

WORCESTERSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by NRS Aggregates Ltd against the refusal of planning permission by Worcestershire County Council of “Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement” on land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, Worcestershire.

Planning Inspectorate Reference: APP/E1855/W/22/3310099

County Council Reference: 19/000053/CM

**CLOSING SUBMISSIONS ON BEHALF OF
WORCESTERSHIRE COUNTY COUNCIL**

Abbreviations

JWKC Ms Jenny Wigley KC

CW Mr Christopher Whitehouse

LT Mr Liam Toland

NF Mr Neil Furber

GB Green Belt

VSC Very Special Circumstances

Introduction

1. This Inquiry results from the partially successful High Court challenge to the Decision of Inspector Normington¹. There are some constants in this Appeal, including the Council's case.

2. Worcestershire County Council ("the Council"/ "WCC") continues consistently to maintain that this application was properly refused on the ground of inappropriate impact on openness in the Green Belt ("GB"). This was represented in the original RfR 2. The various Statements of Common Ground fairly set out the areas of agreement between WCC and the Appellant, leaving one narrow but critically important issue. This is summarised in the Inspector's Main Issues as:

"(1) The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt."

3. There is no dispute that GB policies attract very significant weight, to the point where refusal is inevitable for development which is decreed to be "inappropriate". "Inappropriate" means harmful to the openness of the GB – because that is what a Green Belt is. Open, permanently. Any development that fails to meet the provisos within NPPF para 150 is "inappropriate".

4. The Council's case is that the development proposal does harm the openness of the Green Belt, and conflicts with the Green Belt purposes, and that it is therefore inappropriate development. The Council concludes also that the harm by reason of inappropriateness is not clearly outweighed by other considerations and so there are no very special circumstances to justify the development.

5. The particular location of this appeal site relative to Kidderminster, Wolverley, Fairfield and Cookley is critical to its Green Belt role, and the Council's reason for refusal. Openness is not judged on the basis of numbers of people who perceive or appreciate it. However, it is relevant that the location of this site in the GB is closely observed and scrutinised by many hundreds of current (and potentially future) local residents who experience and value

¹ Appeal Decision Inquiry Held on 28 February to 4 March 2023 and 6–8 March 2023
Site visit made on 6 March 2023 by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE
Decision date: 5th May 2023

its openness and are acutely aware of the difference that a quarry on the site would make. This is something that Inspector Normington noted:

DL59:

“It is clear from my site visit and from the evidence presented in the Inquiry that the local community recognise the contribution that the appeal site makes to the openness of the Green Belt”.

and

DL 72:

“The openness of the area was cited in representations to the Inquiry as an important element of this part of the Green Belt, and a factor that contributed significantly to the appreciation and enjoyment of the area.”

Policy

6. The Council’s witness, Mr Chris Whitehouse [CW] sets out the full analysis of all the relevant development plan policies and the reasons why these proposals conflicts. CW has assessed both the application as originally made, and, prospectively, as potentially amended for the purposes of this appeal; (Option 1 and Option 2).

7. The interpretation and application of policy in this inquiry are not in dispute. To a very large extent, the applicable policies (DM.22; MLP 27; WCS 13) mirror the NPPF policy on the Green Belt.

8. The NPPF Green Belt principles are very well known. Certain forms of development are not inappropriate in the Green Belt *provided* they preserve its openness and do not conflict with the purposes of including land within it. “Openness” has been defined by the caselaw, as analysed carefully within the Parties’ evidence, and includes a spatial and a visual element. The relative importance of those elements is a matter for the decision maker.

9. NPPF Paragraph 150 confirms that a) mineral extraction and b) engineering operations, (which would include bunds) may be acceptable in the Green Belt, but only subject to the key proviso that they continue to maintain openness.

10. The PPG also gives guidance on what openness means, and what sorts of things could impact on openness, based on the relevant caselaw.

11. Everything, therefore, turns on the interpretation and analysis of openness. Caselaw defines what the word means in planning terms. It is for the planning decision maker to apply the definition to the facts of a case and make the value judgment.

12. This is what happened in the previous appeal with Inspector Normington. It is notable that no challenge was made to that Inspector's interpretation or application of "openness", and the successful challenge to his dismissal of the appeal had nothing to do with that part of his decision. Although Ms Wigley KC [JWKC] indicated, in a throw away line during this Inquiry that she had contemplated a rationality challenge to the Inspector's findings on openness, the fact that she did not pursue that on behalf of the Appellant only underlines the unsustainability of that approach, and the validity of the Inspector's findings in all respects other than the wording of his decision around the BNG requirement.

13. In the Opening submissions, JWKC for the Appellant stated that there would be legal submissions in the course of this Inquiry that would demonstrate that Inspector Normington's Decision was in error, and that the proposal cannot be considered inappropriate development. If there were anything in that submission, then such legal points would doubtless have been raised in the High Court challenge. Inspector Normington's Decision is a material consideration in this Inquiry, and his findings are still valid and sound, and very much in line with the Council's case.

14. The Appellant has largely ignored his findings, which is a position which lacks credibility. Neil Furber [NF] and Liam Toland [LT] both made extensive references to the conclusions in the Officer's Report to Committee, with which they agree, as if those had authoritative weight. JWKC also made prominent reference to the "very detailed and carefully reasoned Officer's Report to Committee which recommended approval", in the Opening submissions (paragraph 12) . But no references were made to the contrary conclusions in Inspector Normington's Decision after a lengthy and comprehensive Inquiry, other than to his agreement with the Appellant on amenity impacts.

15. The Appellant's experts also referred to Inspector Normington's conclusions where those agreed with them; notably in terms of the weight to be given to benefits in the planning balance. To ignore entirely the same Inspector's conclusions on impact on openness, without explaining why they disagreed with him is weak and inconsistent. It is notable that the error that the Inspector was found to have made had nothing to do with the quality or validity of his value judgments; it was entirely a point of legal construction on a discrete issue.

It is also notable that Inspector Normington’s findings resonate with the Mere Park Decision², as set out further below.

Typical.

16. The Appellant places enormous weight on the contention that this site is “typical”.

NF Summary Proof para 1.32 and NF 3.10 – – “Bunds are a normal quarry mitigation – measures to screen”.

The Appellant asserts that it is not unusual to have bunds on a quarry site, and this is undeniably true. However, not all quarry sites are in the GB; and not all quarry applications get permission. It is entirely possible for a mineral site like this to have an excessive impact on the GB, notwithstanding the fact that minerals must be worked where they are found, and that they require a certain amount of infrastructure to do so. “Typical” alone will not justify it. The Appellant’s attempts to claim that this site is “just like” other quarries, or “less impactful” than other quarries (unspecified) is futile, and of no evidential value. Every site will inevitably be unique, and without hard evidence to compare and contrast, the Inquiry is taken no further forward by such generalisations.

Option 1 and Option 2

17. The Appellant has also rather transparently attempted to deal with the criticisms of Inspector Normington by tabling a second option for the site; notwithstanding the protestations that this second option was only tabled as a result of the, apparently, unavoidably recent availability of more modern technology. Doubt has been cast upon the credibility of this during the Inquiry. These same improvements and reductions were expressly unavailable as recently as 2022, in the last Inquiry:

Inspector Normington DL

“83. There were discussions in the Inquiry of various ways of reducing the impact of the development and height of bunds by soil spreading for example or seeking alternative locations for some bunds and the plant area and/or reducing the extent of the scheme. ***However, I accept the Appellant’s view that these would not be practicable for the nature of the operations proposed.*** Moreover, an alternative method of working or a reduced scheme are not before me.

² CD12.39 - Secretary of State’s (SoS) letter dated 4 April 2019 in relation to an appeal by RJD Ltd and Gowling WLG Trust Corporation Limited for land at Ware Park, Wadesmill Road, Hertford (APP/M1900/W/17/3178839)

Consequently, I have determined this appeal on the basis of the scheme as considered by the Council.” [Emphasis added].

18. It has been highlighted that the particular plant was not conditioned in Option 1; nor was the scale or dimensions of the bunds. It would always have been open to the Appellant to substitute more modern plant and amend the bunds within the purview of Option 1.

19. Regardless of the reality of when the Appellant was first in a position to amend their scheme, or the real reason why they have chosen to do so, the fact that they have chosen to do it mid-appeal has given rise to a conundrum of their own making. The Appellant’s proposal must be judged as to whether it causes the least possible impact on the Green Belt. Chris Whitehouse [CW] in his paragraph 4.8 confirmed that “a part of the VSCs will be a need to demonstrate why any chosen method or approach is not able to avoid or minimise a reduction of openness”. Both the Appellant’s witnesses accepted that it was appropriate to design the proposal to minimise its impact on its GB location. NF para 2.48 and 2.49 refers to “Carefully designing” and the “improvement” comprised by Option 2.

20. CW paragraph 4.15 confirms that: “Taking into account the matter of a “tipping point,” it is expected that any approach to minerals development within the Green Belt would optimise design in balance with operational needs to seek to preserve the openness of the Green Belt and the effect on Green Belt purposes, so as not to be inappropriate.”

21. It cannot rationally be said of the original Option 1 proposal that it has “optimised design” in light of the tabling of the alternative reduced Option 2 proposal; proving that Option 1 is clearly capable of further mitigation. Whether the Inquiry accepts the reduced Option 2 scheme or not, that conundrum is now firmly on the table to be considered.

22. The bunds for this proposal are intensive for a relatively small quarry operation, and this is because the bunds are necessary for mitigation; of noise, dust and visual impacts in particular. JWKC said of the Option 2 improvements that “They are all beneficial changes”. However, there has been no analysis proffered by the Appellant of why these particular changes have been selected, to the bunds or anything else; what the justification was; or what the claimed benefits are, to openness or otherwise. There is a comparative table of original bunds and Option 2 bunds, but this is quantitative, not qualitative.

23. In the Opening submissions, JWKC stated (paragraph 6): “Should the appeal be allowed, the Appellant would want to take advantage of these advancements in available plant for efficiency and environmental reasons.”

Nothing has been set out as to what those reasons comprise. Nor is there any explanation as to why the Appellant cannot utilise the plant that they choose under Option 1 anyway.

24. NF Summary Proof paras 1.16 and 1.40 set out the extent of the reductions in Option 2, but there is no rationale in the evidence for why these particular reductions were capable of being made, or what benefits the Appellant claims that they afford, for the benefit of the operation, or the GB, or anything else.

25. The Council maintains its position that both proposals would do unacceptable harm to the openness of the Green Belt, and also to two of the purposes of including land within the Green Belt, namely checking the unrestricted sprawl of built up areas, and safeguarding the countryside from encroachment. With respect to those two purposes, the cumulative impact of this proposal together with the significant consented development on neighbouring sites must be considered together.

Openness Definition – in principle.

26. The first stage in assessing whether the development preserves openness is to understand the proper definition of openness, as it is used in the NPPF Para 155 Proviso. Minerals developments and associated engineering are not automatically exempt.

27. The classic caselaw sets out the definitions of openness, with which all parties agree:

Turner³: [Sales LJ]

14. ... “The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.”

³ CD13.19 See CD12.05 (Appendix WCC18 – Judgment, Turner v SoSCLG and East Dorset Council [2016] EWCA Civ 466)

Samuel Smith⁴ Supreme Court [Carnwath LJ]:

22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.

23. The Appellant’s expert witnesses had no hesitation in agreeing that GB openness in principle, and the five purposes of including land in the GB, are different and distinct concepts; not synonymous. That is the significance of the word “linked” in the passage above.

24. Turner⁵ Judgment para 23:

“At para. [22] Sullivan J said, “The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective”.

The loss of openness in principle is harmful; before anyone has looked in its direction. That’s before any consideration of any conflict with the five purposes. One of the characteristics of the GB is its openness (and its permanence) regardless of which of the 5 purposes it serves, if any. It is possible for a site to fulfil the aim of the GB by being open, permanently, without additionally serving any one of the five purposes in particular. This, in fact, was the conclusion of Inspector Normington.

Double use of “sprawl”.

25. The word “sprawl” gets used twice in GB Policy. Once to describe the underlying aim of the GB ,and the second time to describe one of the purposes.

NPPF: 142. “The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”.

⁴ CD13.18 See CD12.06 (Appendix WCC17 – Judgment, R (on the application of Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council (Appellant) [2020] UKSC 3)

⁵ CD13.19 See CD12.05 (Appendix WCC18 – Judgment, Turner v SoSCLG and East Dorset Council [2016] EWCA Civ 466)

Samuel Smith Supreme Court [Carnwath LJ] para 22:

“.....the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.”

“Counterpart” is an ordinary English word. This paragraph in the Judgment is highlighted to contradict the Appellant’s contention that any site that does not, in and of itself contain and comprise urban sprawl is automatically to be credited with the characteristic of “openness”. That clearly is not correct. If a quarry inevitably maintained openness because it does not itself comprise built development and therefore urban sprawl, then there would be no need for the Para 155 NPPF proviso. All quarries would qualify automatically for inclusion in the GB. But they do not.

26. All mineral sites are inevitably not the same. They are unique in terms of the operation, and in terms of site and location. The Appellant’s case is predicated on the alleged impossibility of having a quarry in the GB without it looking and operating like this one. But that clearly isn’t correct either.

27. NF, upon questioning, was able to suggest a number of examples that he said would make this site *more* impactful, in terms of excavation, bunds, plant size and so on. The converse is also true: it could be *less* intense, in terms of operation, quantum of extraction; numbers of bunds, built development, phasing, duration and so on. These variable factors are determined by commercial considerations: the viability and profitability of extracting the mineral; how much, and how quickly.

28. For sites in the GB, another variable will be the sensitivity of the parcel of GB itself, even if the nature of the operations were identical. CW identified that there are less sensitive parcels within the strategic corridor further North. If the harm goes beyond a certain point in this location, then it shouldn’t be here; it should be somewhere else.

29. The contention in *Europa Oil*⁶ and NPPF para 155 that “Minerals can only be worked where they are found” does not equate to a proposition that “Minerals must be worked wherever they are found”.

⁶ CD12.07 *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin)

30. Openness has two elements: Visual and Spatial. Either or both may be relevant to an assessment of openness, and in this case, all are agreed that both are relevant.

31 The “visual” element of GB openness is not the same thing as landscape visual impact because of the element of “permanence”. NF said to JWKC in re-examination that it all boiled down to receptors, but there is a difference in planning judgment terms. The visual element may be satisfactory in LVIA terms but still not satisfactory in GB openness terms.

32. NF agreed in cross examination that it is not relevant how many receptors are actually affected. He had originally stated that openness “can only be assessed from where people can see it” – ie: the roads, PRoWs and so on. That is not right. Openness in the GB can be affected even if no one can see it at any particular point in time. GB is valued for its permanence. That is why it cannot be made to be dependent upon how many individual receptors at any given time are affected by it.

33. Turner⁷ 16: “The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.”

34. Samuel Smith - Lord Carnwath:

“22.Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a

⁷ CD13.19 See CD12.05 (Appendix WCC18 – Judgment, Turner v SoSCLG and East Dorset Council [2016] EWCA Civ 466)

barrier to urban sprawl a quarry *may* be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.” [Emphasis added].

“May” is an important word: and it equally implies the converse, that it may not.

35. What this means is that the mitigation measures, such as bunds, may successfully address harm to landscape and visual amenity, but still do harm to the visual element of openness.

36. The Council levelled criticism at NF in cross examination at the last Inquiry in relation to the paucity of the assessment that he had conducted on GB openness, particularly the spatial element. The same criticisms were made at the current Inquiry. Even after the same points were raised in Inspector Normington’s Decision, and even after the revised Option 2 has been submitted, the Appellant has not given any further attention to this critical matter.

Temporary

37. The primary answer of the Appellant to the impact of the proposal on openness is that the proposal is temporary, and will be restored back to Green Belt. This is not, in fact, any analysis or answer to the impact itself. If temporary duration were the primary consideration for impacts of mineral sites on GB openness, then it would be assessed by focussing on an acceptable time frame for reasonable extraction of the amount of mineral that is there, because it can only be worked where it is found. That is not how mineral extraction in the GB is approached. It is a multi-layered approach, based on the need for the minerals, (relating to the Planning Authority’s landbank); the harm that the proposal will cause; the duration and remediability of the proposal, and other relevant factors. Duration does not trump all other considerations; it is just one factor out of several and it is entirely possible that a mineral extraction proposal, even of short duration, could still be refused permission.

38. **Europa Oil** makes it plain that temporary development can still be inappropriate development:

“Temporary duration

56. There was no issue with what the inspector said in the last sentence of paragraph 15 to the effect that temporary development in the Green Belt could still be inappropriate. It is plain that temporary development can be inappropriate. Equally, it will not always be inappropriate. That is what the inspector in substance says. If he had said that the temporary nature of a

development was irrelevant to its inappropriateness he would have been in error, as I shall come to.”

39. This was also something recognised in the previous appeal Decision:

Inspector Normington:

“76. I recognise that the proposed duration of the development may not be considered to be lengthy in comparison to some mineral developments. Nonetheless, in the context of the visual and spatial components of the Green Belt, the operations could reasonably be considered as occurring over the medium/long-term. In my view, the placement and retention of Bunds 1-5 in a prominent central position within the site for up to 11 years represents a significant period.”

“78. The adverse effects of the bunds on openness would be fully reversible in time. Nevertheless, the harm for up to 11 years could be considered as a medium/long-term effect. In my judgement, bunds of the length, height and duration proposed in such a contained open area would, in combination with the extraction operations, result in the partitioning of the site and would have a substantial spatial and visual adverse effect on the openness of the Green Belt.”

40. The duration of the operation might not be very long in minerals terms, but still be too long in GB openness terms: they are two different evaluations.

Ware Park⁸:

Temporary:

“436. The temporary nature of the works should not be given much weight as that is the nature of mineral extraction. It is a consideration in determining the quantum of any harm, but cannot also be used as a factor to weigh in favour of a proposal in assessing whether VSC exist.”

⁸ CD12.39 - Secretary of State’s (SoS) letter dated 4 April 2019 in relation to an appeal by RJD Ltd and Gowling WLG Trust Corporation Limited for land at Ware Park, Wadesmill Road, Hertford (APP/M1900/W/17/3178839)

41. Ware Park – SOS Decision 19.

“ He has also considered the Inspector’s reasoning at IR366-374 in relation to the effect of the bunds and tree planting on the openness of the Green Belt and the setting of historic Hertford. In reaching his conclusion, the Secretary of State has taken into account that the bunds could exist for up to 10 years, which for GLVIA3 in landscape terms marks a boundary between medium term and long term effects.”

42. The Planning Practice Guidance (PPG) paragraph 64-001-20190722 sets out the correct approach:

“...assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume
- the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness
- the degree of activity likely to be generated, such as traffic generation"

“Activity” in this context is not to be equated with Highway or Transport impacts in NPPF terms.

43. NF at paragraph 2.37 of his Proof deals with vehicle movements, but only in the context of sensitivity of receptors. That is not the point in relation to the visual element of openness, as set out above. He also conflates highway impacts, which is a different point again.

44. WCC continues to maintain that the Appellant has given insufficient consideration to the issue of the degree of activity. The effects on openness of this development on this site are exacerbated because this is not a static site, and the bunds in particular are not static features, and will not be assimilated into the countryside. The erection, maintenance and dismantling of

the bunds has an impact on openness, over and above their ongoing presence in the landform, for shorter or longer periods.

45. It is important to note that the fact that activity (which is not a form of built development) can be assessed as being the converse of openness completely undermines the Appellant's argument that land that does not contain built development or urban sprawl inevitably comprises and maintains openness.

46. CW dealt with duration:

CW 4.37 – “Notwithstanding final restoration; the description of works above identifies that there will be major development of the site over 11 years. The bunds, internal haul roads, plant areas and associated activity are all significant developments that affect openness. There would also be very significant lorry activity within a current provision of countryside land, together with an intensified access junction and associated highway movements.”

47. This has not been dealt with adequately by the Appellant, notwithstanding Inspector Normington's conclusions at DL 79 –

“79. Furthermore, although a phased development is proposed, the operations would be intensive and occupy considerable areas of the site at any one time for the purposes of extraction, infilling and bund placement/removal. I accept the Council's view that this is not a static site and that the bunds, in particular, are not static features. Although some will be grassed, they will nonetheless appear as engineered features that will not entirely assimilate into the landscape. The erection, maintenance and dismantling of the bunds has an impact on openness, in addition to their ongoing presence in the landform, for shorter or longer periods.”

48. This was also dealt with in the Ware Park Decision [CD 12.39]:

“366. Plant, equipment, access and activity associated with mineral extraction here would, to some extent, impair the openness of the area. But not enough in my view to exceed the threshold or tipping point for the purposes of applying paragraph 146. However, the proposed bunds would have a greater adverse impact on the openness of the Green Belt. The scheme would include substantial lengths of bunds up to 3 m high to screen views of the operational phases of mineral extraction. These would be constructed and removed as required for each

phase, but at times the engineered structures would truncate open views from PRow within this part of the Green Belt. [61]

“367. The bunding around the stockpile and attenuation area would have a greater impact on openness because it would be between 4 m to 7 m high, and could exist for up to 10 years. *This is a significant period, which for GLVIA3 in landscape terms, marks a boundary between medium term and long term effects.* The bunds would surround a stockpile area that could provide for up to 50,000 m³ of sand and gravel stored up to 5 m high. These bunds and stockpiles would be located on the eastern slopes of the valley facing towards a busy road. The bunds would be prominent structures in close up views from the B158, especially where roadside vegetation was removed to provide the visibility splays for the access junction. Replacement planting would take time to provide some screening, and views would remain through the widened access. [14,15,61,216,272,273,289] [Emphasis added].

“368. The adverse effects of the bunds on openness would be fully reversible in time. *Nevertheless, the harm for up to 10 years could be considered as a long term effect.* In my judgement, bunds of the length, height and duration proposed in such an open area would have a substantial adverse effect on the openness of the Green Belt.” [Emphasis added].

49. As pointed out above, the duration of the operation in minerals terms, and in GB openness terms are not the same thing.

Openness: Spatial Element.

50. The Appellant’s Statement of Case [CD 13.29] limits its consideration to noting the conclusion in the Officer’s Report (rather than reaching a conclusion of their own) that:

p. 18 para 5.5 “Whilst the proposal would be visible, it would not be very visible due to the topography, proposed temporary soil storage / visual screening bunds, existing historic boundary walls and proposed planting, with any views being contained to relatively few receptors. It is considered that the visual impact on openness does not make this development “inappropriate”.”

That is a landscape visual impact conclusion. It is referring to the bunds as being part of the solution on visual impact, rather than a potential part of the problem.

51. In his Proof for the previous Inquiry⁹ NF said:

OLD PROOF NF 2.26¹⁰ –

“2.26 My assessment is structured into four parts – firstly I cover the visual impact of the temporary built structures within the Plant Site, *which arguably as built development are the only scheme component that have the potential to have any impact on Green Belt openness*, secondly the access road and associated vehicles, and thirdly the phased mineral extraction and temporary screen bunds. Finally, I consider the cumulative impact of other relevant developments in the planning system since the ES was submitted.” [Emphasis added].

52. That was fundamentally incorrect. In the last Inquiry, NF exclusively concerned himself with visual impact; inferring that there was no spatial impact whatsoever from the bunds. It is notable that he does not maintain this position anymore, and he has amended his Proof to remove this paragraph.

The Bunds.

53. At NF para 2.6, he references the “soil storage bunds”; but that is not all they are needed for. They are mitigation to “block” (the term used in the LVIA) and “screen” (the term used in NF’s proof) the views of the construction/excavation. This is an important element of the bunds. Straw bales are used to block and screen as well. They all clearly have an impact on the spatial element of openness, which still has not been adequately analysed. NF has been content to rely upon the LVIA conclusions on the impact of the development on landscape character and amenity.

54. There are details of the bunds in the comparative table between Option 1 and Option 2. There is an assessment of the mitigation benefits of the soil bunds set out in the Appellant’s Landscape and Visual Impact Assessment (LVIA). But no one on the Appellant’s side has analysed the effect that the bunds themselves will have on openness. There was no separate conclusion in the ES (LVIA) on GB openness. NF’s Proof simply extrapolates character and visual conclusions to an openness conclusion. That is a significant failing in the Appellant’s evidence.

⁹ POE2.04 08741 01 Landscape PoE Vol 1

¹⁰ POE2.04 08741 01 Landscape PoE Vol 1

55. NF Proof para 2.16 – “The mitigation benefits of the soil bunds is set out in the Appellant’s Landscape and Visual Impact Assessment (LVIA).”

However, as set out above, those are two entirely different things. Landscape mitigation might be entirely acceptable for landscape character - by creating screening; the use of cunning angles to hide development from view; using topography to hide it, and placing it in less interesting parts of sites, and so on, and that might all be very successful mitigation for visual impact of development. It might still, however, have a negative impact on GB spatial openness, which achieves a different purpose.

56. Bunds, in fact, are a good example of this. They can be effective mitigation in screening development from views by the public, and indeed, that is a key part of their purpose in these schemes:

57. NF Proof 2.16 – “progressive restoration of individual phases which will deliver containment including throughproposed temporary screen bunds...”

However, at the same time, bunds have a major effect on openness, particularly spatial, by partitioning the land. Due to their extent and size, they cut off open views across the site; precisely as they are designed to do.

58. In his Proof para 2.23, NF addresses a spatial component of openness. He states that the extraction activity will only be taking place on 10 hectares “at any one time”. That is not an appropriate test. During that time, there will still be screening bunds and activity all over the site, including erecting and dismantling the plant and the bunds themselves. In their phraseology, both NF and LT prefer to minimise impacts by breaking down the extraction phases and looking at them in isolation, which continues to emphasise the “minor” and “temporary” nature of the development, [NF para 2.26] and has the appearance of making it seem as though effects will end after four years, but of course, they will not. It is notable that JWKC gave a period of five years in the Appellant’s Opening submissions (paragraph 7).

59. NF concluded that:

“2.26. In conclusion I assess that the extraction activity and progressive restoration of the Appeal Site would not materially affect the spatial component of Green Belt openness particularly given the minor and temporary nature of any built development and given that the

changes would result in an improved state of environmental quality, biodiversity and accessibility of the Green Belt, relative to the baseline position.”

60. Here, NF erroneously elides the improved restored state of the site at the end of the development with the spatial component of openness during the site’s life span. He only pays attention to the extraction activity and the built development, and bunds are not mentioned, notwithstanding the clear way in which Inspector Normington addressed their impacts.

61. NF Proof 2.31 In dealing with the role of the screening bunds, NF states, in essence that “People won’t be able to see the extraction going on”. This does not, however, deal with the visual or spatial impact of the mitigation measures themselves on openness, which is an entirely different point, that the Appellant repeatedly fails to grapple with.

63. NF Proof para 2.6 [In the section at the beginning marked “Background”]

“In the case of the proposed development at Lea Castle, there would be some minor temporary adverse effects on openness from the operational phase of the quarry including the soil storage bunds, in the short to medium term, noting that the bunds are not built development and consequently do not necessarily affect openness in Green Belt terms.”

This is a clear underplaying of the impact of the bunds, in the face of Inspector Normington’s conclusions and CW’s assessment of them as having significant adverse effects. Claiming that the bunds do not “necessarily” affect openness, without any explanation or justification for such a radically different view, it is simply not a credible position.

Openness: Visual Element

63 CW evidence is presented through a series of paragraphs [CW Proof 4.88 – 4.90] assessing very significant detrimental effect on visual openness from different viewpoints. Ultimately, these are quintessentially value judgments for the decision maker, and the Inspector will resolve these issues based upon an assessment of the evidence presented and the site visits.

64. NF at his Proof 2.28 states that the site is “well contained”, regarding views into it from outside the site. What he does not deal with in this context is that the site is crossed by PROWs. At paragraph 2.39, NF returns to the public views of the screen bunds from viewpoints outside the site, and at NF 2.40, he moves back to views of the extraction operation, with an emphasis

at NF 2.41 on views below the skyline. JWKC in the Appellant's opening submissions made reference to the plant site being located on "lower ground" (paragraph 9). These points are only part of the issue, and mainly focussed upon the effect on visual amenity, not openness. At NF 2.42, the same error is repeated in referring to "Fleeting views from the road corridor", which is a point about sensitivity of receptors.

65. The Inquiry has heard CW's evidence and that of local people about what can and cannot be seen regarding the bunds, and from which viewpoints, and these will have been assessed on the site visits. It is, of course, possible to gain different impressions of the bunds from a myriad of different positions, and parties can maximise or minimise as they wish, but ultimately, this is a matter for the decision maker.

66. It goes without saying that CW for WCC completely disagreed with NF for the Appellant in terms of the visual impact of the development on GB openness. CW found very significant detrimental effects on visual openness, from every angle, having identified the viewpoints from which those effects will be experienced. CW identified that the bunds which are likely to have the greatest impact, around the plant site, are the ones that will be there the longest, for the duration of the development.

Visual and Spatial – Conclusions

67. In assessing the impact of the proposal on the visual and spatial element of openness, the precise location of the site is vitally important. The Council agrees with and relies upon the conclusions of Inspector Normington in this regard:

DL 82. "In forming the predominant Green Belt landholding between Kidderminster, Wolverley and Cookley, the appeal site provides a visual perception of openness between these settlements. As a consequence of the extent of the proposed extraction operations at any one time and the associated bund provision, I consider that the proposed development would exceed the paragraph 150 threshold for mineral extraction/engineering operations concerning the preservation of the openness of the Green Belt. In my view, the proposed scheme would not preserve the important spatial and visual components of the openness of the appeal site."

Cumulative Effects.

68. It is important to consider the cumulative impact of this site in combination with others in the locality that are already there, or known to be coming. The Appellant has failed to consider, appropriately or at all, the cumulative impacts of the bunds, together with the rest of the development on the site, and the adjacent development, for example, Lea Castle Village.

69. NF's Proof from para 2.43 essentially says that this is all accounted for in the LVIA:

NF Proof 2.43 – "The landscape and visual effects – and that is what the LVIA would be considering". As before, however, there is nothing on the cumulative effect on openness in GB terms and the change in the significance of the site for openness purposes after cumulative impacts.

NF Proof 2.58 and 2.73 – Cumulative conclusions:

"It is the conclusions of the ES that "the resulting level of cumulative impact on landscape character and visual amenity would be neutral".

There was no separate conclusion in the ES on GB openness. Again, NF is just extrapolating character and visual conclusions to an openness conclusion.

70. CW dealt with this clearly: CW Proof 4.56 Cumulative Effects on Visual Openness:

"The visual effects of the proposed development on openness of the Green Belt must also consider the cumulative impact on openness created in conjunction with other development."

71. NF attempted to deflect the issue:

NF Proof 2.8 "Releasing" land from the GB

and

NF 2.9 "Whilst the Site is not being released from the Green Belt for development, in the wider landscape context there is the proposed release of land from the Green Belt associated with the housing allocation at Lea Castle. In my opinion, for the reasons set out below the proposed restoration scheme would further these strategies, thus assisting in compensating for

the release of Green Belt elsewhere and therefore supporting the wider aims of the Green Belt in this area.”

72. The release of the Lea Castle Village land from GB has nothing to do with the impact of the appeal site on the openness of the GB. NF was consistently more comfortable in his Proof in discussing the proposal at the end of its life, and the time of restoration (para 2.10 and 2.11), but less focussed on talking about the impacts of the site during its lifetime. Temporary duration and restoration quality are potential benefits, and it is something that could go into the planning balance if the assessment of the site gets that far, but they are irrelevant considerations for an analysis of openness during the lifetime of the development.

73. JWKC made the same contention in the Opening submissions for the Appellant, by stating at paragraph 10 that “this quarry’s high environmental standards and restoration scheme are strong indicators of its appropriateness in the Green Belt.” That is not the right test. Appropriateness in the GB is tested by way of impact on openness during the operational lifespan of the quarry: not on what it will look like when it is all over and done.

74. As before, the Appellant has failed to acknowledge the heightened purposes that this site performs once the cumulative Lea Castle development is implemented fully. The remaining GB is required all the more. The Lea Castle strategic allocation site (outline planning permission Ref No. 17/0205/OUTL for approximately 1,400 dwellings, employment land, primary school and community facilities) is located approximately 20 metres east of the appeal site boundary and approximately 250 metres from the easternmost extent of the proposed extraction area. Permission has already been granted for 600 dwellings, Class B1 employment uses and other uses. This is very important context for the contribution that the appeal site makes to the openness of the Green Belt, and the cumulative impact, given that the site and its immediate environs are soon to be surrounded on all sides by built development.

75. The question was raised in the course of the Inquiry as to the proper approach to Sales LJ’s dicta in Turner in relation to built up now/ how built up in future:

Turner - Sales LJ:

14. ... “The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among

these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs...”

76. If a site comes out of the GB for the purpose of being built upon, it could technically be said (even the day after release) that it is not the GB that is being built up. However, that purely temporal approach fails to take sufficient account of the impact on the GB as a whole, and the parcels of GB that are left. The fact that a neighbouring site had to be removed from the GB in order to be built up should not exempt it from being considered cumulatively in the overall “built up” assessment. The remaining GB will potentially have a heightened significance because of the degree to which it has been reduced, and that is precisely what has happened in this case. This is Inspector Normington’s “heightened responsibility” point.

77. Inspector Normington acknowledged this expressly:

DL59. “The appeal site lies within the Green Belt as defined in the development plan for the area. It is clear from my site visit and from the evidence presented in the Inquiry that the local community recognise the contribution that the appeal site makes to the openness of the Green Belt. The site and its immediate environs are likely to soon be surrounded on all sides by built development of varying density. To the north is Cookley, to the southwest is Wolverley, to the south is Kidderminster. It is bounded by built development on Sion Hill and there is likely soon to be built form to the east on the former Lea Castle Hospital site. Consequently, the appeal site and its immediate environs will likely form the remaining area of Green Belt between these settlements.

“60. This spatial position, and the contained nature of the appeal site, emphasises its importance in fulfilling Green Belt purposes. Consequently, I consider that this site plays an extremely important Green Belt function in this location to which I have attached considerable weight.”

78. It was so important to Inspector Normington that he repeated it:

DL 72. “In terms of openness, the appeal site comprises open former parkland now used as agricultural fields. It offers relatively open external and internal views from the parts of the Public Rights of Way (PRoW) that cross the site. Its spatial position between settlements, a set out above, is visually recognisable. The openness of the area was cited in representations to the Inquiry as an important element of this part of the Green Belt, and a factor that contributed significantly to the appreciation and enjoyment of the area.”

DL 80. “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.”

79. The Appellant took a bold stance to this Decision finding:

NF Proof para 2.21: “WCC state that the Lea Castle mixed use development to the east of the Site “heightens the functional requirements of the Appeal Site to protect the Green Belt from encroachment and sprawl”. I demonstrate in my analysis of the visual component of openness below, that this statement, with respect to the proposed development, is false.”

“False” is bold word to use, in light of the fact that this “heightened functional requirement” was one of the conclusions of Inspector Normington. In Proof 2.21, NF references this in connection with the visual impact only. There is also the spatial impact, which he does not deal with. In both cases, his analysis is inadequate.

80. NF states that the development “delivers containment”. This is reiterated in NF Summary Proof para 1.24 – “Contained by built development”.

This is part of the problem, not the solution. This is a “contained” site, which is exactly how Inspector Normington categorised it in DL paragraphs 60 (above) and DL 197. That is part of what leads to the site’s “heightened responsibility”.

GB Purposes

81. On top of the generalised harm to GB openness, the Council continues to maintain that the proposal also impacts on two of the purposes of the GB. This offers “further harm” in the GB harm matrix.

Unrestricted Sprawl

82. Contrary to the Appellant’s case, the site does not have to be connected to large built up development in order to be able to perform its contribution to checking unrestricted sprawl. Neither does it have to “constitute” sprawl in itself – and this is the mistake that the Appellant has made.

83. NPPF Paragraph 137 indicates that: “The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.” GB sites restrict sprawl by staying open themselves. Therefore, anything that fails to keep GB land permanently open fails to restrict sprawl. This is the correct analysis.

84. JWKC said in cross examination of CW:

“Openness is the counterpart of urban sprawl. If it is not urban sprawl, (in itself) then it doesn’t impact on openness.”

That is not correct, and that is not what the caselaw means. As indicated above, that is not what “counterpart” means. The underlying aim of GB policy is to “prevent” urban sprawl “by” keeping land permanently open. That is something different from the site “being” urban sprawl.

The Samuel Smith case does not say that a mineral site by definition *does* prevent sprawl, it says that a mineral site *may* be no less effective than an open field. This is going to be a very contextual assessment.

85. NF in his Proof 2.15 states that the site cannot “lead” to unrestricted sprawl because it is not connected to a built up area. He also says that the site cannot be “read” as sprawl in itself. This is simply re-framing the question into one that the Appellant feels able to answer to their satisfaction, but “lead” and “read” is not what the purpose actually says. The terms used is “check” unrestricted sprawl. It has nothing to do with whether the urban sprawl is happening on the land itself. The Appellant asserts that in order to be capable of checking unrestricted sprawl of large built up areas, the site itself must (i) be connected to a large built up area and (ii) become part of that large built up area itself, with more built up development. There is nothing in the description of the purpose that justifies that interpretation. As it happens, this site is, and will be “connected” to large built up areas, including the Lea Castle village. The Appellant’s contention that “connected” can only be understood in the sense of being immediately physically contiguous to a large town is not an appropriate interpretation at all.

86. JWKC cast CW in cross examination as irrational for concluding that this site played a purpose in preventing unrestricted urban sprawl:

JW said: “You’re saying that this quarry and the bunds would be seen as the unrestricted sprawl of Kidderminster? Surely not?!” “That can’t be reasonably maintained”.

That is not the test.

87. JWKC also put to CW that: “Bunds are not urban sprawl”. This appears to go back to NF’s original case set out in his Old Proof for the previous Inquiry, that only plant, as built development, is capable of conflicting with openness, and bunds are not. NF rightly abandoned that line in this appeal.

88. In his Proof CW 4.14 states: “For planning judgements openness is often equated with “absence of built development”. Sprawl is a multi-faceted concept and thus has a variety of different definitions which may apply according to context. Sprawl is the converse of open and undeveloped land and may include an uncontrolled or cluttered urban fringe or development which adds to a loss of attractiveness or sense of untidiness. “

Encroachment

89. The terms “sprawl” and “encroachment” are highly related. Indeed, there is overlap between many of the five purposes of the GB.

90. NF Proof 2.16 starts to deal with safeguarding from encroachment but then, in fact, moves away from that topic to discuss the spatial element of openness generally.

91. CW at his Proof paragraph 4.22 refers to: “‘Encroachment’ is generally defined as a gradual advancement of urbanising influences through physical development or land use change”.

LT did not dispute this definition. There are certainly “urbanising influences” in these proposals, including the traffic, roads, bunds, plant and so on.

Green Belt Review CD 12.02

92. The purpose of the Review was set out at p. 3 –

“Purpose of this report.

This report has been produced for the purpose of setting out the results of a review of the Green Belt in Wyre Forest District. The objective is to test the Green Belt against the five purposes

set for it in national policy to determine the extent to which it is contributing to those purposes. The report does not identify land for release or development.”

93. All of the North West Worcestershire Strategic Corridor (MLP) is located within the West Midlands Green Belt. This does not mean that it is all of equal importance or all achieving the same functions. NF 2.46 stated that this site is: “a very limited proportion of the wider GB”. This is a bad point. There is no indication of how the “proportion” is being measured, or based on how much of the GB in total. It also fails to recognise the particular importance of this site in the GB, which is not based upon a quantitative calculation.

94. The appeal site sits within land parcel N7 of Green Belt reviews Parts I and II (Appendices WCC1 and WCC2). The Corridor area consists of 26 different land areas that are considered by the authors of the review to provide differing and distinct contributions to the Green Belt.

95. Review Conclusions: p. 107

“Parcel N7: Purposes of the Green Belt

(1) To check the unrestricted sprawl of large built up areas

Ribbon development - Does the parcel play a role in preventing ribbon development, Particularly along major transport corridors, and/or has the Green Belt already been compromised by ribbon development (significant role, moderate role, limited role)?

Openness - To what extent is the parcel free from development and have a sense of openness (strong, moderate, weak)?

CONTRIBUTION: - The parcel protects open land from potential development pressures associated with the A449 and creation of sprawl along this key road corridor. “

96. Note that the Review talks about the “sense of openness”. That is not restricted to what can be seen. Secondly, it is completely unrelated to being “contiguous with a large built up area”.

97. The Appellant reframed the words: “Potential development pressures associated with the A449” in an attempt to minimise the Review, by sub-dividing the site further and claiming

that only a portion of it, running along the road side could be argued to be making any contribution. This is a very narrow and artificial interpretation. CW has made it plain that the site protects the GB from encroachment particularly from the A449 into Kidderminster, due to lack of development northerly from Wolverley Road. There is a visual perception of openness across the site at the moment, and for that reason, it is an important parcel of land: more so than other parcels in the same strategic corridor. NF states in his para 2.19 that the Review concluded that this site is no more sensitive than many other nearby sites. But the Review was looking at something different to the considerations for this Inquiry in granting a permission for mineral extraction.

98. The pressures “associated” with the A449 are capable of having impacts across the whole of the field site. Having an active quarry in association with the A449 would also add to those “potential development pressures” .

99. Review:

“(2) To assist in safeguarding the countryside from encroachment

Significance of existing urbanising influences

Has the parcel been affected by the encroachment of urbanising development (comprises open countryside, some urbanisation, openness compromised)? Significance and permanence of boundaries/features to contain development and prevent encroachment

Are there existing natural or manmade features/boundaries that would prevent encroachment in the long term (none, limited, substantial)?

CONTRIBUTION: - Forming open countryside to the north of Kidderminster, separating the town from Cookley, the land has a broadly open aspect. Green Belt contributes to the maintenance of openness through preventing incremental development in an accessible location, both from Cookley to the north and more generally across the parcel. Internal boundaries are limited to irregular hedges and woodland edges.”

100. The parcel has been and will be affected by the encroachment of urbanising development, in the form of the Lea Castle village and hospital development. It is important to observe that the GB Review was completed before the permission was granted for the Lea

Castle development, and before the allocation. So, cumulative effects were not taken into account. To get an up to date picture, the GB review would essentially have to be done again, to get an accurate picture of the contribution that this site now makes relative to the other development - existing and proposed. Clearly, even prior to those two development proposals, the appeal site was defined by the Review as directly contributing to the prevention of both the incremental encroachment of development into the open countryside and to the sprawl of Kidderminster along the A449; as such having heightened purposes in relation to two of the five purposes of Green Belt land. CW agrees with that. NF and LT disagree, but fail to explain why they are right and the reviewers, or CW are wrong.

101. CW explained why he agrees with the assessment of the Review, and its relevance to this site:

CW Proof 4.71 “I agree with the conclusions of the review. The site sits at its narrowest within a 1.3 kilometre gap between the settlements of Kidderminster and Cookley. Views from the public right of way within the appeal site, adjacent to Castle Barns, provide clear views of Kidderminster to the south, on higher land, and Cookley to the north. The two settlements do not appear visually distinct, with the role of the appeal site in providing visual separation further undermined by the impact of the mass of the built development in combination with individual dwellings located across Wolverley Road, in Green Belt land parcels N5 and N6, which creates further visual encroachment towards the appeal site.”

102. He expands upon these points in his Proof paragraphs 4.72 - 4.74.

103. NF Summary Proof 1.10: “The parcels that the appeal site comprises part of have been assessed to be less sensitive than the majority of land to the west, northwest and southwest of Kidderminster. In this context I strongly disagree with the WCC assertion that the Lea Castle mixed use development to the East of the site “heightens the functional requirements of the appeal site to protect the GB from encroachment and sprawl”.

104. Firstly, this is a meaningless comparison. If the Appellant wishes to compare this site with all other sites in the GB Review, then it would be necessary to compare with all of them, and like for like. It would be necessary to compare with other sites within the Strategic Corridor. There are many sites in the strategic corridor in the GB review to the North/East of

Kidderminster that would be much less sensitive than this one to release for mineral working and winning.

105. Secondly, this assertion contains a non sequitur; an apples and pears argument. The fact that other land (not in the strategic corridor) is less sensitive does not lead to a logical conclusion that the release of the Lea Castle development does not heighten the functional requirements of this site. CW maintains that, with the cumulative development, the function of the appeal site does increase. Inspector Normington agreed. That has nothing to do with the function performed by other land to the West. It wouldn't make any difference if other parcels performed more or less of this function.

106. The issues is not whether this site should be compared to others in a list of preferences to be released from the GB. NF effectively acknowledged this in his para 2.11 Main proof:

“It is important to emphasise that these artificial subdivisions were undertaken to assess the suitability of land for release from the GB, to inform the council on the GB sensitivity of parcels to meet development needs -for the LPA, NOT mineral sites considered at County level and where no release of land from the GB is required.”

That is the whole point. The Appellant's evidence contradicts itself.

Planning Balance

Whether Very Special Circumstances Exist.

107. NPPF Paragraph 153 states that local planning authorities should apply substantial weight to any harm to the Green Belt. It can be enough of a reason, on its own, to refuse the application.

108. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

CD 12.29 Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692 42

Paragraph 28 – (quoting another case):

“It is important that the need to establish VSC is not watered down. Clear and cogent analysis is required”, and

Paragraph 21 - Very special is not just the converse of commonplace.

109. ‘Very special’ does not have to be rare, but there does have to be something not only special about the circumstance, but *very* special. It is possible to combine several elements, so that together they are very special.

110. Wychavon [CD12.29] suggested that the special circumstances must be special in the sense of out of the ordinary, meaning, for example, that they cannot simply be a consequence of the preferred working approach of mineral operators.

111. It is the Appellant’s opinion that VSC exist from:

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

Reserves and Landbank

112. It is accepted that WCC currently does not hold a sufficient landbank of minimum seven years as required by paragraph 213 of the NPPF, and Development Plan policy. The picture has improved, however, from the last Inquiry. The Council has a current landbank of approximately 6.59 years. The proposed scheme would add 4.5 years, taking the provision notably above the requirements of policy MLP14.

113. The deficit in the 7 year provision is to be given great weight, but there is relevance in the fact that there is an improved picture from the last Inquiry.

114. JWKC put to CW that the only reason the landbank provision had improved is because of the difference in the LAA calculation. There is no reason to make the calculation against anything other than the up to date applicable figure. The PPG states that where the level is below the 7 year requirement it *may* be taken as a strong indication of urgent need; not *must*. So – there is clearly a sliding scale.

Sustainability of Location

115. The Appellant has attempted to demonstrate that the market for their product will be different, and more receptive. CW does not agree, and concluded that the market will be roughly the same. CW’s attribution of moderate beneficial weight to the sustainability of the marketplace is the right assessment.

116. At CW Proof 5.6, CW sets out that whilst the geographical spread of resources is a benefit, there is not an acute issue that requires supply to be spread proportionality across different marketplaces. As such, he attributes moderate weight to this matter.

117. The NPPF sets a ‘blanket’ landbank for sand and gravel (minimum 7 years). It does not seek to make distinctions between different grades of product, and the different markets that it serves. Economics will drive the destination of the quarried material, and also for the inert waste fill, not just geographical location.

118. CW at Proof 5.7 concluded that the sustainable movement of inert waste was not demonstrated to be a particular benefit of the proposal, as neither the appeal site’s location nor the details provided within the appeal submission provided any degree of certainty that such a benefit could be achieved. As such, he afforded no weight to the matter.

119. Inspector Normington said this:

“81. Although phased working and restoration is proposed, I have identified above that it is not possible for me to conclude with any degree of certainty whether or not there is a realistic possibility of the required 60,000m³ per annum being sustained to achieve the phased working as proposed. ***Notwithstanding*** this matter, the restoration of each phase will likely take some time to achieve a restored visual appearance with the consequence that considerable areas of the site may appear as a ‘disturbed’ landscape until the proposed planting reaches some degree of maturity.” [Emphasis added].

120. The Inspector was not sure about the inert fill but “**notwithstanding**” that, he still thought it would take a long time to restore, which impacts on openness.

Economic Benefits

121. Moderate weight is attached to economic benefits, but there is no evidence that levies or taxation can provide any uplift to that weight.

Restoration and Biodiversity Benefits

122. At CW Proof 5.9, CW attributes moderate weight to the restoration and biodiversity benefits, which is not as great as the Appellant claims. LT fairly accepted that he had agreed with CW in the main SOCG that they differed on the weight to be given to the biodiversity net gain, notwithstanding the later acceptance by the ecologist in the ecology SOCG of significant weight. No point is taken by the Appellant on that.

123. JWKC said that there is a “massive increase” in the provision of BNG, but there is no measure of “massive”. JWKC simultaneously asserts that “None of it is required by policy or legislation”. LT and JWKC in Opening sought to derive weight from the fact that Consultees were supportive of what they were being offered. They would have no reason to be anything other than supportive, but this does not translate into weight in the planning balance. The weight to be attributed is solely a matter for the decision-maker.

124. There are no planning benefits, separately or cumulatively that could be given sufficient weight to amount to very special circumstances that would outweigh the harm to the Green Belt. The Appellant notes that Inspector Normington’s conclusions on the case last time was that it was “finely balanced”. That may be so, but nothing of any substance has changed on this occasion to cause the case to be resolved any differently. The weight to be attributed to the claimed benefits is broadly the same, and cannot outweigh the harm to the Green Belt.

125. CW’s assessment of the elements in the planning balance, and the VSC (which are really identical), and the weight to be given to them is measured, balanced and reasonable, and is to be preferred to the assessment of the Appellants. CW accords with Inspector Normington.

126. CW's conclusions on behalf of the Council are that the claimed VSC do not amount to such, and are not capable of outweighing the harm by way of inappropriateness, and the further harm that these proposals represent.

Conclusion

127. NPPF Paragraph 148 states that local planning authorities should apply substantial weight to any harm to the Green Belt. It can be enough of a reason, on its own, to justify refusal of the application. Multiple reasons are not required. Substantial weight is attached to any harm to the Green Belt by reason of inappropriateness. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

128. The Appellant's analysis of the vital elements of this case has been inadequate. The key consideration of this proposal in the GB relates to the GB policies. The Appellant must demonstrate that their site is not inappropriate. If they fail to do that, they must demonstrate that there are VSC that outweigh the harm that the proposal represents to the GB. If they fail to do this, the proposal must be refused.

129. The Appellant's case is heavily dependent upon the temporary duration of the operational phases of the proposal, and the mitigation measures. Mr Whitehouse's evidence clearly demonstrates that, even for this space of time, the operational phase over eleven years both in isolation and cumulatively has an impact on the landscape and causes harm to the openness of the Green Belt. The bunds, internal haul roads, plant areas and associated activity are all significant developments that affect openness. The Appellant has largely ignored the impact of all of these factors, in conjunction with the large bunds. The impacts of the site and the bunds will remain throughout the whole eleven year lifetime of the site; contrary to the impression that the Appellant's evidence seeks to create. The bunds are designed precisely to "block" views of the development, which has an undeniable impact on openness. The bunds have a particular and significant impact on the public rights of way, that will be felt for a long time.

130. The Council's case appropriately and correctly analysed the impact of this proposal upon the Green Belt the first time around, and Inspector Normington agreed. The Council is right to defend reason for refusal 2, which is sufficient, in and of itself to justify a refusal of

this appeal. The Appellant has failed on both counts, and the Inquiry is respectfully invited to dismiss this appeal.

Sarah Clover

Kings Chambers

Birmingham

4 December 2024