Re-Determined Appeal

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

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Appellant's Closing Submissions

Unless otherwise stated, all page references are to electronic pdf page numbers.

References DLxx are to paragraphs in the decision letter of the previous Inspector.

Overview Considerations

1. As I said in opening, and as now expressly agreed by the Council's planning witness, the appeal proposal has the support of Government policy[1] which requires that 'great weight' should be given to the benefits of mineral extraction, including to the economy. Further, where, as here, the Council agrees[2] that it cannot demonstrate a seven-year landbank of sand and gravel, this is a 'strong indicator of urgent need[3]' which also means that the proposal has the support of policy MLP14.

2. Located within a strategic corridor and area of search, the proposal also has the express support[4] of Policy MLP 1 which seeks to direct mineral extraction within 'Strategic Corridors'; and Policy MLP 3 concerning the strategic location of development within 'Areas of Search'.

3. It is important to note that all issues raised in this inquiry have already been given thorough consideration by expert consultees, officers and decision makers and, at

[1] NPPF para 217, CD11.07
[2] rID3, para 2.10, p.7
[3] PPG at CD12.09, p.1
[4] rID5, para 8.24

every stage, other than in relation to the impact on the Green Belt (which is dealt with in detail below) the conclusion has been the same, that the impacts are acceptable.

4. The Statement of Common Ground records[5] all the many consultees[6] who were consulted and were satisfied with the proposal. And Mr Whitehouse agreed in cross-examination that those expert statutory consultees did not just wave it through, they gave the matters active and detailed consideration, often with exchanges of correspondence which raised issues that were then responded to, examined and resolved.

5. Because of this, the report to Members by the County Council's Head of Planning and Transport Planning recommended approval and set out how all technical issues had been satisfactorily resolved[7].

6. Notwithstanding this, the Committee decided to refuse the application and gave nine reasons. Section 10 of the SCG[8] sets out all those reasons for refusal that the Council initially resolved on and that have been withdrawn. Mr Whitehouse accepted that the decision to withdraw (on all but one reason) resulted from another round of active consideration by officers and reconsideration by members.

7. But this was still not the end of the consideration. The issues continued to be pursued by the r.6 party at the previous Inquiry and so were subject to yet further detailed assessment and hearing by an independent Inspector.

[5] rID2, para 2.16
[6] The only remaining expert consultee who objected was the tree officer (rID2, para 2.17, p.9) but CW accepted that the Council Landscape Officer was happy that the adequate tree protection could be achieved, see rPOE2.12, p.222 and CD10.1, OR paras 737 to 738, p.154)
[7] CD10.1 and see LT proof Appx 2 (rPOE2.12, pdf p.209 to 228), which CW agreed to be a fair and accurate summary.
[8] rID2, pdf 32 to 33

8. In each round of consideration, the conclusion was the same, namely that the appeal scheme was satisfactory and acceptable in all those respects.

9. Therefore, putting to one side the Green Belt issues, Mr Whitehouse was right to expressly accept in cross-examination, that, from his perspective,

> "this Inspector can be satisfied that all issues have been given detailed, active and thorough consideration by all relevant statutory consultees and expert bodies, by the Council and by the previous Inspector and have been found to be acceptable at every stage"[9].

10. I now turn to deal with the main issues identified by the Inspector.

(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.

Green Belt Policy

11. Mr Whitehouse accepted that the development plan policies (Policy MLP 27 of the Minerals Local Plan (CD11.03, p.155), policy DM22(g) (CD11.05, p.169) and policy WCS13 of the Waste Local Plan (CD11.04, p.80)) adopt the NPPF test of appropriateness as the test of whether mineral extraction (and waste fill) operations will be supported in the Green Belt. It follows that if it is determined that the proposal is not inappropriate in the Green Belt under the NPPF, it attracts development plan policy support from Policy MLP 27 and Policy DM22(g) and WSC 13.

12. Even if it is determined to be inappropriate development in the Green Belt, such development can be approved under the relevant policy in very special

[9] Expressly accepted by Mr Whitehouse in cross-examination

circumstances ("VSC"). VSC will exist if the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations (NPPF paras 152 to 153).

The Green Belt in this location and the impact of the development on openness.

13. The appeal site lies entirely within land parcel N7 of the Wyre Forest District Council Green Belt Review Analysis. It is assessed as making only a "contribution"[10] in Green Belt terms and not a "significant contribution". That "contribution" is of lower significance than a large part of the Green Belt further west which is assessed as making a "significant contribution" (see plan at CD12.02, p.4). There is no suggestion in the Green Belt Review Analysis that this parcel of the Green Belt has any heightened role above any other area of the Green Belt in this general location, and indeed it would appear to have a less significant role than many other areas.

14. The previous Inspector placed some weight on the significance of the contribution that the site makes to the Green Belt between the settlements of Cookley, Wolverley and Kidderminster. In the Wyre Forest District Council Green Belt Review Analysis (CD12.02), that area is represented by parcels N3, N5, N6 N7 and N10[11]. The appeal site falls within parcel N7 only which is approximately 120 ha in area. The overall site area of the appeal site is approximately 46ha and extraction area is approximately 26ha. Therefore, as accepted by Mr Whitehouse, the extraction area is only approximately 22%[12] of Parcel N7 (which itself is only part of the relevant area between the settlements). And, of course, it is important to remember that only part of that extraction area will be worked at any one time (with other parts either remaining undisturbed or fully restored).

15. As to the qualitative importance of the appeal site within this location, Mr Furber's view in response in cross-examination was that from a visual point of view the

[10] CD12.02, p.107 -109
[11] CD12.02, fig 2.1, pdf 15 and rPOE2.08, pdf 6.
[12] rPOE2.07, para 2.18, p.14

predominant area between the settlements of Cookley, Wolverley and Kidderminster is not the area containing the appeal site but is in fact the area near the canal between Wolverley and Cookley (i.e the canal area). That area will of course be entirely unaffected by the development.

16. In concluding 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", the previous Inspector placed some significant weight on the appeal site's role in the "visual perception of openness between Kidderminster, Wolverley and Cookley". This issue was interrogated in some depth in this inquiry. It is important that the role of the appeal site in the gap between the settlements is not judged by looking at a two-dimensional plan or map (a perspective which appears to have influenced the previous Inspector). As Mr Furber explained, this issue needs to be considered on a three-dimensional basis and with specific regard to the locations from where openness between settlements can be perceived.

17. Obviously, 'visual perception of openness' is intrinsically linked to where that openness can be appreciated from. It is evident from visiting the site that the appeal site in fact provides very little opportunity to perceive the openness between the three settlements. Within the appeal site, it is only at the elevated location of Mr Furber's VP8 where there might be any such perception. But from that location Wolverley is not even visible as it is low lying. The edge of Kidderminster and Lea Castle development are largely screened by vegetation but are just about visible and the upper floors of dwellings at the edge of Cookley can only be seen on turning to the right. The temporary impact of extraction phases 4 and 5 will be in this view. But at this location the temporary bunds will be below the skyline and there will be no obstruction to the open, panoramic views of the Green Belt landscape beyond the site.

18. Similarly, the sequential view along the A449, approaching or leaving Kidderminster, will be hardly affected by the quarry development which is to be well set back from the road. Whilst there will be some impression of grassed bunds

around phases 4 and 5, it can be seen from the visualisations for Mr Furber's VP9[13] that these will not materially affect the impression of openness between Kidderminster and Cookley.

19. As to the cumulative effect of the proposal with the Lea Castle development, this is carefully considered in some detail by the only landscape expert to the inquiry, Mr Furber. The Inspector is invited to consider the viewpoints discussed by him[14] and to come to the same conclusion as Mr Furber that the addition of the proposed development to a cumulative baseline, including all other developments, would have a neutral cumulative visual effect with no discernible effect on Green Belt openness.

20. Further, whilst this proposal does not involve any removal of land from the Green Belt, it has the beneficial side effect of providing compensatory improvements that can be seen as offsetting the loss of the Lea Castle housing development site from the Green Belt. Mr Whitehouse did not disagree that many of the compensatory improvements listed in the PPG (and quoted below)[15] will be provided by this proposal:

    - 'new or enhanced green infrastructure' - trees, improved hedgerows, pocket parks;
    - 'woodland planting' – 'planting of a woodland block in the north-east corner of the site in Phase 5 together with the strengthening of existing adjacent hedgerows' and 'native woodland blocks[16]'
    - 'landscape and visual enhancements' – 'planting approximately 120 trees along bridleways WC-625 and WC-626'; 'agricultural parkland'[17]
    - 'improvements to biodiversity' - significant improvements agreed in ecology SCG including 7.5ha of new acidic rich meadow grassland[18]

[13] See NF figures 13 to 16 (in rPOE2.08). Whilst these views are not from the A449, they do show the visual impression of the scale of the bunds which are of low profile on the original scheme and even lower profile on the revised scheme.
[14] rPOE2.07, paras 2.61 to 2.69
[15] CD12.44, p.2-3 (para 001, ID:64-002-20190722)
[16] rPOE1.02, para 4.29, p.26, para 4.33, p.27
[17] rPOE1.02, para 4.29, p.26 and 4.33 p.27
[18] rPOE1.02, para 4.33, p.27

- ‘new or enhanced walking and cycle routes’ – ‘new public right of way created measuring approx 2.3km’[19]
- ‘improved access to new, enhanced or existing recreational and playing field provision’ – pocket parks

21. As to the impact of traffic and activity on openness, there will be hardly any awareness of the activity of the plant site itself which will be largely hidden below ground level and the extraction activity will be progressive with relatively small areas of activity at any one time, with the disturbance akin to that caused by farm machinery. There will be an increase in lorry movements along a short section of Wolverley Road to the east of the access road. However, as stated below (under main issue 6), the highest predicted increase in traffic from the operational phase falls well below the materiality threshold and represents less than the 8% margin representing the observed day to day variations currently experienced on local routes. For these reasons, Mr Whitehouse was wrong to suggest that the lorry traffic has a material impact on openness. It is not predicted to be material in itself, and, in any event, no-one has suggested that it falls beyond the level of lorry movement which is intrinsic to, and to be expected from, typical quarry development and which the NPPF author must have had in mind when setting out the exception from inappropriateness for mineral extraction development.

22. Whilst it is acknowledged that bunds can have an impact on openness, they are not built development and so they do not make an area more ‘built up’. They are an extremely common feature of quarry development; in fact Mr Furber had never come across a sand and gravel quarry development that did not include bunds (see also the examples at Appx 3 to 5 to his proof[20]). This is for the simple reason that they have two important functions that are directly related to quarry development per se, namely as soil/overburden storage and as screening. In regard to this, Mr Partridge accepted in cross-examination that he had been clearly wrong to state in his proof that ‘soil storage bunds, and access are by definition inappropriate[21].’

[19] rPOE1.02, para 4.29, p.26
[20] rPOE2.07 pdf p.60 to 69 includes bunds up to 5m high
[21] rPOE3.02, para 9.9, p.28

23. Indeed it is worth noting in the Ware Park decision that the Inspector reported that:

- The scheme would include substantial lengths of bunds up to 3m high to screen views of the operational phases of mineral extraction. Theses 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[22];
- The bunding around the stockpile and attenuation area would have a greater impact on openness because it would be between 4m to 7m high, and could exist for up to 10 years[23];
- 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.[24]
- "In terms of openness the [Ware Park] appeal site comprises open agricultural fields, which offer expansive views from elevated vantage points over the River Rib Valley. Openness as a feature of this part of the Green Belt is apparent from the local description of the one tree located towards the centre of the site as "the lonely oak"[25]".
- The Inspector considered that the temporary effect of the bunds, along with the long-term impact of tree planting exceeded the NPPF threshold for mineral extraction/engineering operations concerning the preservation of openness and concluded that the Ware Park development would be inappropriate in the Green Belt[26].

24. Notwithstanding these findings by the Inspector and the reported degree of bunding and the particular impact on openness, the Secretary of State in the Ware Park case disagreed with the Inspector's conclusion and concluded that the development would

[22] CD12.39, IR366, p.85
[23] CD12.39, IR367, p.85
[24] CD12.39, IR368, p.85
[25] CD12.39, IR365, p.84
[26] CD12.39, IR370 p.85 and IR373 p.86

not amount to inappropriate development in the Green Belt[27]. Oddly, and somewhat misleadingly, the Council's closing (at para 48) relies on the findings of the Ware Park Inspector in relation to bunds and the Green Belt, without drawing attention to the clear contrary position of the Secretary of State in that case.

25. Similarly, a recent decision of this County Council granted planning permission for the Pinches Quarry case and concluded that the proposed development involving 3 – 4m high bunds that would not be restored for 14 years did not amount to inappropriate development in the Green Belt. Interestingly, the County Council considered that a proposal that is anticipated to be completed and restored within 14 years of commencement is not considered to be very long-term in the context of mineral extraction and restoration.[28]

26. In this case, many of the bunds will only be in place for short periods of time (1 to 3 years) and Mr Furber stated in oral evidence that the activity associated with constructing and dismantling bunds is also very short lived, lasting a matter of days to a week or so. Whilst bund 3 would be in place for the duration of the extraction (10 years), the visualisations provided by Mr Furber[29] show that its impact on openness will be limited and not starkly different from the existing rising landform in that location (east of the bridleway).

27. In short, soil bunds are a typical and intrinsic feature of quarry development, and it would be contrary to the purpose of the policy exception in the NPPF if the typical presence of bunds caused quarry development to be inappropriate development in the Green Belt.

[27] CD12.39, para 19, p.4
[28] CD12.40, para 610, p.95. NB It is well established that where a committee accepts the recommendation of officers, the reasons for its decision are taken to be those set out in the officer's report (*Mansell v. Tonbridge and Malling BC* [2017] EWCA Civ 1314, at para 42(2).
[29] View points C and D at figures 51 to 62

28. Finally on openness, it is agreed that this proposal is a quarry that includes minimal built development (3 portacabins), all set below ground level. As such it cannot realistically be said to constitute urban sprawl, particularly as the caselaw considered below establishes that the other aspects of quarry development can be an effective barrier to urban sprawl. As the counterpart to urban sprawl, the quarry in fact assists in preserving openness.

Impact on Green Belt purposes

29. I deal with the Green Belt purposes in turn. They are set out at NPPF para 143.

(a) to check the unrestricted sprawl of large built-up areas

30. First, this purpose is of limited relevance as Mr Whitehouse accepted that there are no 'large built-up areas' adjacent to, or nearby, the site. That fact means that the development cannot affect one way or the other 'the unrestricted sprawl of large built-up areas'.

31. Second, Mr Whitehouse accepted that there are minimal buildings on the site and that they are only temporary. Also, the bunds are not built development.

32. Third, Mr Whitehouse accepted that this proposal would not be seen as an extension to Kidderminster, Cookley or Wolverley.

33. Fourth, as set out in the Supreme Court in *Samuel Smith*, a quarry is no less effective as a barrier to urban sprawl than an agricultural field.[30] In other words, typical quarry development, which this is, does not conflict with this GB purpose.

34. It follows from these points that there can be no conceivable basis for concluding any conflict with this Green Belt purpose, even temporarily. Mr Whitehouse's credibility was severely stretched by continuing to maintain a conflict in this regard.

[30] CD12.06, p.13 para 22

The previous Inspector was correct in his conclusion that the development would not hinder the objective of preventing unrestricted urban sprawl (at IR 85).

(b) to prevent neighbouring towns merging into one another

35. Again, this Green Belt purpose is of limited relevance as there are no neighbouring towns (as agreed by Mr Whitehouse). Even if the proposal were considered to be sprawl, he agreed it would not join up neighbouring towns or settlements. Accordingly there would be no conflict with this Green Belt purpose (again as concluded by the previous Inspector at IR 85).

(c) to assist in safeguarding the countryside from encroachment

36. It is well recognised that "minerals have to be quarried where they are found". And that is often in the countryside. Accordingly, quarry development is not incompatible with being in the countryside.

37. This is reflected in the appeal decision in the Ware Park, where the Inspector stated[31]:

> "Turning next to the purposes of the Green Belt, the proposed development would not be of a type and scale that would conflict with the Green Belt's purpose to assist in safeguarding the countryside from encroachment."

38. The Secretary of State agreed with this.[32] And the previous Inspector in this Lea Castle appeal made the same observation about the appeal proposal development at IR85, p.16.

39. Again, in circumstances where the scale of the operation is no more than reasonably required for the mineral extraction proposed, there can be no case for finding a conflict with this purpose as to do so would be to ignore that minerals have to be

[31] CD12.39, IR371, p.85.
[32] CD12.39, para 19, p.4

extracted where they are found and would run directly contrary to the purpose of the exception from inappropriateness for minerals development in NPPF para 155(a).

(d) *to preserve the setting and special character of historic towns*

40. Mr Whitehouse was obviously correct to agree that this Green Belt purpose is not relevant to this case as there are simply no historic towns that would be impacted by the development. Even if Cookley or Wolverley could be considered to be 'historic towns' their setting and character would not be affected for the reasons given by the previous Inspector at IR68. Mr Partridge also sensibly accepted that Cookley and Wolverley are not 'historic towns' and that the appeal site is not in the setting to them.

(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

41. As to the final Green Belt purpose, sensibly no-one suggests that the urban regeneration purpose / aim of recycling derelict land is of any relevance to this appeal or type of development.

42. In conclusion, the appeal proposal will preserve the openness of the Green Belt in this location and does not conflict with any Green Belt purpose.

Does the appeal proposal represent inappropriate development in the Green Belt?

43. Under paragraph 155(a) of the NPPF, mineral extraction proposals are, by exception, not inappropriate development in the Green Belt so long as "they preserve its openness and do not conflict with the purposes of including land within it."

44. Whilst a lot of the inquiry has been taken up by consideration of impacts on openness and, in particular, the visual component of openness (see above), it is submitted that, on the basis of the correct interpretation of paragraph 155(a), absent any particularly unusual feature (such as an excessive amount of built development or excessive

degree of activity, beyond what is necessary for the proposed mineral extraction[33]), visual impact should by no means be the primary consideration nor even a primary consideration when assessing whether or not the proposal is inappropriate development in the Green Belt.

45. Visual impact is, and should be, a peripheral consideration as it was in the ***Samuel Smith*** case itself. Indeed, Lord Carnwath made clear that visual unattractiveness of temporary quarry development is not necessarily inconsistent with the furthering of Green Belt purposes by being a barrier to sprawl[34]. Mr Partridge again was forced to accept in cross-examination that he was wrong to rely in his proof[35] on the Court of Appeal decision in ***Samuel Smith*** which stated that 'visual impact on openness was "quite obviously" relevant to its effect on the openness of the Green Belt.' That CA decision was overturned in the Supreme Court with Lord Carnwath stating on behalf of the Supreme Court that he was 'unable to accept [that particular] analysis of Lindblom LJ[36]'.

46. As is clear from the Court judgments set out below, the more important considerations for development of this nature are its temporary duration, the extent of any built development, whether the site will be well restored and whether good environmental standards will be maintained.

47. Where, as here, any built development is minimal, far from constituting 'sprawl', the proposal should be considered as an effective 'barrier' to urban sprawl. As openness is the converse (as expressly stated by Mr Whitehouse[37]) or opposite of sprawl, a quarry development without any significant built development almost by

[33] It is to be noted that neither the Council nor any other party has alleged that the proposal includes any built development or activity that goes beyond what is necessary for the mineral extraction proposed. Nor has anyone suggested that the proposed mineral extraction is itself unusual or excessive. The view of the previous Inspector in relation to buildings at IR65 is obviously correct.
[34] CD12.06 at para 22
[35] rPOE3.02, at para 9.16, p.28-29
[36] CD12.06, at para 36 to 39, p.22 - 23
[37] rPOE1.02 para 4.14, p.21

definition preserves openness and falls within the NPPF exception from inappropriate development.

The Law on the Interpretation of Paragraph 155(a) of the NPPF

48. The High Court in *R (Europa Oil and Gas Limited) v. SSCLG* ([2013] EWHC 2643 (Admin), CD12.07) quashed a decision of the Secretary of State on the basis that the Inspector had failed to consider whether the proposal in that case (hydrocarbon exploration) fell within the above exception from inappropriate development. The Court interpreted the above exception in the NPPF as setting a premise as a starting point:

> "The premise therefore for a proper analysis is that there is nothing inherent in the works necessary, generally or commonly found for extraction, which would inevitably take it outside the scope of appropriate development in the Green Belt.
>
> As [Counsel] accepted, some level of operational development for mineral extraction, sufficiently significant as operational development to require planning permission has to be appropriate and necessarily in the Green Belt without compromising the two objectives. Were it otherwise, the proviso would always negate the appropriateness of any mineral extraction in the Green Belt and simply make the policy pointless. Extraction is generally not devoid of structures, engineering works and associated buildings. The policy was not designed to cater for fanciful situations but for those generally encountered in mineral extraction." (*Europa*, CD12.07, paras 64 -65)

49. The Court then went on to consider the relevant factors in this context:

> "One factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects. Those are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place

where those operations achieve what is required in relation to minerals. Minerals can only be extracted where they are found […]

Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt." (***Europa***, CD12.07, paras 67 – 68)

[….]

In my judgment it is clear [that] the relevant policy, spells out factors of direct relevance to appropriateness: the temporary nature of the activity, the environmental standards maintained during operation and the restoration of land to beneficial after use consistent with Green Belt objectives within an agreed time limit, are all relevant to issues of appropriateness." (***Europa,*** CD12.07, para 71)

50. And the Court made further comment as to the purpose of NPPF para 90 (now para 155):

"If paragraph 90 NPPF is of any purpose, the mere fact of the presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate. It does not depend for its purpose on fanciful notions of drilling rigs at the bottom of a large quarry. For MC3 purposes, the temporary nature of development underlies the policy on appropriateness and its reversibility is crucial to it." (***Europa***, para 75)

51. In summary, it is submitted that the following principles can be drawn from the Judgment in ***Europa***:

(a) Development proposals for mineral extraction are not to be considered as inappropriate development in the Green Belt merely by virtue of the necessary presence of plant, buildings and other structures (including bunds) and/or by virtue of the operational activity of extraction.

(b) Because of their temporary duration and reversibility, mineral extraction proposals are usually not inappropriate development in the Green Belt, unless there is something about them which makes them atypical.

(c) Further if it is considered that good environmental standards will be maintained during operation and that there will be restoration of land to beneficial after use consistent with Green Belt objectives within an agreed timescale, then these will be strong factors indicating that the proposal is not to be considered as inappropriate development in the Green Belt.

52. The Judgment of the Supreme Court in *R (Samuel Smith Old Brewery (Tadcaster) v. North Yorkshire CC* ([2020] UKSC 3, CD12.06) also made some instructive comments about the appropriateness of mineral extraction in the Green Belt. Lord Carnwath drew attention to the fact that, in the previous national policy set out in PPG2, para 3.11, mineral extraction may be regarded as not inappropriate, subject only to "high environmental standards" and the quality of restoration:

> "Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored." (extract from para 3.11 of PPG2, set out at para 10 in *Samuel Smith*)

53. Lord Carnwath noted that in PPG2, the exception for mineral extraction had only been subject to these two issues (high environmental standards and restoration) and had not been expressly subject to an impact on openness proviso as it now is in the NPPF. Further, he specifically considered that the change from PPG2 to the NPPF was not "intended to mark a significant change of approach. If that had been intended, one would have expected it to have been signalled more clearly." (para 12 in *Samuel Smith*, CD12.06):

"I do not read this as intended to mark a significant change of approach. If that had been intended, one would have expected it to have been signalled more clearly. To my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material change. It may also have been thought that, whereas mineral extraction in itself would not normally conflict with the openness proviso, associated building or other development might raise greater problems. A possible example may be seen in the *Europa Oil* case discussed below (para 26)."

54. It is notable that the proposal in the *Europa Oil* case[38] was an exploratory drill site to explore for hydrocarbons in the Green Belt, including plant and buildings. The development in fact largely comprised 'associated building and other development' and that element was much more extensive than for this quarry development (which everyone accepts has minimal structural paraphernalia). It included an 'extensive compound' (not set below ground), boundary fencing, a drilling rig up to 35 metres in height, and related (above ground) buildings, plant and equipment. And even then, the Inspector's decision was quashed by the High Court for failing to consider the mineral extraction exception from inappropriate development. In other words, that greater degree of 'associated buildings and other development' in that case was nevertheless considered by the High Court (and Court of Appeal) as capable of falling within the exception from inappropriate development.

55. The Council's closing (para 27, top p.8) makes the point that "*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*." This demonstrates a clear misunderstanding of the case law and particularly para 12 of ***Samuel Smith*** set out above which is clear that it is usually only excessive associated buildings and other development that have the potential to disqualify quarry development from being acceptable in the Green Belt, not the quarry development (including extraction, bunds etc) itself. In other words, the intention

[38] CD12.06, para 26, p.15

of the NPPF as interpreted by the case law is that a quarry without significant built development does inevitably maintain openness because it does not constitute urban sprawl (which is the counterpart, or converse, to openness).

56. It follows from all this that, once it is established that the associated buildings and other development are minimal, the key issues when considering the appropriateness of temporary mineral extraction in the Green Belt are the question of whether high environmental standards will be maintained and whether the land will be well restored.

57. In relation to this issue, the previous Inspector[39], the Council and all relevant statutory consultees agree that high environmental standards will be maintained and that the proposed site restoration is good quality and can be achieved and secured (see reps from Worcestershire Regulatory Services, Environment Agency, Natural England, Worcestershire Wildlife Trust, District Council's Countryside and Parks Officer, County Ecologist, County Landscape Officer, Woodland Trust and Forestry Commission and Hereford and Worcester Gardens Trust). This will include very significant biodiversity net gain, restoration in line with the MLP priorities, benefits to recreation by increased public access routes and pocket parks, restoration of historic parkland features and no policy conflicts in relation to noise, dust, air quality or health impacts (all set out in more detail under main issues 3, 4, 5 and 7). As set out above (at para 20), Mr Whitehouse also accepted that the proposal provides improvements akin to those listed as particularly relevant to the Green Belt in the PPG.

58. Further, it is clear that the effects will be temporary, and particularly so, because of the progressive restoration. Mr Whitehouse acknowledged that the western area will be fully restored within 5 years and the eastern area will be fully restored within 1 year after cessation of mineral extraction. The total extraction period will be 10 years (i.e medium term) and during that time much of the site will be either

[39] At IR129 to 130

undisturbed (i.e phases 4 and 5, in the first five years) or restored (i.e phases 1 to 3, in the second five years).

59. All these factors, along with the relative lack of built development, should lead to the conclusion that the proposal is not inappropriate in the Green Belt. And this should be the case irrespective of any impacts on openness which are the inevitable effects of quarry development of this scale, particularly in circumstances where the main part of the proposed development is situated largely out of sight, 7 metres below existing ground level.

60. Lord Carnwath made clear the following in relation to mineral extraction (emphasis added):

> "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. 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 barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land." (*Samuel Smith* at para 22, CD12.06, emphasis added).

61. Finally, in relation to *Europa Oil*, Lord Carnwath commented as follows:

"Although the decision turned principally on a legal issue as to the meaning of 'mineral extraction', it is significant that the impact on the Green Belt identified by the inspector (including a 35 metre drill rig and related buildings) was not thought necessarily sufficient in itself to lead to conflict with the openness proviso. That was a matter for separate planning judgement." (*Samuel Smith*, at para 28, CD 12.06).

62. Having regard to the parameters and principles set out in the caselaw above, it is submitted that the proposed development falls clearly within the category of not being inappropriate development in the Green Belt. In summary, the Appellant relies on the following:

(i) the quarry extraction is temporary in nature and progressive with much of the site either completely undisturbed or fully restored at any one time,

(ii) the proposed development is subject to good environmental standards,

(iii) the site will be well restored in line with Green Belt policy PPG, including reinstatement of historic parkland features, improved public access and recreational facilities, and very significant biodiversity net gain,

(iv) the 'structural paraphernalia' including portacabins, offices, welfare facilities etc are commonplace for a quarry operation of this scale (as agreed with the Council and as found by the previous Inspector at DL64 - 65)

(v) the plant site (including the portacabins etc) will be set 7m below ground level,

(vi) the bunds are a typical feature of a quarry and, in this case, when properly considered (including by reference to the visualisations), their spatial and visual impacts are limited and mostly very temporary'

(vii) as a typical quarry, this quarry is an effective barrier to urban sprawl'

(viii) given that openness is the "counterpart to urban sprawl", as a barrier to urban sprawl, it preserves openness.

63. Whilst the Inspector in the previous inquiry came to a different overall conclusion on inappropriateness (see paras 59 to 87 of the Decision dated 5 May 2023 "DL"), it is submitted that the conclusion of the previous Inspector on this point should not be followed for the following reasons:

    (a) The Inspector's view of the site's "importance in fulfilling Green Belt purposes" and his view that "the site plays an extremely important Green Belt function" (DL60) was in the context of him recording that "the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open;" (DL61 and DL80). In attaching "considerable weight" to the site's function in this respect when addressing the issue of inappropriateness, the Inspector failed to properly appreciate the role that a quarry can have in <u>preventing</u> urban sprawl and thus in <u>maintaining</u> separation between settlements (one of the Green Belt's purposes). Properly considered, a quarry development is a "barrier to urban sprawl" (see Lord Carnwath quoted above – CD12.06, para 22) and consistent with these purposes of the Green Belt. This means that, far from supporting a conclusion that the development would be inappropriate in the Green Belt, the site's location between settlements and the nature of quarry development should have been supportive a conclusion that the development would <u>not</u> be inappropriate in the Green Belt.

    (b) The previous Inspector did not have the benefit of all of the visualisations provided to this Inquiry which show the localised and modest impact of the bunds upon the openness of the Green Belt, that would in the case of activity to the west of the bridleway, be limited to less than 5 years.

    (c) The previous Inspector's consideration of the visual perception of openness between settlements (IR82) may have been unduly influenced by the two-dimensions of a plan or map and without full consideration of the fact that there is only one view point (Viewpoint 8) beyond the appeal site from where there is any perception at all of the space between settlements and the proposed Lea Castle Village allocation. At this viewpoint 8, (i) even the appreciation of space between the settlements and the allocation gained from there is very limited; and (ii) the impact of the temporary extraction on

the site visible from that location will not obstruct open, panoramic views to the Green Belt beyond the site.

(d) The previous Inspector was not provided with a copy of the Secretary of State's decision in Ware Park in which the Secretary of State clearly concluded that the Inspector was wrong to consider that the presence of significant bunding in an open and visually exposed area of the Green Belt was capable of causing a mineral extraction development to constitute inappropriate development in the Green Belt (see above).

(e) The previous Inspector did not have the benefit of the amended proposals which demonstrate how the openness impact of the scheme can be minimised even further by modern plant of a reduced size which allows the imposition of conditions restricting the number and heights of the bunds without compromising on noise and visual attenuation.

(f) Contrary to the parameters established by the caselaw set out above, the Inspector did not consider the high environmental standards and the calibre of the restoration scheme in the context of considering appropriateness. Both ***Europa*** and ***Samuel Smith*** emphasise the importance of these factors in the consideration of the issue (see extracts set out above).

64. In light of all the above, it is accordingly respectfully submitted that the appeal scheme is not inappropriate development in the Green Belt and that there is no requirement for very special circumstances to be demonstrated. There is no good basis to depart from the considered conclusion of the Head of Planning and Transport Planning in his advice to committee:

> "It is considered that the proposal is in line with any typical mineral development in the Green Belt, and it is assessed that this site should benefit from the exceptions that are clearly provided for in the NPPF for mineral sites. There would be impacts, but only of a temporary duration, and relatively short for mineral extraction, with an appropriate restoration programme, back to a beneficial status in the Green Belt. The NPPF clearly envisages that mineral extraction should benefit from the exemption in paragraph 150, and this

proposal should benefit from those exemptions as it comes within the intended scope[40]."

65. However, even if it were concluded to be inappropriate development it is demonstrated in the evidence (summarised under the main issues below) that the benefits are sufficient to constitute very special circumstances in this case, such that there would still be no policy conflict in allowing the appeal.

(2) The effects of the proposed development on the character and appearance of the area.

66. The starting point is that the Head of Planning and Transport Planning in his advice to committee had the benefit of a number of experts with qualifications in landscape and visual assessment. None of those experts consider that the proposed development will have any significant adverse impact on the character and appearance of the area and all welcome the restoration proposals. As recorded in the Statement of Common Ground:

> "It is agreed that a Landscape and Visual Impact Assessment (CD1.04) was submitted as part of the planning application. The County Landscape Officer has no objection to the proposal, subject to appropriate conditions requiring the implementation of a CEMP and LEMP, with a long-term aftercare period to cover a period of at least 10 years. Hereford & Worcester Gardens Trust also hold no objection to the proposed development; and the Head of Planning and Transport Planning concurred, on balance with the findings of the LVIA[41]."

67. Impact on landscape or character and appearance has never been a reason for refusal put forward by the County Council. Further, at the Inquiry, Mr Whitehouse readily agreed in cross-examination that the proposals comply with the relevant local landscape guidance[42].

[40] CD10.01, para 461, p.103 and see careful analysis from paras 440 to 462.
[41] rID2. Para 8.11, p.28
[42] At rPOE2.07, p.36

68. The LVIA was undertaken by an expert qualified in landscape and visual impact assessment and the Appellant's evidence to this inquiry was given by another expert with over 25 years' experience of assessing the impact of minerals proposals. Both consider the proposals to be acceptable in landscape and visual terms. This view chimes with the expert consultees that contributed to the Head of Planning and Development and the previous Inspector agreeing that the temporary effects upon the character and appearance of the area, whilst adverse, were not of a degree that warranted refusal of the application.

69. The Council's landscape officer[43] considered the proposal to be acceptable and welcomes the restoration proposals. A retired landscape architect from the Hereford and Worcester Gardens Trust raised some detailed recommendations and concerns[44] and these were all confirmed to be satisfactorily addressed by further information.[45]

70. By contrast Mr Partridge and Mr Harthill from the r6 party are not qualified in landscape and visual impact assessment and their lack of professionalism on this issue is obvious by their phraseology such as "flat featureless plateau[46]" and "very small candles on top of an absolutely disgusting cake[47]." Mr Partridge's lack of understanding of the restored landform is evident in his analysis of the additional photomontage from Viewpoint 8 where he describes the restored landform as containing 'moguls' i.e piles of hard snow.[48] Further, a particular concern raised by Mr Partridge (that the restoration would deliver "a flat crater with a raised access route") is similar to a point raised by the (expert) Hereford and Worcester Gardens Trust but later dismissed: "We note the revised landscape sections that indicate that the retained and replanted avenue will not, as initially feared be seen as a strip of elevated land across the site[49]".

[43] CD2.29, CD4.32, CD5.23, CD6.23, CD6.36
[44] CD2.08 and CD4.14
[45] CD4.14 and CD6.07
[46] rPOE3.02 para 4.32, p.20
[47] rPOE3.03, p.19
[48] rID226, p.1
[49] CD4.14, p.2

71. The r 6 party's closing (para 77) refer to the landscape being 'valued'. That is the case in the sense that local residents do subjectively appreciate it. However, there can be no question about it being a 'valued landscape' in NPPF policy terms (NPPF para 180(a)) and no such proposition was put to the Appellant's witnesses, nor is para 180(a) of the NPPF referenced in the r 6 party's closing.

72. As explained by Mr Furber, the visual impacts during the extraction period will be temporary and limited and predominantly screened by grass seeded bunds, as can be seen on his visualisations. As to views of phase 3 to the west of the bridleway, there is no bund screening proposed for this very short term impact but agreed draft condition 46[50] makes provision for details to be approved for hay bales to assist with temporary screening in this location.

73. A very large number of visualisations have been produced and it is unreasonable and unrealistic for the r 6 party to suggest (in closing) that there has been a lack of assessment and that more visualisations should have been produced. As explained by Mr Furber in cross-examination, for the scale of development proposed, a very large amount of illustrative material has been produced. Obviously not every single viewpoint has been subject to specific assessment, but he explained that care has been taken care to choose representative viewpoints along PROW and to choose viewpoints that are likely to be worst affected.

74. As explained by Mr Furber and Mr Sutton, the site will result in the restoration of many historic landscape features such as the treed avenue, parkland trees and the Broom Covert which is a lost historic woodland. Whilst it will be a low level restoration, it will not be flat or featureless. The gradient to the west of the bridleway will be very similar to what is existing and the restored land to the east will still follow the rising existing landform, albeit at a lower level. This can be seen in the

[50] In both rID235.01 and rID235.01

visualisations provided by Mr Furber[51] and the further visualisation requested by the Inspector[52].

75. As recorded in the Statement of Common Ground[53]:

> "The proposed restoration scheme includes the creation of a new agricultural parkland, providing approximately 2.7 kilometres of new public bridleways and permissive bridleways and 5 pocket parks. Native woodland blocks would be established (approximately 3.42 hectares of additional native woodland, which equates to 9,750 woodland trees), approximately 439 metres of hedgerows would be strengthened, approximately 579 metres of proposed new hedgerow planting (3,474 hedging plants) and new acidic rich meadow grassland, measuring approximately 7.5 hectares in area would be developed to promote biodiversity and educational opportunities. In addition, the restoration scheme includes the planting of approximately 170 avenue and parkland trees reinstating the historic avenue of trees along bridleways WC-625 and WC-626."

76. The one-eyed nature of the r.6 party's position is demonstrated by their failure to recognise the significant benefit that will be realised by this degree of tree-planting and parkland restoration. Their position in closing is that this benefit is outweighed by (unevidenced) 'significant tree loss' (closing para 89). However, their actual complaints (closing paras 90 to 91) relate to the effects on very small number of trees, which are in fact proposed to be retained! The vast majority of all existing trees on site will be retained, and the r.6 party does not in fact complain about any particular tree which is proposed to be removed. Instead, they raise concerns about the 'threat' to trees 12 -21 along the central bridleway and about trees T9 and T10. Mr Toland was clear in cross-examination that there is sufficient space to ensure adequate root protection areas, both along the bridleway and within phase 3, and this is secured by conditions including proposed condition 47 which is very specific and

[51] Figures 56, 62 and 70 of rPOE2.08
[52] rID76
[53] rID2, para 4.8, p.19

enforceable as to the dimensions of the root protection areas which will be required for T9 and T10.

77. In light of all of the above, the Inspector is invited to agree with the previous Inspector that there will be no unacceptable visual harm during the extraction period and that the restoration scheme will deliver landscape benefits of at least moderate weight and that there would be no conflict with policies MLP28, MLP 33, WCS12 or WCS14 (IR129 to 131).

(3) The effects of the proposed development on the local amenity of the area and the living conditions of nearby residents, with particular reference to outlook, noise, dust, air quality and health.

78. The Council withdrew its reasons for refusal in relation to visual outlook[54], impact on health[55], noise and dust (including impacts to residential dwellings and Heathfield Knoll School and First Steps Nursery)[56].

79. At the previous inquiry, the rule 6 party maintained a case on these issues, but that case was rejected on each issue (see DL119 and DL127)

80. At this Inquiry, Mr Partridge accepted[57] on behalf of the rule 6 party that the proposal will not cause unacceptable harm to amenity or living conditions with reference to visual outlook, noise, dust, air quality or health and he therefore accepted that there would be no conflict with policies MLP28, MLP29 or WCS14 (all of which adopt 'unacceptable harm' as the applicable test). Whilst he maintained that there would still be 'some harm', for planning purposes, the unacceptability threshold is what is important for attracting weight in the planning balance.

[54] Reason for Refusal 3, see rID2, para 9.2 first bullet, pdf p.31
[55] Reason for Refusal 9, see rID2, para 10, bottom bullet on pdf p.32
[56] Reason for Refusal 3, see rID2, para 10, final bullet, top of pdf p.33
[57] In cross-examination

81. As a result, the Appellant's expert witnesses were not cross-examined in relation to these issues and their evidence (referenced below) was unchallenged.

82. Mr Furber (the Appellant's landscape and visual assessment expert) considered the visual impact on residential amenity in his proof at paras 3.1 to 3.39[58]. In line with the view of the previous Inspector, he considered that the Equestrian Bungalow is the property that would be most affected. But, taking into account the separation distance to the screen bund, its height and temporary duration for only 9 months, there would only be a moderate adverse overall effect that would not be significant.

83. As to noise, based on guidance set out in PPGM, Ms Canham (the Appellant's noise expert) used results of baseline noise surveys to set acceptable limits for noise from normal, day to day operations. She then assessed the worst case[59] impact of noise on all the residential receptors likely to be most affected, plus the Heathfield Knoll School. In all cases, the predicted noise levels will be below or at the acceptable noise limits[60]and these noise limits will be secured by condition.

84. The noise levels from the quarry will be particularly low at the Knoll Heathfield school where the dominant noise would be the traffic on the Wolverley Road.

85. As to dust and air quality, Ms Hawkins (the Appellant's expert on dust and air quality) produced detailed evidence assessing all potential impacts and concluded that "overall from my review of the information and results of the assessment, with the incorporation of appropriate mitigation as already employed at the site, the proposed development complies with the relevant national and local planning policies in relation to dust and air quality[61]."

[58] rPOE2.07, p.26 to 33
[59] i.e with all mobile plant items operating at the closest practical position of the proposed operating areas to each receiving location, and assuming that all plant on site operates simultaneously in the closest likely working areas to each receiver location for both extraction and infilling – para 5.4, rPOE2.10, p.22.
[60] Table 5, rPOE2.10, p.29
[61] Para 7.11, rPOE2.02, p.41, and see her further note at rID38

86. Some local residents (although not the rule 6 party) raised concerns about the potential health impacts of respirable crystalline silica ("RCS") and the risk of silicosis. This issue was considered by Ms Hawkins at paragraphs 6.3.1 to 6.3.10 of her proof.[62] She referenced HSE advice which is that "No cases of silicosis have been documented among members of the general public in Great Britain, indicating that environmental exposure to silica dust is not sufficiently high to cause this occupational disease."

87. She also explained in her evidence how the risk of any RCS emissions from this site would be minimised by the fact that there will be no blasting or other significant breaking activities and no large crushing activities. Also, the use of dust suppression measures would minimise RCS emissions. Her conclusion was that there is no evidence that the proposed development would pose a potential significant risk to the local population due to RCS.

88. Ms McNeill made a written representation about silicosis.[63] The Appellant has responded to this, pointing out that she is a non-local person living in Australia, and, for the reasons stated in the note[64], the HSE advice remains valid in that there have not been any documented cases of silicosis in the general public in the UK. And in relation to this, it is worth noting that, as accepted by Mr Lord, quarrying of sand and gravel is not a modern or new activity – it has been going on for centuries, if not millenia. As stated by the HSE this indicates that environmental (i.e general ambient air) exposures to silica dust are not sufficiently high to cause silicosis.

89. Finally, in relation to the PM2.5 Targets Interim Planning Guidance[65] raised by the Inspector, as explained at the round table session, the Appellant's air quality expert is satisfied that its requirements have been met by the ES and ES Addendum. Mr

[62] rPOE2.02, p.38 to 39
[63] rID184
[64] rID230
[65] rID225

Aldridge confirmed that Worcestershire Regulatory Services had been consulted on the Guidance and were also content with what had already been provided by the Appellant. No other party attempted to suggest that any information was lacking in this regard, nor was any substantive concern raised.

90. In conclusion, none of the three main parties alleges any policy conflicts in relation to outlook, noise, dust, air quality or impacts on health. Whilst some local residents do raise concerns, the issues raised have been fully addressed by the Appellant's relevant experts and have been shown to be unfounded. None of the relevant expert consultees raise any objections[66].

(4) The effects of the proposed development on Public Rights of Way and access.

91. The impacts on PROW are assessed in ES chapter 16, CD1.03. The significant enhancements and proposed new routes are shown on the concept restoration scheme (CD5.11 and CD15.23).

92. The rule 6 Party sought to use expressions like 'highly permeable' and 'arterial route' to describe the public rights of way within the site. But the reality of the situation is that there are just two public rights of way passing through the site. One is a bridleway going from south to north-east and the other is an east/west public footpath (CD5.14). Neither of these rights of way are regionally or nationally promoted, and this is in contrast to the promoted PROW near the canal which have better recreational facilities, and which are nearby but outside and to the west of the site. These alternative routes outside, but close to, the site will of course be entirely unaffected by the proposed development.

93. The bridleway within the site will be preserved in situ throughout the development save for a short period during construction and removal of the conveyor: During construction, there will be a temporary diversion of a section of approximately 30

[66] No objections raised by the County Public Health Practitioner or Worcestershire Regulatory Services - CD10.1 paras 197, p.33, paras 577 – 578 p.125 and para 973, p.194

linear metres to run parallel with its existing route and approximately 30 m to the west within the adjacent field for a period of approximately 2 weeks. These minor temporary works will be publicised and discussed with the Council and users of the track to ensure appropriate measures are in place and the same procedures will be put in place when the tunnel is removed, which will take approximately 1 week[67].

94. It is obviously wrong for the r.6 party to suggest in closing that the bridleway through the site is to be used as an access road for HGVs (r.6 party, closing para 118). That does not form any part of the proposal.

95. As for the east/west public footpath, this is proposed to be diverted along a similar east/west route for a short period to facilitate the working and restoration of phases 1 and 2. On completion of the working and restoration of Phase 2, the footpath would be re-instated along its original route and eventually upgraded to a bridleway as part of the restoration scheme.

96. Accordingly, use of the public rights of way will be maintained and ensured throughout the development.

97. There will be some visual impacts on amenity but, because receptors on rights of way are usually in motion, the impact is transient. Further, because of the progressive working, there will be limited impact at any one time and most individual impacts will be very short lived (such as the impact on views to the west of the southern section of bridleway).

98. Whilst bund 3 will be in place for the duration of the development, its effect is not markedly different from the current baseline which is a rising landscape. The bund

[67] rID110

will be a rising landform, with a 1:3 grass seeded slope, and well set back from the track (as shown in photomontages for Viewpoint C[68]).

99. As to the concerns raised about dust impacts on public rights of way, these were considered in some detail by the Appellant's dust expert and her conclusions were that, during the operations, there would be a low risk of dust impacts with slight adverse effects at most, reducing to negligible at completion of the works in the western part of the site (phases 1, 2 and 3). Her overall conclusions remain that the proposed development would not result in significant or unacceptable adverse impacts[69]. Ms Hawkins' evidence was unchallenged[70]. In these circumstances it is simply not open to the r.6 party to assert that "exposure to ...dust… from operations would severely compromise amenity. There has been no assessment of how these individually, or cumulatively will impact upon horses." (r.6 closing para 119).

100. As to noise impacts, Ms Canham explained[71] that there are no noise limits for public rights of way in planning guidance. Noise along public rights of way is not covered by the noise guidance set out in the PPGM. There is little guidance on specific or relative noise levels that are appropriate for these types of receptors.

101. The users of public rights of way are considered to be transitory. As the quarry site is worked over the different phases, the majority of public rights of way are either located behind 'acoustically soft' bunds (and therefore acoustically screened from site operations) or located at a reasonable distance from active workings. There will be no blasting and the noise will be mechanical, not dissimilar to agricultural machinery. The highest site noise levels experienced by users of the public rights of way would be experienced only for a short period of time when the person is at the closest possible approach to the site operations. As the person travels along the

[68] rPOE2.08, figures 51 to 55, pdf 56 to 60 and figures 57 to 61, pdf 63 to 66
[69] rRP1.02 K Hawkins Rebuttal Proof
[70] The Appellant repeatedly expressly offered to call Ms Hawkings to answer any questions on her evidence from the rule 6 party (or Inspector) but the offer was declined and no request was made.
[71] In her oral evidence and in her Rebuttal proof at rRP1.01

public right of way, the site noise level should reduce as the distance from the site operations increases.

102. As to issues raised in relation to the conveyor under the bridleway, the public rights of way officer was satisfied with the details provided[72] (CD4.22). Ms Canham explained that noise from the conveyor would be experienced at the crossing point but that the conveyor noise level would reduce rapidly as the distance between the conveyor and the rider/horse increases. Within a couple of minutes, it would be expected that the horse and rider would be at least 200 metres from the crossing point and therefore it would be expected that the conveyor noise levels would have reduced by at least 20 dB(A).

103. With regard to the impact of sound on horses, the British Horse Society (BHS) gives some guidance on a horse's response to noise in the document "Advice on Noise affecting routes used with horses" (Nov 22), including the following:

> "*Considering how similar a noise may be to a natural predator is a useful guide to whether a horse will be troubled by it. A quiet rustling is likely to have greater impact than a high speed train because the former could easily be associated with a predatory animal moving into position to attack whereas a train is a continuous steady loud noise which is not clearly a predator; it can be heard from far away and the majority of horses these days have been exposed to and accepted commonly occurring mechanical noises from their birth. There are many situations of horses unperturbed by trains or motor traffic, even for the first time, in fields or on bridleways alongside a railway or motorway. Because a human hears a sound, it is often assumed that this is what is troubling a horse, but the horse may have heard that sound long before and already dismissed it as not a threat, but could be reacting to a sound or movement that a human has not seen, possibly even behind it*.".

104. Ms Canham explained that the conveyor and motor are a constant non-fluctuating, mechanical noise source, with the loading of material from the hopper best described as a 'whooshing' sound. As such, there would be no sudden or loud

[72] CD3.16 – the conveyor will be set below 0.6m of concrete on 0.3m of well compacted hardcore and will be set on rubber anti-vibration brackets.

aspect of the noise that might be expected to startle the horse. Further, the note[73] provided in response to the Inspector's questions shows that the noise levels from the conveyor will be modest.

105. Finally, in relation to Ms Hatch's concerns about a horse approaching a noise without knowing where it might come from, that is precisely the situation that already exists when a horse travels southward down the bridleway and approaches the traffic noise on the Wolverley Rd (before the traffic itself is visible).

106. The fact is that the bridleway currently "starts on a busy road and ends on a busy road"[74].

107. Indeed, one of the benefits offered by the restoration scheme is that new bridleway sections will enable a circular /figure of 8 riding route within the site which enables riding on busy roads to be avoided if desired. While part of the proposed new route will be near the Wolverhampton Road (albeit off road and within the site), there is an alternative parallel, permissive route further within the site some distance from the Wolverhampton Road. That proposed route forms part of the public access network which is secured in perpetuity under the Unilateral Undertaking.

108. It is notable that the British Horse Society have not submitted an objection to the proposal. In its letter dated 20 May 2024[75], it referred to its previous 'neutral response'. And the May 2024 letter itself is not an objection; it merely raises some questions which have been satisfactorily addressed or will be addressed by details to be approved under conditions. For example, there are conditions controlling the HGVs and the access (which is plainly separate from the bridleway and directly from the Wolverley Road); there is a proposed condition dealing with the design of the site access crossing point; and there are conditions controlling the alignment, width and surfacing materials of the proposed public rights of way.

[73] rID37
[74] Mr Toland in oral evidence.
[75] rPOE3.06, p.33-35

109. In conclusion on this issue, the existing public rights of way will be protected and maintained and the proposed significant additions to the PROW network (whether by public access routes made available in perpetuity under the planning system or by formal dedication as PROW) will be a benefit of the proposal (and are able to be secured in perpetuity by the Unilateral Undertaking[76] as part of the restoration scheme). The proposal is in compliance with MLP30 and there is no reason to depart from the previous Inspector's conclusions, set out at DL132 to 137.

110. As to the r6 party's response[77] to the Appellant's note[78] on securing the duration of public access routes, it contains a number of misconceptions and misunderstandings. As explained by the Council in relation to the draft conditions, the conditions only seek to secure that the proposed public access routes are made available unless and until they are adopted as PROW. The conditions do not themselves seek to require dedication as PROW.

111. As to the mechanism for making the proposed public access routes available in perpetuity, this is specifically permitted by s.106(2)(b): "A planning obligation may impose any requirement … indefinitely". Further, the case relied on by the r6 party (*DB Symmetry Ltd v. Swindon BC* [2022] UKSC 33[79]) itself specifically makes clear that (subject to the requirements of regulation 122 of the 2010 regulations[80]) a planning obligation *can* lawfully be used to require the dedication of access routes for public use in perpetuity (see paras 62 to 63 of rID234).

112. In this case the proposed public access routes are an important part of the restoration scheme, providing public access to the proposed pocket parks (both elements of restoration specifically encouraged by development plan policy). The

[76] See the Unilateral Undertaking rID227.03 and the note at rID228.01
[77] rID233
[78] rID228.01
[79] rID234
[80] Referenced at para 5 of rID228

unilateral undertaking[81] ensures that they can be secured as part of that scheme in perpetuity without necessarily needing to be formally dedicated as PROW. Further, as is usual with s.106 obligations, both the operator and the landowner are signatories, meaning that the obligation binds the land irrespective of change in ownership.

113. The r6 party's closing appears to be blind to the fact that the landowner is a signatory to the UU and to the fact that there are obligations requiring the provision and maintenance of the proposed public access routes (Sch1, para 2(ii) and (v)) and as to a requirement to keep them available for public use in perpetuity (Sch1, para 2(vii)). Accordingly, the r6 party submissions on this are based on an incorrect premise and are fundamentally misconceived.

(5) The effects of the proposed development on heritage assets.

114. This is not, and never has been, one of the Council's reasons for refusal. Mr Whitehouse confirmed on behalf of the Council that the proposal will cause no conflict with development plan policies WCS9 of the Waste Core Strategy, MLP32(b) of the Minerals Local Plan or SP21 and DM23 of the Wyre Forest District Local Plan. This is because the public benefits of the proposal are considered to clearly outweigh the less than substantial harm to the significance of the designated heritage asset of North Lodges and Gateway to Lea Castle (that being the only harm to designated assets that is considered to arise from the proposal).

115. Mr Whitehouse also agreed that that opportunities for enhancement have been taken up by the proposed restoration of the parkland setting to the Lodges and Gateway, in compliance with limb (c) of policy WCS9[82].

[81] rID227.03. NB, this signed version followed earlier drafts which were considered by the Council and commented upon. Mr Aldridge confirmed in the round table session on 25 November 2024 that the Council had no outstanding comments on the draft that had not been satisfactorily addressed.
[82] CD11.04, p.65

116. Mr Partridge's proof on heritage was hyperbolic and not credible, using terms like 'substantial harm', 'devastating' and 'obscene' in relation to heritage impact.[83] However, on cross-examination he acknowledged that he is not a heritage expert and he backed down on those extreme allegations, accepting that the only impact in NPPF terms would be 'less than substantial harm' to the significance of North Lodges and Gateway.

117. Mr Partridge placed emphasis on the North Lodges and Gateway being a 'local landmark'. Mr Sutton agreed with this point, but it is of course a feature of the asset which is appreciated from Cookley and will be entirely unaffected by the proposed development.

118. Mr Sutton (the Appellant's expert heritage witness) considered that the heritage significance of North Lodges and Gateway is derived from the architectural value embodied in its physical form and fabric, as well as its historical value to the development of the estate and parkland landscape. The appeal scheme will obviously have no impact on the physical fabric of the buildings and will only result in a change to the character of the wider associated former parkland landscape. This will have little impact on heritage significance because very little original character of the former parkland survives, with this element of significance of the setting of the buildings being very limited (when compared to the other elements of significance). The temporary nature of the extraction work further minimises the scale of impact on this element of the building's significance. Overall, the conclusion of the only heritage expert in the Inquiry is that the appeal scheme would result in a very limited impact at the very lowest end of 'less than substantial harm'.

119. Further, Mr Sutton considered that due consideration and weight[84] should be given to the heritage benefits that would be delivered in the restoration of the landscape following completion of the extraction work, particularly the return of lost

[83] rPOE3.01, para 7.15, p.25, para 13.9 p.37

[84] This is reinforced by the statutory duty under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have 'special regard to the desirability of preserving listed buildings and their settings.

and poor surviving elements of former parkland features including Broom Covert and the treed avenue. For this reason, it was his view that these long-term public heritage benefits easily outweigh the short term/ temporary adverse effect so the extraction work.

120. As to other heritage impacts, very limited harm would be caused to other proximate non-designated heritage assets[85] associated with the former parkland, including temporary harm to the boundary wall in the location of the access (which is proposed to be rebuilt in its former position and appearance, using the same materials, as part of the restoration scheme). Again, it is Mr Sutton's view that these minor impacts are easily outweighed by the heritage benefits of the restoration scheme that would come from the restoration of lost parkland features and enhanced historic landscape character.

(6) The effects of the proposed development on highway safety, particularly for vulnerable road users

121. The issue of highways impact was originally a reason for refusal imposed by Council members without the support of the highways' authority. It was not based on evidence and was subsequently withdrawn[86].

122. As already set out, Mr Whitehouse accepted that the highest predicted increase in traffic from the operational phase would be 1.8% on the short section of Wolverley Road to the east of the access road and this "falls well below the 5% threshold considered to represent a material increase in traffic[87]." Indeed, the OR makes clear that "this insignificant impact is highlighted by the fact that the development traffic represents less than 8% of the observed day to day variations currently experienced on the routes[88]" (as also accepted by Mr Whitehouse in cross-examination).

[85] Mr Sutton's evidence at rPOE2.04, p.17 to 19
[86] rID2, para 10, fifth bullet, p.32
[87] CD10.1, para 457, p.101.
[88] CD10.1, para 457, p.101.

123. Mr Hurlstone's updated evidence[89] includes updated traffic data (June 2024) and updated collision data, both of which reinforce his professional opinion that the highway impact of the proposed development would be acceptable[90]. He has also reviewed the highway related points raised by the r.6 party and sets out his responses concluding that the impact of the quarry is acceptable and should not be refused on highway grounds[91].

124. Mr Webber, a local resident, sought to make much of the safety risks associated with material on the road (mud or sand) and gave the example of a site in Hagley Road. However, when questioned about that site, he had to accept that he had not reported the matter to the Police or to the highways authority. This was notwithstanding that he said he knew that the deposit of material on the road is a criminal offence (s.148 Highways Act 1980) and that he apparently knew that the highways authority has power to require its removal and/or to do the removal itself and recover costs from the offender (s.149 Highways Act 1980). In circumstances where the highways authority has these powers and does not object to the planning application and where there are adequate mitigation measures imposed by condition[92] this is a non-issue.

125. In terms of any effect on pedestrians, due to the routeing of HGVs to / from the east, the potential impact is limited to that corridor, where there is a single footway on the north side of the carriageway. Mr Webber made an assertion[93] that the footway is particularly sensitive because it is part of a route promoted as a 'safer routes to school walking route.' However, he did not produce any documents or other information to support this assertion. In fact, he is contradicted by the later written representation from Catherine Cape[94] which indicates that, far from being promoted as a safe route to school for use by school children, pedestrian use of that

[89] rPOE2.05
[90] rPOE2.05, para 4.4, p.9
[91] rPOE2.05, para 3.36, p.24
[92] Condition 19, rID9
[93] rID58, p.6
[94] rID134

route to school is currently discouraged and a bus service is provided as an alternative.

126. Mr Hurlstone provided a written response (rID204) to Mr Webber's new points, including in relation to the survey data showing an increase in motorcycle activity during the summer months. He makes the point that this increase has not led to any increase in collisions with HGVs on the local road network and sets out the evidential basis for his conclusion that it is clear that the local road network is of a sufficient design standard to safely accommodated HGV movements with other users of all types on the road network.

127. As to pedestrians, whilst the proposed site access will create a pedestrian crossing point, Mr Hurlstone points out[95] that the collision data demonstrates that where pedestrian activity would be expected to be significantly higher than in the vicinity of the proposed access (i.e. within or close to residential and employment areas, such as on Sion Hill, at junctions which accommodate significantly higher traffic movements than would occur at the proposed access) there is no evidence to suggest pedestrians are incapable of safely crossing the comparatively busier junctions with higher traffic flows. It is also apparent that despite this apparently being a significant concern of the objector, no pedestrian survey data has been presented to substantiate the concerns raised, despite the original application being lodged several years ago. This is likely to be because the pedestrian flows in the vicinity are low, based on the lack of activity observed during several site visits. And this point is corroborated by rID134 (referenced above).

128. As to the effect of the site access (and its crossing) by vulnerable road users, a Road Safety Audit was provided at the request of the highways authority and the highways authority is content that any remaining concerns can be adequately dealt with at detailed design stage[96].

[95] At rID204
[96] CD4.34, p.6 – 7 and see Condition 22, rID9.

129. As to the effect on horse riders, the proposed bridleway within the site allows for a circular / figure of 8 route off road. This is a betterment on the current situation, where the bridleway starts and ends on a busy road. Horse riders crossing the site access will similarly be protected by the measures which the highways authority consider can satisfactorily be put in place at detailed design stage following the Road Safety Audit.

130. In conclusion, this issue has been considered in depth by the highways' authority, by the Appellant's technical information, including Road Safety Audit, by the Appellant's highways expert and by the previous Inspector[97], all of whom have concluded that the impact is acceptable. No technical or expert information has been provided to suggest anything to the contrary.

131. Finally, as to the r.6 party's points in closing on transport sustainability issues from the Sustainability Assessment (SA) (closing paras 145 to 150), as stated further below it is inappropriate for these to be made in closing when they were not put in cross-examination.

(7) The effects of the proposed development on biodiversity

132. The agreed position for this inquiry is that the proposal will result in a 74.16% BNG and a 300.93% net gain in hedgerow units[98]. These gains greatly exceed the applicable policy requirement (which is merely that there should be positive net gains of no specified degree – para 180(d), NPPF 2023 and MLP31). They also greatly exceed the legal minimum of 10% net gain that is now required for current planning applications by the Environment Act 2021, even though that requirement does not apply to this planning application. In light of this, it was agreed with the County Council's BNG Officer that the very significant biodiversity net gains that will be achieved by the proposed development should attract significant positive weight in the planning balance[99].

[97] DL149 to 150
[98] rID5, paras 5.2.18 to 5.2.19
[99] rID5, paras 6.1.4 to 6.1.5

133. Mr Whitehouse sought to take a different position, and, to his discredit, this was on the basis of no evidence or reasoning whatsoever.

134. Mr Whitehouse accepted the following:

- That the BNG levels set out above can be adequately achieved and secured[100]

- That the BNG uplift is double that considered by the previous Inspector, with the hedgerow units being 3 times that considered by the previous Inspector;

- That the BNG uplift is very significantly higher than what would be required of other schemes by the Environment Act 2021 (which does not apply here);

- That the BNG proposed is of the type specifically identified in the MLP as being desirable and beneficial in the North-West Worcestershire Strategic Corridor (see text to MLP11 at CD11.03, p.106 to 110);

- That all the relevant ecology expert witness consultees gave the proposal careful consideration and were supportive of the proposals, with the Council's own ecology expert considering that the BNG should attract significant positive weight.

135. Notwithstanding all this, Mr Whitehouse's position was that BNG should only be accorded moderate weight in the planning balance. In taking this view he departed from the view of the Council's own BNG Officer (who clearly has confidence in the integrity and significance of the BNG proposals) and he inexplicably preferred the view of the previous Inspector in circumstances (i) where it was the previous Inspector's view on this specific point which led to the quashing of the appeal decision (due to the Inspector reducing the weight to be accorded to

[100] Mr Whitehouse in cross-examinat and at rPOE1.02 para 5.9, p.52

BNG as a consequence of his error as to the legal position); and (ii) where the agreed BNG is now more than double that considered by the previous Inspector.

136. Mr Whitehouse's position was untenable and he could give no credible explanation for it. He tentatively sought to suggest that the weight should be reduced due to the size of the site but then sensibly realised that the percentage gain was obviously relative to the size of the site anyway. He then sought to suggest that there is no available way of benchmarking or assessing the relative weight but then had to accept that the proposed BNG here is more than seven times that required by legislation, even though the legislative requirement does not even apply here.

137. In conclusion on this, there is simply no evidence or justification for reducing the significant positive weight that should be accorded to the very significant biodiversity net gains that the Council accepts will be achieved and secured by this proposal.

(8) The effects of the proposed development on employment and the economy

138. Mr Whitehouse accords moderate weight to the direct and indirect economic benefits of the creation of the 11 full time equivalent jobs[101]. Mr Lord made the point that some jobs would be specialist and non-local but accepted that jobs like security and haulage could be filled from the local area. As to the alleged lack of courses offered by local colleges or training providers (r.6 closing para 162), this is wrongly attributed to Mr Toland in fn111. Similarly, the Inspector is asked to check his notes of Mr Toland's evidence as regards the points made in the r.6 closing at paras 160 and 163. The Appellant's recollection is that the points made about 'basic supplies and services' were not made in evidence.

139. Mr Whitehouse would not accord any weight to the wider economic benefits from the aggregates levy and non-domestic rates on the basis that he did not know how to assess their quantum. However, he was unable to dispute the fact that the

[101] rPOE1.02, para 5.8, p.51-52

quarry will be a hereditament liable to business rates and that an aggregates levy of over £2 per tonne would be charged on exported material.

140. Whilst Mr Lord sought to calculate the quantum of direct benefit from the creation of jobs (his para 7.3), this did not take into account the wider economic benefits. He accepted he was unable to offer any basis for disputing Mr Toland's evidence[102] (from similar quarries operated by the Appellant) estimating likely annual costs of £6M to £7M going into the economy from aggregates levy, business rates, direct labour, equipment hire / haulage costs, maintenance, security, plant/ transport repairs and running costs, sales and administration costs and restoration costs. And he was unable to dispute the Appellant's evidence of quarry set up costs[103], again all money going into the economy.

141. Mr Lord also accepted that he was in no position to dispute the following from the 'Profile of the UK Mineral Products Industry' (CD12.01, pdf 5):

- Industry directly employed 81,000 people and supported 3.5 million jobs through its supply chain (para 2.3)
- Each worker produced over £71,000 in gross value added in 2018, equivalent to 1.2 times national average (para 2.3)
- Minerals products industry directly contributed over £5.8bn to UK economy in 2018 (fig 2.2a)
- Industry had a turnover of £16.3bn in 2018 (fig 2.2a)
- And enabled a further £596.7bn turnover in industries downstream of the supply chain (fig 2.2a)

142. It is therefore clear from the undisputed evidence before the inquiry that there is strength and depth in the economic benefits derived from the industry generally and this quarry proposal in particular. The exhortation in para 217 of the NPPF to

[102] rPOE2.12, para 10.4.8, pdf 63
[103] £5M to £7M, rPOE2.12, para 10.4.7, pdf 62

give ‘great weight’ to economic benefits of mineral extraction relates to contributions to the economy generally, not to the local economy. And in all the circumstances, Mr Toland’s judgement that the economic benefits are of significant weight is to be preferred.

143. As to allegations of negative economic impacts, these were entirely unsubstantiated. Mr Lord had no evidence to substantiate his assertion that the “local economy relies on sectors such as tourism and leisure.” He had no evidence that this local area is particularly sensitive or has any more concentration of leisure, visitor attractions or tourism than anywhere else. The site is not in an AONB or National Park for example, both of which are areas that are more sensitive and likely to be more dependent on tourism. And, as noted by the previous Inspector (DL170), many mineral extraction operations *do* occur in those types of areas where their economies are particularly reliant on tourism.

144. Whilst there were generalised fears expressed about impacts on local businesses including the private school, there was no empirical evidence to demonstrate any negative impact and no evidence of a drop in pupil numbers, even though there was much exclamation (although no evidence) as to how the fear of this quarry was already deterring custom at local businesses. It was also telling that, despite the huge number of representations from local residents, there were in fact very, very few objections from local businesses.

145. Mr Lord made much of the proposition that people act on their fears and do not always act rationally. He relied on the argument that there could be a negative effect on businesses from people’s perception of harms, even if those perceptions were wrong. His point was that we cannot see inside people’s heads. That may be right but if there were any resulting material adverse economic impact, that effect *would* be measurable and demonstrable. He accepted that quarry development is not a new or unusual type of industry. Quarries have been operating for many centuries, if not millenia. If there were negative economic effects from quarries on local business, one would expect that some evidence would have been collated and produced by

now, by someone, somewhere. However, Mr Lord had searched for this and admitted he could find nothing.

(9) The need for sand and gravel, having regard to likely future demand for, and supply of, these minerals, along with the availability of inert material for restoration

Minerals Demand and Supply

146. The policy in MLP 4 and NPPF para 219(f) both require a landbank of sand and gravel to be maintained of at least 7 years

147. Mr Whitehouse accepts that "it is reasonable to make the assessment of the Council's landbank as it applied at the 31 Dec 2023, in accordance with the approach taken in the Local Aggregates Assessment"[104]

148. As at 31 Dec 2023, and on the basis of the reduced LAA apportionment figure[105] Mr Whitehouse confirmed that the agreed landbank is 6.59 years[106], so below the required 7 years.

149. This is slightly higher than at the previous inquiry, but Mr Whitehouse accepted that the reason is due to the fact that the LAA requirement apportionment figure has been reduced to 10 year average sales +20% (where previously it was +50%). He agreed the landbank would obviously be lower if the previous LAA apportionment figure of 10 year average sales + 50% (0.834mtpa[107]) were used. And he agreed it would be even lower if the nationally derived annual apportionment figure of 0.871mtpa were used (CD11.08, pdf p.32 – summary box).

150. The justification for changing the approach to annual apportionment is at paras 1.6 to 1.7 of the LAA (CD11.08, pdf,2). However, as explained in Mr Toland's evidence[108], contrary to what is asserted in the LAA, this new requirement does not

[104] Cross-examination and rPOE1.02, para 4.114, p.45
[105] Of 10 year average sales +20% = 0.667mtpa – CD11.08 para 1.8, p.2
[106] rID8, para 2.10, p.7
[107] rPOE2.12 para 6.2.5, p.31
[108] rPOE2.12, para 6.2.8ff

allow for any flexibility in development demand. When the main COVID year, 2020, is excluded (as Mr Whitehouse accepted is reasonable), the average sales figure for the last three years is 0.674mtpa[109]. That average figure (0.674mtpa) is in fact higher than the adopted (+20%) apportionment figure (0.667mtpa).

151. Also, the last two years recorded sales figures (0.705mt and 0.668mt[110]) both exceed the LAA apportionment figure of 0.667mtpa. That is another indicator that the adopted apportionment figure is too low and does not allow for flexibility in demand

152. Another important factor is the housing Standard Housing Methodology which is listed in the Worcestershire LAA[111] as a demand indicator. The proposed revised Standard Methodology indicates a very significant increase in housing targets. The annual housing target for the West Midlands is set to increase from 24,734 to 31,754[112]. Whilst this increase is not yet adopted and subject to consultation, the WMS (which is not subject to consultation) indicates the Government's clear direction of travel in this regard[113].

153. All of this indicates that the LAA apportionment figure is too low and is likely to need to be raised.

154. In any event, as Mr Whitehouse accepted, on the basis of any of the apportionment figures, there is less than a 7 year landbank and so there is a shortfall in supply so clear policy support for the appeal proposal from development plan Policy MLP 3. Further, as already mentioned and as Mr Whitehouse accepts, there is an urgent need: PPG (084 Reference ID: 27-084-20140306) is clear that "where a landbank is below the minimum level this may be seen as a strong indicator of urgent need".

[109] 0.648mt plus 0.705mt plus 0.668mt, all divided by 3 – see CD11.08, para 4.8 table 2, p.17
[110] CD11.08, para 4.8 table 2, p.17
[111] CD11.08 p.75
[112] CD12.43
[113] CD12.35 and see rPOE2.12 paras 6.2.11 to 6.2.12

155. Mr Whitehouse accepts that the appeal proposal would increase the landbank by 4.5years (CW para 4.120, p.46). As such, he agrees that 'great weight' is required to be accorded to the benefits of mineral extraction, including to the economy, under NPPF para 217 (CW para 4.121, p.47).

156. Mr Whitehouse agrees the scheme would accord with policies MLP 3, MLP 14, and MLP 15, and together with 'great weight' from NPPF – this is of 'significant beneficial weight" in support of the proposal (CW proof para 4.121, p.47). However, this represents a reduction from his 'substantial weight' (at the last inquiry) to 'significant weight'. This reduction in weight is not justified in circumstances where the appeal proposal would meet the PPG 'urgent need' by bringing the landbank from below to above 7 years, and where the NPPF advises 'great weight'.

157. Further, whilst Mr Whitehouse relies on the perceived improved position of the landbank as a factor reducing weight, that is no good justification in circumstances where the landbank has been calculated against a reduced LAA annual apportionment figure which does not allow for sufficient flexibility in demand (as set out above), and which does not allow for the likely uplift in housing standard methodology targets (another indicator of demand) as set out.

158. As Mr Toland said in response to cross-examination, the current situation is such that as sites in the planning system come on stream, the timescales are such that they are eaten up by continuing need with no improvement of the overall position. Without granting permission for sites like this, the Council will be "constantly treading water" and the situation of 'urgent need' is not going to improve.

159. Whilst Mr Toland did not rely specifically on the mineral at the site having any special qualities, he did emphasise that it is the only site in north Worcestershire that contains both sand and gravel and solid sand with the nearest other site containing sand and gravel being Clifton Quarry, which is 30 miles south. And it is agreed in the Statement of Common Ground that the appeal site would contribute to a balanced geographical spread of mineral resources[114].

[114] rID8, para 2.16, p.10

160. Finally, the r.6 party's reliance on the previous Inspector's identification of sites that could contribute additional supply (r.6 closing para 173), flatly ignores the factual position set out in relation to the Wilden site in the Statement of Common Ground, namely that that permission does not authorise any further mineral extraction or importation of waste from the date of the permission and so does not increase the level of permitted reserves or the landbank[115].

161. In all the circumstances, Mr Toland is right to accord substantial weight to the urgent need for sand and gravel and the contribution that the proposal will make to supply.

Availability of Inert Fill

162. The position agreed between the Appellant and the Council is set out in the updated and revised Statement of Common Ground dated 7 October 2024[116].

163. Notably, the EA Waste Data Interrogator for 2023 published on 24 September 2024 shows total (void space) capacity of just 786,000m3 in Worcestershire, a very significant drop from the 2022 recorded total capacity of 1,413,616m3.

164. The Waste Core Strategy anticipated a void space of 1,939,775m3 in 2023. Given the capacity is just 786,000m3, this means that there is significantly less inert landfill capacity remaining at this stage in the WCS plan period than was projected, and this would continue to decline without Chadwich Lane Quarry, Sandy Lane Quarry and Pinches (4) Quarry being granted Environmental Permits, or other pending undetermined mineral planning applications with restoration with imported inert waste being granted permission.

165. All this demonstrates that there is likely to be more than enough inert waste to fill the site at the modest rate of 60,000m3 per annum, and Mr Toland made clear

[115] rID8, para 2.7, first bullet, p.4 - 5
[116] rID8, p.11 to 15

that there is an economic incentive on the operator to ensure that this happens on time (due to the money that is made from accepting inert fill).

166. There are currently only 2 EA permitted landfill sites accepting inert waste in Worcestershire and there is only one such site in the West Midlands Metropolitan Districts, Meriden Quarry.

167. The total inert waste received at Meriden Quarry in 2021 was 783,452 tonnes, 2022 was 727,882 tonnes, 2023 was 688,442 tonnes and for Q1 of 2024 a total of 202,848 tones. Meriden quarry is operated by the Appellants and therefore, if required, 60,000m3 per annum could be redirected from the source sites to Lea Castle Farm rather than to Meriden.

168. Mr Whitehouse expressly accepts in his proof that, given that the total inert waste received by Meriden Quarry in 2023 was 688,442 tonnes, there is clearly fill available from there to address any shortfall in available fill from elsewhere. (CW 4.128, p.48). Indeed, the Council agrees that a new site at Lea Castle would be an environmentally better solution to managing inert fill from the south and west of Birmingham than the sites at Meriden and Saredon (para 3.16, rID8).

169. Mr Houle sought to assert that the potential for inert fill to be diverted from Meriden would fatally undermine the Appellant's Transport Statement. However, this was premised on a number of fundamental misunderstandings:

170. First, Mr Houle appeared to assume that the inert fill would be transported from the Meriden Quarry itself, when of course it would be diverted direct from its source without pointlessly going to Meriden first. Waste currently going to Meriden is sourced from a wide geographic area using a variety of routes.

171. Second, Mr Houle had misread the Transport Statement[117]. He had wrongly assumed that "the traffic movement calculations assumed 154 HGV movements per

[117] CD1.09

day relate to the same vehicles that distribute sand returning to the site carrying inert fill." This is wrong. The Transport Statement explains at paragraph 5.11 that the export of minerals results in an average 55 loads / 110 movements per day. Paragraph 5.12 explains that the import of inert material results in an average of 22 loads / 44 movements per day. Therefore, the total traffic movements associated with these two activities (i.e the 154 movements relied on by Mr Houle) are entirely independent of each other and do not assume any back-hauling between exports and imports[118].

172. When the potential back-hauling is factored in, there are still 75% of the 55 loads / 110 movements (i.e 42 loads / 84 movements) associated with the sand and gravel exports that would remain independent of the inert import trips (para 5.16). This means there is built in flexibility and any shift in some of the sources of inert fill would not undermine the 60/40 north south split assumed in para 5.18.

173. Further, Mr Houle admitted that he had not even read the Appellant's evidence[119] on inert fill for this inquiry. He was entirely unaware of the permitted major construction projects across the West Midlands put forward by Mr Toland as generators of sources of inert fill[120]:

a. West Midlands Interchange
b. M54 and M6 link road
c. Willington C Gas Pipeline
d. M5 Junction 10 Improvement Scheme (currently at Examination)

174. Also, he had ignored the anticipated increase in housing construction that Mr Toland considered would be a generator of inert waste needing fill capacity. The revised Standard Methodology will result in an increased housing requirement across the Worcestershire authorities, including Wyre Forest District itself whose annual housing target is set to almost triple (see CD12.43) (and in relation to this the r.6 party's point about Wychavon and Malvern Hills (closing para 206) is an obvious

[118] CD1.09 , p.13 to 14.
[119] rPOE2.12, pdf pages 42 to 46
[120] rPOE2.12, para 7.6.3, pdf 45

red herring, particularly when the closing fails to acknowledge the position in the actual district in which the site is located!) . The site provides a sustainable destination for waste and is strategically located close to Wyre Forest's largest settlement (Kidderminster) which is likely to accommodate the largest amount of growth within the authority area.

175. As to the r.6 party's points in closing about the projects listed above (r.6 closing para 183), the Inspector is asked to check his notes of Mr Toland's responses in cross-examination and re-examination. In particular, in relation to (a), material would not need to travel past Telford, which is 20 miles directly west of the Interchange; in relation to (b), there are no closer disposal sites to the link road; and in relation to (c), the pipeline starts in Staffordshire, and therefore is not solely located in Derbyshire.

176. As to the r.6 party's reliance on aggregates being bulky in nature (closing para 188), this is completely irrelevant to the transportation of inert fill which is an entirely different material. No comparison between the nature of transportation of aggregates and inert fill was put to Mr Toland in cross-examination.

177. As to the r.6 party's assertion as to what is required by Policy ML26 (closing para 182), their reliance on the supporting text is misconceived. It is well established that the supporting /explanatory text to a policy does not form part of the policy and cannot introduce additional development plan policy requirements (see ***R. (Cherkley Campaign Ltd v. Mole Valley DC*** [2014] EWCA Civ 567, at para 16, attached).

178. Put simply, there is a decreasing void capacity, below that predicted by the Waste Core Strategy; there is an increase in construction projects likely to generate inert material; and there are abundant sources of inert waste that are readily available to the Appellant to divert to the site from other quarries as necessary. In light of all this, the Inspector is invited to adopt Mr Whitehouse's conclusion:

> "I conclude that there is sufficient evidence before the inquiry to determine that the Appellant would have sufficient supply of inert waste across the

development period to meet restoration objectives and as such fulfil the requirements of a planning permission in this regard." (rPOE1.02, 4.130, p.49)

(10) Planning policy matters and the planning balance.

179. Mr Partridge had not even sought to carry out a planning balance and any conclusions he offered would be undermined anyway by his many concessions in cross-examination (referenced in the relevant sections above), including that he had been in error to consider the harm to heritage assets as 'substantial' and by his concession that he could not properly describe any harm to amenity as 'unacceptable' within the policy tests.

180. Mr Partridge's reliance on his perception of the site ranking 17th out of 29 in the Sustainability Appraisal (SA) also undermined his credibility. He accepted, (as he had to) that the 17th place in the table (which is a table of 30, not 29) in the SA had nothing to do with any ranking on merit as the search areas were not listed in order of preference[121]. He also accepted, as he had to, that the SA is necessarily high level and does not provide a site level appraisal and is desk-based.[122] He misleadingly sought to suggest in oral evidence in chief that the relevant Area of Search (listed as SSSG17 in table 6.4[123]) was 'slightly larger than the appeal site'. In cross-examination, he had to accept that this was totally wrong as site search area SSSG17 is shown on the map[124] as covering an area many times larger than the appeal site. In any event, any perceived 'ranking' would be of no relevance as Mr Partridge accepted that, as a matter of law there is no duty to consider alternative sites.

181. Even if the appeal scheme is determined to be inappropriate development in the Green Belt requiring very special circumstances, there is no duty to consider

[121] CD12.47, para 2.20, p.22 (although he sought incredulously to maintain that the 17th place was based on his own personal scoring system, of which he provided absolutely no evidence)
[122] CD12.47, p.34, paras 3.80 to 3.82
[123][123] CD12.47, p.67 - 68
[124] CD12.48, p.2

alternatives (see *R (Peak District and South Yorkshire CPRE) v. SST* [2023] EWHC 2917 (Admin), particularly at paras 37 and 57)[125].

182. Given how Mr Partridge's flawed reliance on the SA was exposed during cross-examination of him, it is not surprising that no points from the SA were relied on in Ms Davies' cross-examination of Mr Toland. However, given that such points were not put, it is entirely inappropriate for such points from the SA to be relied on in closing (see paras 147 to 150, and 154 of the r 6 party closing). In any event, such points are clearly of no relevance to this site in any event given the very large area beyond the site which is referenced in the SA (see above).

183. Mr Whitehouse's planning balance was based on the proposal being concluded to be inappropriate development in the Green Belt. The only other harm he relied on was heritage harm and he accepted that it was outweighed by public benefits such that there was no policy conflict. He accepted, as he had to, that if the Inspector concludes that the proposal is not inappropriate development in the Green Belt then the appeal should be allowed.

184. This must be right. If it is concluded that the proposal is not inappropriate development in the Green Belt, then the appeal must be allowed in accordance with s.38(6). In other words, the proposal would have support from the many development plan policies (including, the 'in principle policies' such as, importantly, MLP1, MLP3, MLP14 and all the development plan Green Belt policies, MLP 27 and Policy DM22(g) and WSC 13 – see above) and there could be no reasonable basis on which it could be found to be contrary to the development plan as a whole, particularly as no other policy conflicts are alleged by the Council and the rule 6 party has accepted that none of the impacts on amenity are sufficient to amount to a conflict with development plan policy. Whilst the r 6 party focusses on the Wyre Forest Local Plan (closing paras 196 to 199), those policies are largely more generalised versions of the more mineral focussed policies (which are more directed

[125] See also the Statement of Common Ground on alternatives at rID2, paras 8.24 to 8.25, p.29 to 30

at this specific proposal) in the Minerals Local Plan (and with which the proposal complies – see under the relevant main issues above). Further, it is to be noted that a number of the points summarised by the r 6 party in closing in relation to those policies were not put to Mr Toland. Finally, the accordance with the NPPF policy on Green Belt and Minerals would strongly indicate that that important 'other material consideration' (national policy) also points towards a grant of permission.

185. Further, even if it is concluded (contrary to the detailed case of the Appellant) that the proposal is inappropriate development in the Green Belt, it is submitted that the appeal should nevertheless be allowed. In other words, even if this Inspector agrees with the previous Inspector's findings on everything, including Green Belt (save for the point on biodiversity net gain which was quashed by the Court) this appeal falls to be allowed. This is because, properly considered in the correct legal context, the very significant Biodiversity Net Gain is sufficient to tilt the (very finely balanced[126]) scales in favour of the proposal.

186. In this regard the Council's closing (at para 3) is obviously wrong to suggest that "refusal is inevitable for development which is decreed to be "inappropriate". If that were the case, then there would be no provision for VSC in policy. And the practical ability of a proposal like this to meet the VSC test is clearly shown by the previous Inspector in this case describing the decision as to whether to grant planning permission for what he considered to be "inappropriate" development as 'very finely balanced' (and that was even in circumstances where he reduced the weight accorded to the benefit of BNG on an erroneous basis).

187. Further, looking at the evidence entirely afresh, the benefits of the proposal are clearly sufficient to justify this development in the Green Belt, even if it is considered to be 'inappropriate'. For the detailed reasons set out above under the other main issues, there is a high degree of accordance with the development plan

[126] DL200

and the NPPF and there are very significant benefits of the proposal (to which high degrees of positive weight can be accorded) meaning that even if found to be inappropriate development in the Green Belt, the harm by reason of inappropriateness (which is to be accorded substantial weight) and the very limited degree of any other harm is clearly outweighed, such that very special circumstances are shown to be demonstrated.

188. Finally, before concluding, I turn to some remaining miscellaneous other matters.

Consideration of the Revised Scheme

189. The Inspector is invited to impose the conditions referable to the revised scheme given that it has been demonstrated that the noise limits and dust mitigation can be achieved with lower and fewer bunds for shorter durations (as set out in CD15.01 and in rID16, with the changes also set out in tables in the Statement of Common Ground at rID2). This is the lawful and appropriate way forward for the reasons set out by the Appellant at the opening Round Table session and in writing in rID12. It is to be noted that the Council has no objection to this approach.

190. Whilst the r.6 party has repeated its points in relation to this issue in its closing, the Appellant relies on its written note together with what was said at the round table and does not repeat every point here. In brief, plainly the proposed changes are beneficial (and no-one can sensibly suggest otherwise), they do not require any change to the description of the development, they are plainly not fundamental – the extraction phases (and depth of extraction) is unchanged, the restoration phases are unchanged and the final concept restoration plan is the same. Extensive public consultation was undertaken both directly by the Appellant and by the Council (as set out in rID13). It cannot realistically be contended that there has been any material prejudice or unfairness caused to anyone by the proposed changes.

191. The two main parties also agree that, in relation to the ES Addendum and associated plans, there has been substantive compliance with regulation 25(3) of the EIA Regulations and that there are no outstanding requirements under those Regulations[127].

192. Some complaint is made by the r6 Party as to why the documents could not be hosted in the Council's Offices[128]. The reason for this is that Mr Aldridge had advised that the documents could not be made available at County Hall due to RAAC in the roof and legionella being discovered in the water system, meaning that all parties were working from home. In any event, all documents were available to view online, and the consultation ran for a full 30 days. A total of 118 people attended the two in person consultation events and there were over 100 visitors to the Aldermill consultation website. All documents were also available on the Council's website.

193. In their note on EIA compliance, submitted very late in the inquiry, the r6 party state that they are aware of people in the locality who have difficulty accessing material online[129]. However, at no point had this been previously reported to the Appellant, the Council or PINS. And it was abundantly clear during the Inquiry that everyone who wanted to, was able to participate, that every effort was made to ensure that everyone was able to access the material and have their say, with very many people speaking at the Inquiry and very many late written representations being admitted. Indeed, many of those who made representations to the previous inquiry were clearly aware of the changes which have been discussed in this inquiry, not least because many of the same people made representations to this inquiry.

194. In conclusion, it is clear that the two main parties are correct that there has been substantive compliance with the EIA Regs. Everyone has been afforded every

[127] rID71, paras 6 and 12.
[128] rID232, para 6.
[129][129] eID232, para 8.

opportunity to participate in the appeal and no procedural unfairness has been caused by the proposed beneficial changes to the scheme.

No need for a financial bond to secure the restoration.

195. The Council has never sought any financial bond to secure the restoration. The r.6 party witnesses accepted in cross-examination that:

- This is not a 'very long-term new project where progressive reclamation is not practicable'
- This does not involve a 'novel approach or technique'
- There is no 'reliable evidence of the likelihood of either financial or technical failure'.

196. Accordingly, (contrary to the impression given in their closing) the r.6 party witnesses accepted that a financial guarantee is not justified under the criteria in the PPG (at p.26 of CD12.19). This would be the case whether or not the operator was contributing into an established mutual funding scheme. As it happens the applicant's holding company (who is also the 'Operator' and a signatory of the Unilateral Undertaking[130]) is a member of the Minerals Products Association.[131] This means that there is an added extra (but not mandatory) layer of protection.

Hydrology and Bore Hole Testing

197. It is noted that interested third parties have raised some issues relating to hydrology[132]. However, this issue has been considered extensively by the statutory consultees who are satisfied with the proposals. Mr Harthill confirmed for the r6 party that he is satisfied with the bore hole testing required by the Environment Agency (EA). The EA confirmed[133] it is satisfied with the testing required to be

[130] rID227.03
[131] rID79
[132] See e.g rID178 and Appellant's response at rID230
[133] See CD2.34, CD4.17, CD8.04 and CD9.21

carried out by condition prior to extraction. Natural England has no objection. The Council is also content with the position[134].

198. It is important to note that this appeal process is required to assume that the permitting regime will operate effectively:

> "The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities." (NPPF, CD11.07, para 194)

> **"What issues are for other regulatory regimes to address?**
>
> Since minerals extraction is an on-going use of land, the majority of the development activities related to the mineral operation will be for the mineral planning authority to address. However, separate licensing, permits or permissions relating to minerals extraction may be required. These include:
>
> - permits relating to surface water, groundwater and mining waste, which the Environment Agency is responsible for issuing; […] (PPG, CD12.19, p.9 – 10)

199. Accordingly, it must be assumed that the permitting process will deal satisfactorily with surface and ground water.

200. If there are any concerns as to the progressive restoration being held up by the need for a permit, the Appellant considers these to be unfounded, particularly given the fact that much bore hole testing that has already been carried out, meaning that there should be no delay in obtaining a permit. However, if any concerns remain,

[134] rID2, paras 8.18 to 8.20, p.29

the Appellant would be willing to accept a pre-commencement condition preventing development from commencing before a permit is in place (albeit without prejudice to its primary position that this is not necessary).

Conclusion

201. For all the reasons set out above, the Inspector is invited to allow the appeal, subject to the agreed conditions (including pre-commencement conditions) and any such amended or other conditions he considers necessary.

5 December 2024

JENNY WIGLEY KC

Landmark Chambers