has been no consideration of the effects on Heathfield School as a significant local employer.

iii. The impact on the marketability of the new Lea Castle Village development is ignored, notwithstanding the fact that many people have

[108] See evidence of Mr Lord
[109] XX of Mr Toland.

given evidence at this inquiry to say that they did not know about the scheme and/or were completely unaware of the fact that there was a quarry proposed to be introduced just across the road when they purchased their houses. Several have said that they have moved in but would not have purchased a house there had they known that there was a quarry proposed on the Site.

iv. The evidence completely overlooks the impact on local tourism businesses regarding tourism and visitor accommodation. There has been no assessment of effects on the Staffordshire & Worcestershire Canal as a visitor attraction, nor has there been any assessment of the potential reduction in visitors to local pubs, cafes and shops. No assessment either of the impact on local accommodation providers who rely on the area's rural character is dismissed.

159. As an approach, it leaves much to be desired. There is no sensitivity testing of assumptions, an absence of comparative data from similar schemes, a lack of consideration of alternative scenarios and no proper assessment methodology which focuses only on the positives without giving any consideration for the negatives.

Capital Investment

160. The Appellant places significant weight on the initial capital investment in plant and equipment. However, this spending would not benefit the local economy. The major capital items - processing plant, weighbridge equipment, and site offices - would be procured from national or international suppliers rather than local businesses.[110] The specialised nature of quarrying equipment means there are no local suppliers capable of fulfilling these orders. Even the maintenance contracts for such specialised equipment would likely be with national firms rather than local contractors.

Taxation and Levies

[110] Toland XX.

161. Similarly, the claimed benefits from taxation would not accrue locally: the aggregates levy, estimated at £2 per tonne, is collected nationally. This levy exists specifically to encourage aggregate recycling, and its benefits are distributed nationally rather than concentrated in the local community. Business rates, while partially retained locally, will represent a modest proportion of the claimed economic benefit. In any event, these are benefits that would be derived from any mineral develpoment anywhere in the country. They are not unique or special to this scheme.

Employment "Benefits"

162. The employment benefits have been overstated. The specialised nature of quarry operations requires specific skills and experience. No local colleges or training providers are offering relevant courses[111]; this means the skilled positions would likely be filled by existing quarry workers from outside the area rather than local residents. That is of limited additive economic value too.

Supply Chain Effects

163. The wider supply chain benefits are similarly unlikely to materialise locally: Specialist quarry equipment and parts would be sourced nationally. Technical services would be provided by specialist firms rather than local businesses, and even basic supplies and services would likely be procured through existing supply arrangements rather than local providers.[112]

Negative Economic Impacts

164. More significantly, the Appellant's analysis completely fails to address potential negative economic impacts. No assessment has been undertaken of effects on local tourism businesses, the potential deterrent effect on other business investment has not been considered, nor have the effects on the amenity value of PRoW used by local

[111] Mr Toland XX.
[112] All discussed with Mr Toland in XX.

businesses have not been assessed (for example, the equestrian business) or those who come to walk/ cycle/ ride in the surroundings offered here.

165. As Mr Lord stated, the perception of the harm arising from the quarry can be enough to cause negative economic consequences, and the evidence of that has already materialised, with clients of the Lea Castle Equestrian Centre already moving their horses elsewhere. One can foresee the negative consequences on the camping/caravanning business if there was a quarry noted to be sited next door.[113]

166. We have also heard from numerous individuals who explained that they would take their children out of Heathfield Knoll School if the quarry came to fruition. Combined with recent increases in the impact of VAT on school fees and the Employer National Insurance contributions, this would be a triple threat on the school whose future would be put at risk.

167. In summary, regard needs to be had to the local economic impacts as well as national impacts (in §85 of the NPPF). These have not been assessed at all. The risk of negative environmental effects is already materialising given that the perception is enough to cause an impact regardless of whether or not the actual impacts are realised. There is real potential for this to be a harm of the scheme. It certainty is not a material consideration which is "*very special*" and has potential to be a harm.

MAIN ISSUE 8: 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

168. The need case cannot amount to VSC in this context. This is particularly the case when there is an improving supply position,[114] which means that any shortfall is reducing. In addition, alternative sources either exist or are coming forward, the mineral

[113] As explored with Mr Lord in EiC.
[114] When compared with the time when Inspector Normington took the decision.

itself is not scarce or especially valuable[115], and the policy framework does not create a presumption based on landbank position.

169. One can contrast the situation in this case with an operator who has a case where there are acute shortages, especially of valuable minerals. It is not part of the Appellant's case that this is a material which has special qualities.[116] That can be contrasted with other minerals appeals where it is obvious that there is a particular type of mineral which can only be worked in that particular location (given, for example, its special qualities). That is not the case here.[117]

170. There is nothing special or scarce about the mineral resource at this site. Such river terrace deposits are extensively available nationwide along river valleys. The Minerals Local Plan identifies around 100 areas of search for such minerals.[118] This particular location represents just one of many potential sources.

171. One might also find that where there is an absence of alternatives and clear evidence of market failure, there is a need to work the mineral in this location. It is not the Appellant's case that there is no other area in this MLP such that the mineral needs to be worked in this location.[119] As was pointed out in Mr Partridge's XX, this area of search is a huge area,[120] and it is no part of the Appellant's case that this is the only site which can come forward (or that there are other areas in the area of search which are constrained/undeliverable).

172. In such circumstances, the planning policy framework does not create a presumption in favour of mineral extraction where there is a landbank shortfall:

a. Paragraph 219(f) of the NPPF simply requires "*maintaining landbanks of at least 7 years for sand and gravel"*;

[115] During Mr Toland XX, it was confirmed that he did not rely upon the special qualities of this particular mineral. That can be contrasted with other cases where you might have particular qualities to the mineral which means that has to be worked in this particular location.
[116] Mr Toland XX.
[117] All explored with Mr Toland in XX.
[118] §4.28 of CD11.03
[119] As discussed with Mr Toland in XX.
[120] Partridge XX.

b. The PPG indicates that a low landbank "*may*" indicate suitable applications should be permitted - notably using permissive rather than mandatory language;

c. Unlike housing land supply, there is no "*tilted balance*" or presumption triggered by a shortfall;

d. The landbank requirement functions primarily as a plan-making tool to trigger a review of allocations rather than a development management threshold.

The Improving Supply Position

173. The need case is materially weaker for the Appellant than when Inspector Normington considered the previous appeal. At that time, he identified a 5.74-year landbank. He also identified several sites that could contribute additional supply:

a. Pinches Quarry Phase 4 (1.03 years);
b. Ripple East (0.57 years);
c. Former Motocross Site at Wilden (0.3 years).

174. Since then Pinches Quarry Phase 4 has been approved, adding over a year to the landbank. Two other applications remain in the pipeline. Mr Toland produced no evidence to suggest these other sites are undeliverable.[121]

175. On the evidence before the inquiry, the supply position has, therefore, improved since Inspector Normington's decision.

176. In summary, the extensive nature of alternative sources is demonstrated by the very many areas of search identified in the Minerals Local Plan,[122] the presence of other active planning applications, the improving landbank position noted above, and the

[121] Toland XX.
[122] §4.28 of CD11.03

ordinary nature of the mineral resource. Policy MLP14 confirms this is not the only area of search for sand and gravel in the county, let alone the country.

177. WCC are planning to maintain supply through the preparation of a Site Allocations Document subject to a proper sustainability assessment.

Restoration and Inert Fill

178. There are serious doubts about the deliverability of the inert fill. Those were doubts that Mr Normington had, too.[123] It will not be lost on the Inspector that the plan for the sourcing of fill has completely changed from what was proposed in the first inquiry. That only serves to underscore how shaky the assumptions were in respect of the first inquiry (for example, relating to HS2).

179. Since the first inquiry, planning permission has been granted for Sandy Lane Quarry (and NRS are the operator). There is no written or oral evidence put forward by the Appellant to suggest that the Sandy Lane Quarry is constrained in any way and that there will not be inert fill entering that site.[124] The Sandy Lane scheme is further ahead than this scheme, given that the site has already been worked to the extent that it is going to be, and there is a need to fill the site quickly. Mr Houle explained that NRS had worked to gain planning permission quickly for this site given that there were environmental risks owing to its proximity to the Veolia Site next door.

180. There is no evidence at all that two of the other sites which also have inert fill capacity will not come forward either. Mr Toland refers to the delay (to date) in those sites coming forward, but he does not refer to any constraints and advances no case that those will not come forward.[125] Those too will also be sites accepting further inert fill waste.

[123] See Inspector Normington's decision, §58.
[124] And confirmed with Mr Toland in XX.
[125] Mr Toland XX.

181. If there is inadequate inert fill, operations will likely be extended beyond 11 years. That was a risk that Inspector Normington identified[126]. There is not sufficient evidence before the inquiry to come to any different conclusion now.

182. It is relevant to reflect upon what **MLP26** requires. That expressly requires that the likely availability of suitable fill materials be explained. The explanatory text states that:

"Where the use of imported materials is proposed, potential sources of suitable materials (such as other development projects) should be identified within an economically viable distance for transporting materials, and the assessment should refer to the scale, timing and levels of certainty around those projects, and whether there are likely to be other demands for those materials (such as other quarry restorations)which could prevent the proposed restoration scheme being delivered."[127]

183. The further sources of inert fill now relied upon by Mr. Toland are speculative and unrealistic:

i. The **West Midlands Interchange** proposal demonstrates the weakness of the Appellant's case. It is located near Junction 12 of the M6, north of Wolverhampton. Any material would need to travel past, for example, sites in Stafford, sites around Telford and Bridgnorth. It would also need to drive past facilities around Wolverhampton. There is no commercial logic to transporting material past alternatives a considerable distance away from the Site. The Appellant produced no evidence of any commercial arrangement or even discussion with the developers. It amounts to little more than speculation.

ii. The **M54/M6, link road proposal,** suffers from similar deficiencies: it is located near Featherstone, Wolverhampton. Any material would again need to bypass closer disposal options. The Appellant produced no evidence about the volume of material likely to be generated and whether it would require off-site disposal. There is no evidence of any

[126] See §58 of Inspector Normington decision.
[127] See CD11.03 MLP,

commercial discussions about securing the material. The project involves constructing a road across predominantly greenfield land, making significant surplus material unlikely. Even if material were available, there is no logical reason why it would bypass closer disposal options.

iii. The **Willington C Gas Pipeline** proposal is perhaps the most speculative. It is located in Derbyshire (over 50 miles away). The material would need to travel south from Derby, past Lichfield, around Wolverhampton, past Stourbridge, and finally to Kidderminster. This route would likely pass dozens of potential sites. More fundamentally, the Appellant failed to explain how a gas pipeline project would generate significant surplus material, why such material would require disposal rather than reuse on-site, and any commercial rationale to such long-distance transport.

184. References were also made to projects in the south of Birmingham. As Mr Houle explained, these would need to travel past other inert disposal sites including, for example, Sandy Lane to reach the appeal site which will also have restoration requirements. Sandy Lane is located just off the motorway junction. No justification is provided as to why those transporting fill would bypass that site in favour of the Appeal Site.

185. The suggestion that the material will be taken away from the Lea Castle Village development (first phase on the old hospital site) is also fanciful. The former hospital part is largely complete, and the remaining greenfield portion would generate minimal excess material.

186. The suggestion in evidence from the Appellant that soil would be used to fill the appeal site is entirely contradicted by rID236, which states that the topsoil is generally not part of the imported material to the Site. Whilst it could theoretically form part of the *"inert material*" that could be imported, there is no reason how or why this could be the case, having regard to the virgin green field site that remains as part of the Lea Castle Village develpoment. It is respectfully suggested that there would be little commercial sense in disposing of topsoil (and having to pay to get rid of it).

187. The reality is that this Site would be competing with closer alternatives including Sandy Lane and Pinches quarries. More local options would be commercially preferable. As a commercial operation reliant on third parties bringing material, there is no guarantee of securing adequate fill. The suggestion that NRS would transport this material is no answer given that they too would then be shouldering the cost of the transport and the 'gate fee'.

188. Mr Toland in his own proof explains that aggregates being bulky in nature, makes them costly to transport and that they would typically only be transported about 30 miles from the source.[128] The Appellant has failed to explain why it would bypass closer alternatives, and there is no evidence of commercial arrangements, or why the material would need to travel beyond that radius.

189. The few lines dedicated to this subject in the Proof of Mr Toland does not provide the necessary degree of reassurance that this fill will reach the Appeal Site. The MLP requires that where imported materials are proposed, potential sources should be identified within an economically viable distance; evidence should address the scale of available material, the timing of availability, the level of certainty, and competition from other sites. The Appellant's evidence fails on every count, despite the issue being identified by Inspector Normington.

190. The commercial reality of inert fill disposal undermines these claims disposal costs typically include gate fees, transport costs, and landfill tax where applicable. Transport costs make proximity to the source a crucial factor and no rational operator would transport material past closer alternatives. The Appellant produced no evidence of how these commercial barriers would be overcome despite the concerns having been raised for several years now and being sufficient to plague Inspector Normington.

Impacts on the restoration scheme

191. Serious doubts remain about whether the proposed restoration can be achieved within the claimed timeframe or, indeed, at all. This uncertainty weighs against the

[128] See §10.3.1 of Mr Toland Proof.

grant of permission, creates the risk of prolonged Green Belt harm, and undermines claimed benefits dependent on restoration.

192. There was a discussion relating to a bond. With all of the deficiencies of that document having been pointed out,[129] the Appellant now no longer relies upon a bond. It rather begs the question as to why it was put forward in the first instance.

193. Nevertheless, the Appellant suggests that the restoration bond should only be required in an exceptional circumstance.[130] There is a (non-exhaustive) list of reasons of such exceptional circumstances. There are risks here which have been outlined throughout this inquiry, particularly given the sensitivity of the location, its historic landscape character, the extent to which this is used by local people and the importance that it be restored to an appropriate landform. There are doubts about whether or not there is sufficient inert fill given the limited evidence before the inquiry to provide reassurance. If the restoration cannot be achieved, then the harm (on such a sensitive site) will be sustained for longer.

194. The MPA Guarantee Fund cannot be relied upon either. The membership relates to the parent company,[131] and there is no guarantee it will apply to the Appellant itself.[132] In addition, it has never been used and will only pay out to a limited degree.

195. Even in circumstances where the inert fill is £15 per tonne (and it is expected that it would trade for more than that), the required amount will be the equivalent of crica £ 15 million.[133] That would plainly be worse if the fill trades for more, taking account of transport costs, etc. In the context of the MPA Guarantee Fund only paying out £0.5 million per individual claim, in the event of default, it will not touch the sides of what is required for restoration.[134]

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[129] Mr Partridge EiC

[130] Minerals PPG, Paragraph: 048 Reference ID: 27-048-20140306
Revision date: 06 03 2014

[131] rID79

[132] The MPA membership evidence relates to a different company – there is nothing in the evidence before the inquiry to confirm that the MPA would pay out in circumstances where a subsidiary company cannot fulfil its develpoment obligations.

[133] As discussed with Mr Toland in XX.

[134] See rID79, page 1.

MAIN ISSUE 9: PLANNING POLICY MATTERS AND THE PLANNING BALANCE.

Conflict with the Wyre Forest Local Plan

196. The Appellant has not engaged in assessing the Proposed Development against the Wyre Forest Local Plan ("**WFLP**") in evidence. Mr Toland's answer is that the SocG does that.

197. Any failure to engage with the WFLP means that local plan priorities have not been adequately addressed. This is important to bear in mind as the WFLP sets out what the local priorities are, and what Wyre Forest District Council ("**WFDC**") deems to be acceptable development in its district.

198. WFDC provided a detailed consultation response, which is important to consider[135]. That refers to the potential harms on the nearby residential occupiers, including concerns about the delivery of housing on the Lea Castle Village Site.[136] It is a large strategic allocation, which is '*fundamental to delivering the aims of the (then) emerging plan, along with critical infrastructure in the area'*.[137] It is critical in delivering the 5YHLS in Wyre Forest. Having regard to this plan is essential when considering whether or not there is compliance or conflict with the development plan, taken as a whole.

199. By way of summary:

a. **SP2** requires the safeguarding and, wherever possible, the enhancement of the open countryside. That also requires the maintenance of the openness of the GB and the protection of the sensitive development areas because of the landscape, heritage assets or biodiversity. Plainly there is tension with that policy for all the reasons explored above.

[135] CD4.38.
[136] Ibid, page 2.
[137] CD4.38 – page 4.

b. Similar points can be made about **SP6** – development proposals will not be permitted where it would be likely to have a significant effect on the District's BMV, and historic farmsteads which will be protected from inappropriate development. Plainly, there is harm assessed against that policy too given that the scheme involves developing a farm.[138]

c. **SP16** refers to health and well-being. That requires development proposals to minimise the negative health impacts and maximise the opportunities to ensure that the people in WFDC lead healthy, active lifestyles and experience high quality of life. As the Inspector will have heard at length, this is an area enjoyed for recreation and from people from immediately adjacent settlements and by those from further afield. If such opportunities are compromised or lost, there will be conflict with this policy too.[139]

d. **SP17** too refers to the impacts on the diverse local economy; employment on existing site will be supported. As part of his broader assessment of the economic benefits it was clear that the Appellant has only had regard to economic impacts on a wide-scale basis. There has been no consideration of the potentially negative economic consequences arising from the scheme, particularly at a local level

e. **SP19** concerning sustainable tourism is emphasised to be important in the Plan. Mr Partridge and Mr Lord are clear that there could be a detrimental impact on the local tourism businesses.

f. **SP21** deals with heritage impacts, this is dealt with above and plainly there is harm to which the Inspector need to have regard, and accordingly apply the Statutory Duty in the Planning and (Listed Building and Conservation Areas) Act 1990 where you are also required to give harm to heritage assets be given '*considerable importance and weight'*.[140]

[138] rPoE 3.02 Mr Partridge Proof page 11.
[139] rPoE 3.02 Mr Partridge Proof page 11.
[140] rPoE 3.02, page 11.

Conflict with the Minerals Local Plan

200. Mr. Toland's evidence fails to demonstrate compliance with key development plan policies:

a. **MLP7** requires a level of technical assessment appropriate to the proposed development to demonstrate throughout its lifetime how the delivery of multiple benefits will be optimised, taking account of the "*local economic, social and environmental context of the site"*. It also requires enhancing the rights of the road network and providing publicly accessible green space. There has simply been no compelling or convincing assessment to that effect.[141] The evidence before the inquiry, with respect to both the evidence of Ms Hatch and Mr Lord, is that there will be harm that arises in both regards. Therefore, there is clearly a breach of that policy, which is a harm that ought to be weighed against the scheme.[142]

b. **MLP11** requires evidence that this is the optimal practicable solution, including in respect of Green Infrastructure. This requires the delivery of these priorities at each stage of the site's life and explanation as to why the scheme is the "*optimal practicable solution*" to deliver on green infrastructure priorities. Given that there is now a proposed alternative for determination, the first scheme clearly cannot be said to be the optimal practicable solution.[143]

c. There is a clear conflict with Policy **MLP 30,** which adds significant weight against the proposal. The policy's requirements regarding network integrity and quality reflect the importance of protecting public access to the countryside. The Appellant's scheme would cause exactly the type of harm the policy seeks to prevent.

201. Consideration needs to be given to the Waste Core Strategy too. Mr Partridge sets out how, in his view there is also conflict with **WCS9** which seeks to protect and

[141] See MLP7(a) and (c)(vii).
[142] rPoE 3.02 Mr Partridge Proof page 8
[143] rPoE 3.02 Mr Partridge Proof page 8.

enhance heritage assets[144] **WCS 12** which seeks to protect and enhance local characteristics[145] and **WCS13**[146] which also relates to the Green Belt**.**

Very Special Circumstances

202. The VSCs put forward are not "*very special*" either individually or cumulatively.

203. **First**, in respect of mineral need[147], this was not found to be very special during the last inquiry and since then the position towards meeting the landbank has improved. Work is also ongoing to allocate sufficient sites within that plan to meet the need. This is not very special for the reasons explored above.

204. **Second**, are the asserted environmental and sustainability benefits. The fact that the site is located next to the Lea Castle Village site is not necessarily advantagous. The sand and gravel the material will still need to move away to be processed.[148] The Appellant states that the closest sand and gravel quarry is in Clifton, but there is of course the permitted Pinches Quarry, about 10 miles away. The environmental and sustainability benefits are overblown.

205. **Third**, the Appellant relies upon the national sales trends for aggregate. These are benefits that would accrue from any mineral development anywhere in the country. They are standard – they are not special, let alone "*very special*".

206. Similarly, the references to the Standard Method changes (to drive an increase in housebuilding) are unhelpful given that some of the authorities (notably Wychavon and Malvern Hills by way of example) will not be affected by that change. As proposed, those authorities would be subject to the transitional provisions given that they have a local plan submitted for examination. Therefore, the uplift in housing numbers expected

[144] rPoE 3.02 Mr Partridge Proof page 9.
[145] rPoE 3.02 Mr Partridge Proof page 9.
[146] rPoE 3.02 Mr Partridge Proof page 9.
[147] See §10.2.1 of Toland Proof.
[148] As explored with Mr Toland in XX.

to be delivered in this locality is not as great as Mr Toland suggests and amount to little more than speculation.

207. Moreover, the economic benefits are not "very special" either. 11 jobs are cited, but according to Mr Lord, several jobs would be put at risk if the local economic impacts are considered in a balanced way. Those have not be substantially challenged. That would largely cancel out that benefit.

208. **Finally**, the restoration and biodiversity benefits cannot be relied upon as being "very special" either. The permissive paths would not necessarily be delivered given that they require the consent of the landlord and there is no mechanism to deliver dedication upon which the Inspector can place any weight. The planting of trees is a benefit, but it is to the detriment of some historic trees, which will be lost. Given the risk of mineral workings in and around historic trees which form an important landscape and historical feature (the detail of which clearly has not been worked out yet) means that there is no evidence of how the scheme would be workable around them. The pocket parks are a modest benefit (connected only by the "*permissive paths"* identified above). They are far from "*very special*", though, given that they deliver little beyond what is already there, and if the permissive consent is withdrawn, they will be little more than islands in an agricultural parkland unable to be lawfully accessed.

209. The management in the UU for 30 years does not necessarily extend to the footpaths/bridleways. Whilst there is restoration, this will not involve restoring the historic landform and though there will be a biodiversity net gain, that will only come after several years when the use of the land and the habitats that it contains will be very considerably disrupted.

Conclusion

210. This is a Site which is well-used and which means so much to local people. There are a great number of harms as a consequence. These impacts are so much more profound given where this site is located and given that local people cherish this landscape.

211. The bunding, for example, is much more excessive on this Site than it otherwise would need to be. Moreover, the concerns on the harms to the Green Belt are well-founded. There are also concerning impacts arising from noise, dust, highway impacts and of the operational develpoment of the scheme. The benefits put forward do not come close to mitigating the harms caused.

212. The R6 Party invites the Inspector to take a precautionary approach here. Given the sensitivity of this landscape – and the inability to attach appropriate conditions and given that there is no critical need, the harms very clearly outweigh the benefits. There are no VSCs which justify the consent.

213. There is conflict with a litany of policies which form an important part of the Development Plan (taken as a whole). Accordingly, planning permission should be refused.

214. Even if the Inspector were to find compliance with the policies in the Development Plan, the sheer number of harm arising from this scheme would mean that the material consideration would indicate that planning permission should be refused.

215. For all the reasons contained in these Closing submissions, for the reasons given the R6 Party witnesses, and the many people who have spoken to this inquiry, the Inspector is respectfully urged to dismiss the appeal.

SIONED DAVIES
No5 Chambers

4 December 2024