

TOWN AND COUNTRY PLANNING ACT 1990**PROPOSED QUARRY AT FORMER HATFIELD AERODROME****Ref: APP/M1900/W/24/3346607**

APPELLANT'S OPENING STATEMENT

INTRODUCTION

1. The application with which this appeal is concerned is for the winning and working of a steady supply of 8 million tonnes of sand and gravel ('the Appeal Scheme') from land at the former Hatfield Aerodrome ('the Appeal Site'). The mineral would be won on a phased basis, with progressive restoration. A full description of the working scheme, access proposals and restoration proposals is provided at Appendix 1 to Mr Holliday's Proof.
2. The Appeal Scheme presents itself at propitious moment. A new Government places economic growth at the core of its policy agenda, and planning decisions are very much a focus of that vision. The Secretary of State and the Deputy Prime Minister have made strong public statements directed to the need to deliver housing at quantities and rates which have not been seen for many years¹. By the time that the decision in this appeal comes to be made,

¹ "In keeping with the scale of our ambition, we are going further and revising the existing standard method, raising the overall level of these targets from around 300,000 to approximately 370,000." – Letter from the Housing Minister, 31 July 2024
https://assets.publishing.service.gov.uk/media/66aa60d6ce1fd0da7b593123/Letter_from_the_Housing_Minister_to_stakeholders_-_Building_the_homes_we_need.pdf

we will know the extent of the increase in housing delivery in the Districts which are within easy reach of the Appeal Site. The express intentions of the Government are to see substantial increases in housing delivery, as the consultation on the Standard Method shows. By way of example, the *increase* in St Albans would be 660 dpa². Whatever the final numbers, the trajectory is clear.

3. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings and goods which the country needs³. Without mineral extraction, the social and economic benefits of new built development cannot be delivered. It is for that reason that great weight should be given to those benefits⁴. This Mineral Planning Authority accepts that there is a need for additional permitted reserves in order to provide a steady and adequate supply of aggregates⁵. In the Southeast, the largest producing region, the volume of sand and gravel sales during 2014-23 was almost three times higher than that of new permitted reserves⁶.

² SoCG on need records:

“2.3 The new Government consulted on changes to the NPPF between 30 July 2024 and 24 September 2024. No changes are being proposed to the chapter on Minerals and so there is no change in emphasis to national policy.

2.4 Changes are being proposed to the methods of calculating housing need which will result in an increase in the number of dwellings to be provided in Hertfordshire. This is relevant as housing is often used as a proxy indicator for the need for aggregates.”

The CIL Compliance statement for the s106 says:

St Albans local plan review is at the Regulation 19 Consultation stage (from September to November 2024). The proposed submission date is December 2024 for adoption in March 2026. The new standard method for St Albans would result in an increase from 885 to 1544 dwellings annually.

³ NPPF §215

⁴ NPPF §217; Mr Jones Proof at §7.3

⁵ NPPF §219 and §220

⁶ 11th Annual Mineral Planning Survey Report (2023) on page 9 (CD 3.11)

4. Those minerals which will deliver the development which will support the economy must be worked where they are found⁷. The minerals were in situ long before Green Belt policy, and they are not available elsewhere.

5. The promotion of the Appeal Scheme represents the result of many years of intensive joint working with key statutory consultees and officers of Hertfordshire County Council ('HCC'). In very brief summary, the background to this appeal is as follows:
 - i) The Appeal Site was allocated as a preferred area for mineral extraction in the HCC Minerals Local Plan Review 2002-2016 ('MLP'), adopted as far back as 2007. That reflects the position in the Hertfordshire County Council Minerals Local Plan (1991-2006) which in turn informed the SPG: Hatfield Aerodrome (Adopted November 1999)⁸.
 - ii) A planning application for mineral extraction at the Site was submitted in 2016. This was recommended for approval by HCC officers, which members accepted and resolved to grant in January 2017. When it went back to Committee in 2020, it was refused;
 - iii) Through the resubmitted Appeal Scheme, the Appellant has carefully addressed all matters raised in Inspector Woolcock's 2021 decision.⁹
 - iv) All technical subjects have been resolved to the satisfaction of the expert statutory consultees.
 - v) The Appeal Scheme as proposed was recommended for approval by HCC's professional officers, through carefully drafted and full Committee Reports.¹⁰
 - vi) Nonetheless, on 12th January 2024, the application was refused by HCC Committee Members for no less than eight reasons ('RfR').

⁷ See Mr Jones' Proof at §§2.5-2.6. Each of the operational extraction sites in the County is in the Green Belt.

⁸ See §2.8 of the SPG on page 4 [CD 3.3]

⁹ The changes are as listed at Mr Jones' Proof §4.19

¹⁰ CD2.9

vii) The Appellant submitted an appeal and carried out significant work as regards each RfR, including drafting comprehensive Statements of Common Ground ('SOCG') and Proofs of Evidence.

viii) On 25th September 2024, HCC's Members confirmed they have now reached the same conclusion as their professional officers, withdrawing all eight RfR and thereby accepting that permission should be granted.

6. As such, it is now common ground between the Appellant, HCC, and all relevant statutory consultees that the environmental effects of the Appeal Scheme would be acceptable and policy-compliant, subject to appropriate planning conditions and obligations. Those environmental effects have been assessed in a great deal of detail and repeatedly over many years, including most recently in the Appellant's response to the latest reg.25 request for further Environmental Information.¹¹

7. While that overarching position is 'common ground', HCC have been unwilling to engage in the process of agreeing any detailed statements of common ground in line with the deadlines set by the Inspector at the Case Management Conference ('CMC').

- i) As far back as June, the Appellant sent a draft "Main" SOCG and seven "Topic-Specific" SOCGs to HCC.
- ii) On 2nd August, the Appellant emailed HCC asking for a response to the SOCGs to assist in preparing proofs.
- iii) On 13th September, a meeting was held between the Appellant and HCC on the "need" SOCG.
- iv) On 26th September, the Appellant again requested from HCC a timetable for responding on all remaining draft SOCGs.

¹¹ CD2.11

- v) On 3rd October, HCC by telephone requested that the Main SOCG at §§2.4 and 2.7 be reconsidered, stating that they needed to consider the other SOCGs further before responding. Those changes were made on 4th October. HCC then advised they planned to meet the Rule 6 Parties to discuss the SOCGs. No further response has been received.
- vi) The Appellant's biodiversity witness also invited HCC for a specific discussion on that SOCG to assist in preparing proofs.
- vii) On 10th October, again the Appellant chased HCC for a response.
- viii) On 21st October, a revised SOCG on need only was agreed.
- ix) On 22nd October, a draft SOCG re 2000 Agreement was sent to the Appellant by the Councils. The Appellant provided comments on 23rd October. No further response has been received.
- x) HCC have still not provided a substantive response in relation to all other SOCGs, which remain unsigned.

8. Against that background, in Opening, we address the likely main issues identified by the Inspector at the CMC, in an order that we propose would make most sense for hearing oral evidence:

- i) Policy/planning balance;
- ii) Need (including inert fill);
- iii) Green Belt;
- iv) Landscape character and appearance, including restoration;
- v) Public access;
- vi) Biodiversity;
- vii) Heritage;
- viii) Residential amenity: noise and air quality;
- ix) Highways;
- x) Groundwater;
- xi) Flooding.

9. While “cumulative effects” has also been identified as a likely main issue, it may make more sense for each of the subject-specific witnesses to address any

queries on cumulative effects during their subject-specific roundtable. The less manageable alternative would seem to be a joint roundtable where all experts attend to discuss possible cumulative effects across all subject areas. Finally, appended to this Opening is a note addressing the separate matter of the 2000 section 106 agreement.

PRINCIPLE OF DEVELOPMENT

10. There is very strong in-principle-policy-support for the Appeal Scheme, deriving from two key considerations: the development plan and the agreed position on need. The need is local, but it is also national; as we have highlighted by reference to long-standing national policy, sand and gravel supplies are essential to driving economic growth through planning and development but are not keeping pace with demand.

11. The MLP is the key part of the development plan with which this appeal is concerned. The MLP addresses future supply of minerals and commits HCC to making an appropriate contribution to regional needs for primary aggregates by granting planning consents (§3.2.1). The MLP identifies areas in which mineral working might be encouraged “*to give clear guidance to users of the Plan, both as to where permission is likely to be forthcoming, and where permission is unlikely to be granted*” during the plan period (§3.4.1).

12. Following an “*extensive site selection process*” to identify the most sustainable locations, Minerals Policy 3 identifies three ‘Preferred Areas’ for sand and gravel extraction (§3.4.2). The Appeal Site lies within Preferred Area 1, ‘Land

at former British Aerospace, Hatfield’. This area is subject to a number of site-specific considerations set out at Appendix 8 of the MLP, including the Hatfield Aerodrome Supplementary Planning Guidance (‘SPG’), adopted 1999.

13. Preferred Area 1 was allocated in full knowledge that the Site comprises Green Belt land. Indeed, even at the time of the SPG in 1999, it was already clear that the Appeal Site area was part of HCC’s minerals strategy, notwithstanding the Green Belt designation.¹²

14. Within HCC’s Emerging Minerals and Waste Local Plan, the Appeal Site remains a proposed allocation and a “*central and a key component to the Council’s strategy for supplying minerals into the long term.*”¹³

15. Minerals Policies 1-3 of the extant MLP explain that permission for mineral extraction will only be granted where there is a need. That trigger is met in the present case in light of the agreed position as set out within the Need SOCG.¹⁴ That SOCG explains that “*the landbank of permitted reserves of sand and gravel within Hertfordshire is low*” and that there is a “*clear need*” for the Appeal Scheme, which would make a significant contribution to the landbank. It is estimated that the landbank at the end of 2024 will be just 6.5 years.¹⁵ No

¹² See Section 9 at page 34 of that document CD3.3

¹³ Need SOCG CD14.13 at §§3.10-3.15

¹⁴ CD14.13

¹⁵ Need SOCG CD14.13 at §4.48

other applications have been submitted for new mineral reserves; if the Appeal Scheme is not approved, the landbank will continue to fall.¹⁶

16. As such, the Appeal Site as a longstanding allocation complies with the spatial strategy in the development plan. Location is more important for minerals than perhaps any other area of planning: as we have emphasised, and national policy makes clear, minerals are a finite natural resource and “*can only be worked where they are found*” (National Planning Policy Framework (‘NPPF’) at §215).

17. The NPPF in that same paragraph establishes the importance of minerals: it is “*essential*” that there is a sufficient supply to provide the “*infrastructure, buildings, energy and goods*” that the country needs. While the current version of the NPPF was drafted under a previous administration, the new Government has expressed even bolder ambitions for development as a lever for achieving economic growth and social welfare. Sand and gravel will be key.

18. At §217, the NPPF provides that “*great weight*” should be given to the benefits of mineral extraction when determining planning applications. At §219, it tells us that minerals planning authorities should plan for a steady and adequate supply of aggregates by, amongst other things, maintaining landbanks of “*at least*” 7 years for sand and gravel. The Minerals Planning Practice Guidance (‘PPG’) explains at §084 that where a landbank is below the minimum level, as it is here, this may be seen “*as a strong indicator of urgent need*”.

¹⁶ Need SOCG CD14.13 at §4.51

19. On the topic of need, the Inspector at the CMC also sought clarification on the position in relation to inert infill. In parallel with the extraction of minerals, the Appeal Scheme proposes the importation of low permeability inert material to facilitate restoration. The imported material would typically comprise excavation wastes from construction and engineering projects (soils, overburden, clays etc.) within the region.¹⁷
20. The Need SOCG establishes that the Appeal Site is well placed to attract the infill materials required.¹⁸ The number of sites able to accept inert waste arisings within the county is declining, as is the remaining void within these sites. Over a million tonnes a year of residual inert waste need to be beneficially disposed of within Hertfordshire. By c. 2030 it is likely that there will be insufficient capacity to manage. Thus, there is a need for the Appeal Scheme to meet the forecast capacity gap.

GREEN BELT

21. A further policy matter of importance relates to the Green Belt. That is the agreed common ground between the Appellant and HCC's officers that the Appeal Scheme does not comprise 'inappropriate' development.
22. The NPPF at §155 lists a number of forms of development that are not inappropriate, provided that they preserve the Green Belt's openness and do

¹⁷ Mr Holliday Appendix 1 §3.3

¹⁸ CD14.13 section 5

not conflict with its purposes. The first type of development in the list is “mineral extraction”.

23. However, as the Supreme Court held in Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council,¹⁹ the NPPF effectively represents a slimmed down version of the former policy in PPG2. Under PPG2 policy, mineral extraction was considered not inappropriate so long as “*high environmental standards are maintained and that the site is well restored*”. In other words, as the Supreme Court held, in PPG2 the openness proviso was directed “*to forms of development other than mineral extraction*”. The Supreme Court held that the NPPF did not intend to mark a significant change of approach. As such, as a matter of law, mineral extraction can be considered appropriate development in the Green Belt without any requirement to consider its impact on openness.

24. Some level of operational development for mineral extraction must also be able to be considered appropriate in the Green Belt without compromising openness or Green Belt purposes. The policy was designed for those situations generally encountered in mineral extraction: Europa Oil and Gas Limited v Secretary of State for Communities and Local Government.²⁰ In line with the case law, the previous Inspector in his 2021 decision found that:

- i) The term ‘mineral extraction’ (as per the current §155 of the NPPF) “*should include plant and infrastructure necessary to facilitate the winning and working of minerals.*” (DL48)

¹⁹ CD12.4, §§11-12

²⁰ CD12.1

- ii) The policy now found at NPPF §155 “*must mean that some level of operational development for mineral extraction in the Green Belt would preserve its openness and would not conflict with its purposes, and that beyond that level the development would become inappropriate in the Green Belt, and so the exception would no longer apply. Determining the tipping point would depend upon the particular circumstances, as a matter of fact and degree, but relevant considerations could include the siting, nature and scale of the operational development in its local context, along with its visual effects, duration and the reversibility of any adverse impact upon the openness and purposes of the Green Belt*” (DL49).

25. Inspector Woolcock then went on to consider whether the ‘tipping point’ he identified had been reached in relation to the scheme before him. He concluded at DL50 that it had, because the Concrete Batching Plant (‘CBP’) that formed part of the previous scheme played “*no direct role in the winning and working of minerals and that its presence or absence [was] irrelevant to operation of the quarry*”. The Inspector also found that the inclusion of the CBP meant the scheme impaired openness and conflicted with the purpose of safeguarding the countryside from encroachment.

26. The present Appeal Scheme now omits the CBP, the only aspect that Inspector Woolcock considered represented inappropriate development. In addition, the area of the processing plant has been reduced to 8.2ha from 11ha.²¹ None of the ancillary plant or associated engineering works are beyond the minimum required and accord with the principles foretold by and established in the SPG.²² Mr Jones is clear that the Appeal Scheme does not go beyond the

²¹ Mr Jones §4.19

²² Mr Jones §1.17 and §1.19, §6.34

‘tipping point’ inherent in the permissible approach to mineral extraction in the Green Belt indicated by national policy.²³

27. Against that background, it is common ground between Mr Jones and HCC’s officers that the Appeal Scheme does not comprise inappropriate development.²⁴ HCC’s Members must either agree with that consensus, or alternatively consider that there are nonetheless very special circumstances (‘VSC’) justifying a grant of permission. In light of the need, the allocation, and the acceptability of the harms arising, both Mr Jones and HCC’s officers also agree that, were they to be necessary, VSC would be easily demonstrated.

28. Furthermore, in the context of the consideration of the Green Belt location of the Appeal Scheme, it must be kept in mind that (a) the Appeal Site was allocated in full knowledge of it being Green Belt; (b) there are no alternatives for sand and gravel extraction other than in the Green Belt in Hertfordshire²⁵; and (c) nearby developments including Cemex’s Hatfield Quarry have been found by this authority to be acceptable in the Green Belt.

LANDSCAPE CHARACTER AND APPEARANCE

29. We turn next to the environmental impacts of the Appeal Scheme, starting with landscape character and visual appearance.

²³ Mr Jones §1.17 and §1.19, §6.34

²⁴ Committee Report Addendum Note CD2.9

²⁵ Mr Jones at §2.6

30. In terms of landscape character, the key impact would be on the Appeal Site itself. Mr Holliday describes the Appeal Site as a “*young landscape established on a disturbed site, that has been cleared of its historic field pattern by the aerodrome and subsequent uses.*”²⁶ He finds the landscape value of the Site and its immediate context to be at the lower end of ‘medium’ and the overall sensitivity to be ‘low/medium’.²⁷

31. Mr Holliday acknowledges that with respect to the Appeal Site itself the magnitude of landscape change is ‘high’, as the land would be largely cleared and worked for minerals and associated operations.²⁸ However, Mr Holliday also notes that not all of the Site would be worked at the same time, with large parts retained in the current state or restored at any given time.

32. The magnitude and sensitivity result in a ‘medium’ adverse change during operations. At restoration, the existing character of the Site with areas of grassland and young scrub would be readily replicated, resulting in a more diverse and managed landscape and a long-term ‘minor’ beneficial effect.²⁹

33. The wider character Area 31 (De Havilland Plain) as described in the Hertfordshire Landscape Character Assessment has ‘medium’ sensitivity at the bottom end of that category.³⁰ The magnitude of change would be ‘low’,

²⁶ Mr Holliday §3.19

²⁷ Mr Holliday §§3.22-3.35, §6.5

²⁸ Mr Holliday §6.6

²⁹ Mr Holliday §6.6

³⁰ Mr Holliday §6.3

resulting in a minor adverse effect during operations.³¹ Again, upon restoration there would be a ‘minor’ beneficial effect.

34. The former RfR 4 referred specifically to the impacts of the removal of roadside vegetation to create the new access. The SPG requires that the development deploys “*a direct route as possible to the trunk road network and to minimise disturbance to local residents*”.³² The most direct route is the A1057, which is lined by hedges and trees. While there would be an inevitable loss of vegetation to allow sight lines, replacement planting could be provided to provide a green backdrop to the road.³³ In all, the loss of the trees would result in a localised adverse landscape effect but would in time be more than compensated for with new planting as part of restoration.³⁴

35. In terms of visual impacts, Mr Holliday notes that the Appeal Site has a fairly limited visual envelope and that there are relatively few receptors that would experience change.³⁵

36. Most residential properties are separated from the Site by planting, or in the case of the closest properties at Lawrence Close, by a bund and screen fence. Low levels of visual effect are predicted in this regard.³⁶ In particular, the

³¹ Mr Holliday §6.3

³² SPG CD3.3 at §9.28

³³ Mr Holliday §§6.7-6.8

³⁴ Mr Holliday §6.9

³⁵ Mr Holliday §13.11, §4.1

³⁶ Mr Holliday §§7.2-7.7

proposed stand off and screening proposed for Popefield Farm are appropriate and would minimise the visual effects.³⁷

37. There are some formal public rights of way through and near the Appeal Site, as well as a number of informal routes used by walkers and cyclists. While there would be some inevitable impacts on views from these routes, the Public Access Strategy ensures that if some routes are temporarily diverted, or less attractive, there are alternative areas than can be accessed and enjoyed.³⁸

38. The only public highway that that would experience any notable change in visual amenity is the A1057.³⁹ Over most of this route users would have no or negligible views, being behind a mature hedgerow and screen bunds. At the access, loss of roadside vegetation would result in a moderate effect that would reduce over time as new planting establishes behind the sight lines.⁴⁰

39. In all, the Appeal Scheme would result in a change to the character and appearance of the Site over an extended period, as recognised by the previous Inspector (DL70). However, this is an inevitable consequence of winning and working minerals in accordance with the Appeal Site's status in the development plan and as anticipated by the SPG.⁴¹ The previous Inspector also recognised that the restoration scheme would provide an enhanced landscape in the longer term in accordance with Minerals Policies 13 and 14 (DL70).

³⁷ Mr Holliday §13.11

³⁸ CD2.7 Mr Holliday §13.12

³⁹ Mr Holliday §§7.17-7.18

⁴⁰ Mr Holliday §§7.17-7.18

⁴¹ Mr Jones at §5.55

40. In all, Mr Holliday concludes that the impacts would be appropriately mitigated and at a low level for a scheme of this size.⁴² It is of note that the Appeal Scheme he has assessed differs materially from that previously considered, including through provision of additional mitigation, a reduced plant site area, removal of the CBP, and the realignment of the haul road.⁴³ These changes have been welcomed by HCC's professional officers.⁴⁴

BIODIVERSITY

41. Mr Edmonds explains that the effects on ecological features within the Appeal Site during operations would be minor, temporary and predicted to recover upon restoration.⁴⁵ In his expert opinion, all proposed mitigation for habitats and species is appropriate and can be controlled by condition.⁴⁶ As such, no unacceptable impacts would arise in terms of nature conservation.

42. Indeed, the Appeal Scheme would, in the long term, represent a benefit to nature, bringing about a net gain in biodiversity with the implementation of the restoration scheme.⁴⁷ The restoration habitat creation and enhancement proposed includes retaining the recharge lagoon area as a permanent water body; provision of a variety of grassland habitats; and tree, woodland, hedgerow and scrub planting.⁴⁸

⁴² Mr Holliday §13.14

⁴³ Mr Holliday's Proof at §§8.6-8.9

⁴⁴ Mr Holliday section 8 and section 9

⁴⁵ Mr Edmonds §7.1

⁴⁶ Mr Edmonds §5.12 and Table 5/1 which sets out the outline of ecological receptors, proposed mitigation measures and means of delivery

⁴⁷ Mr Edmonds §3.2

⁴⁸ Appendix A to Mr Edmonds' Proof at §2.3 p.7

43. Under the law and policy applicable to the Appeal Scheme, there is no requirement to demonstrate biodiversity net gain ('BNG') using a quantitative metric. The relevant national policy encourages the provision of BNG but does not set a numerical target as a requirement for the grant of permission.⁴⁹ The 10% statutory BNG requirement does not apply as the application was submitted before 12th February 2024.⁵⁰ Policy SADM16 of the Welwyn Hatfield Local Plan also does not require a 10% BNG for this Scheme, as footnote 63 aligns the policy with the statutory commencement timeline. The Courts have made clear that it would be an error of law to reduce the weight to be given to the estimated BNG in these circumstances by taking into account the new, but not applicable, statutory requirements.⁵¹

44. Nonetheless, Mr Edmonds explains that using the updated Statutory Biodiversity Metric, a gain of >10% in both habitat (13.68%) and hedgerow (30.53%) units is achievable by the end of the life of the quarry.⁵² As the Statutory Biodiversity Metric does not easily accommodate phased minerals permissions, the technical assessment has been carried out using a simplified development programme, which assumes that all habitat losses occur at Year 0 but also that restoration happens "in advance" from the end of each quarry phase.⁵³ Given the void in relevant guidance, this is an appropriate approach.

⁴⁹ See *R (Weston Homes plc) v Secretary of State* [2024] EWHC 2089 (Admin) CD12.6 at §101

⁵⁰ The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024, as recognised in the Committee Report CD2.9 at §9.125

⁵¹ *NRS Saredon Aggregates Limited v Secretary of State* [2024] Env. L.R. 18; [2024] JPL 616 CD12.13 at §§55-56, *Weston Homes* CD12.16 at §120

⁵² Mr Edmonds §§4.8-4.13. The Overall Biodiversity Gain Plan BNG Report v3, SLR Consulting Ltd October 2024 is at Appendix A to Mr Edmonds' Proof, see in particular §3.1 on p.9

⁵³ Appendix A to Mr Edmonds' Proof at §2.2.1 on p.5

45. In all, as both the previous Inspector and HCC's professional officers concluded, the long term ecological benefits of progressive restoration would outweigh the temporary and minor negative effects to existing habitats.⁵⁴

HERITAGE

46. The only heritage assets the significance of which would be affected is the group of three grade II listed buildings at Popefield Farmhouse. The significance of this group of buildings lies predominantly in their form and fabric and evidential and historical interest.⁵⁵ The vast majority of their special interest would be preserved unaffected with the Appeal Scheme.⁵⁶

47. There is a distant historical connection between the Appeal Site and the listed buildings, in that prior to the aerodrome they formed part of the same landholding.⁵⁷ However, there is no perceived strong visual or abstract connection between the group as it is today and the pre-1930 agricultural landscape that once existed – the contemporary altered setting of the buildings does not contribute greatly to their significance.⁵⁸

48. The workings of the Appeal Scheme would only be active near the listed buildings for relatively short periods of time, resulting in a low, intermittent

⁵⁴ Officer Report CD2.9 at §9.126, previous appeal decision DL80 CD1.5

⁵⁵ Dr Edis §3.11

⁵⁶ Dr Edis §4.11

⁵⁷ Dr Edis §3.10

⁵⁸ Dr Edis §3.11

effect that can be mitigated.⁵⁹ The proposed mitigation is by way of a stand off and buffer zone with appropriate planting and bunding.⁶⁰

49. In terms of restoration, Dr Edis concludes that the proposed country park would provide the listed buildings with a suitable setting, with secured public access allowing their appreciation as a historic group.⁶¹

50. The analysis carried out by Dr Edis reaches the same conclusion as the previous Inspector and HCC Officers. In short, while some less than substantial harm would arise, this would be at the lower end of that scale.⁶²

RESIDENTIAL AMENITY

51. The two main matters raised under this heading by local residents are noise and air quality. In both regards, the planning conditions to which any consent would be subject would ensure that mineral workings do not give rise to unacceptable effects.

52. In terms of air quality, Mr Allison explains that the technical analyses have demonstrated an overall negligible risk of adverse dust effects at neighbouring properties from the main mineral extraction and no significant impact on air quality with appropriate mitigation in place.⁶³ As the previous Inspector held, there is no convincing evidence that dust, emissions of respirable crystalline

⁵⁹ Dr Edis §4.3, §4.11

⁶⁰ Dr Edis §4.4, §4.11

⁶¹ Dr Edis §4.5

⁶² previous appeal decision DL83 and 89 CD1.5, Officer Report CD2.9 at pp. 95-96

⁶³ Mr Allison at §§6-11

silica, or any other effects of on air quality would impair the health of those living nearby.⁶⁴ The mitigation proposed by condition includes a dust suppression scheme to control dust soiling and an air quality monitoring scheme.

53. In terms of noise, the key document that sets out the stepped approach that has been taken to the assessment and to deriving the proposed conditions is the Regulation 25 Response October 2024 Chapter 10 Noise (CD2.11). In summary:

- i) The first step is to identify the applicable guidance. Here, that is the section of the Minerals PPG dealing with noise, with the key paragraph that sets the appropriate noise standards being §021. That paragraph explains that decision-makers should establish a noise limit, through a planning condition, that does not exceed the background noise level at the noise-sensitive property by more than 10dB(A) during normal working hours. Where that is not reasonably possible, the maximum limit is 55dB(A) LAeq.
- ii) In light of that guidance, the starting point of the Appellant's assessment has been to agree receptor locations⁶⁵ with HCC and to determine a representative background baseline at those receptors during the hours in which the quarry would typically operate.⁶⁶ As Ms Dawson will explain, the locations that would be most affected have been chosen as representative receptors, with measurements typically

⁶⁴ previous appeal decision DL63 CD1.5

⁶⁵ The agreed receptor locations are set out in CD2.11 at Figure 10-1

⁶⁶ These are set out in CD2.11 in the first column of Table 10-5 at p.11 of Ch10. The preceding section titled 'Baseline Conditions' explains how the baseline was derived.

taken at the façade of the property nearest to the proposed development.

- iii) Having determined the baseline at the agreed receptors, the noise assessment has then set a noise limit in line with the guidance set out in the PPG.⁶⁷
- iv) The final step has been to assess the predicted operational noise levels generated.⁶⁸ At the majority of locations, the worst-case predicted levels would be at or below the derived noise limit. There are two instances of marginal exceedances of 1-2dB(A)⁶⁹, resulting in minor not significant impacts that would still meet the maximum 55dB LAeq,1hr limit set out within the PPG.

54. The Appellant, having carried out the assessments, is confident it can meet the noise limits derived from the PPG and proposes to be bound to them by way of condition 49.⁷⁰ Residents would be further protected from disturbance by proposed condition 35, which provides for a noise management strategy for each phase of the development.⁷¹

55. Further, the Appellant has addressed the noise matters raised by the previous Inspector:

- i) The Appeal Scheme represents an improvement on that previously considered, as the access road from the quarry entrance has been

⁶⁷ These are set out in CD2.11 in the second column of Table 10-5 at p.11 of Ch10

⁶⁸ These are set out in CD2.11 in Table 10-9 at p.15 of Ch10

⁶⁹ This will, in fact, be 1 exceedance given paragraph10.65b at p14 of Ch10

⁷⁰ Ms Dawson at §4.8. HCC's officers were content that the noise impacts would be acceptable, subject to appropriate planning conditions, in the Committee Report CD2.9 §§9.95-9.106

⁷¹ Ms Dawson at §5.8

relocated 5m to the east to allow additional acoustic screening on the western boundary.

- ii) A series of further assessments has been carried out at Popefield Farm. These demonstrate that with the buffer zone and bunds proposed, amenity would be protected in accordance with the agreed guidance.⁷²
- iii) In terms of low frequency noise ('LFN'), Ms Dawson explains that there is no guidance as to how to conduct an assessment of LFN for the purposes of predicting new situations in a planning application.⁷³ However, in her professional experience there would only be limited exposure to low frequency noise from mobile plant engines (as would be used here), with LFN complaints more consistent with stationary plant such as containerised gensets for power generation (which are not proposed here).⁷⁴

56. In all, the evidence demonstrates that the air quality and noise impacts can both be properly controlled by condition.

PUBLIC ACCESS

57. Public access to the Appeal Site has been available since circa 2010, including by way of a number of informal permissive paths.⁷⁵ However, it is the longstanding policy of HCC that the Site will be worked for minerals, with the allocation representing an express acceptance that the working areas would impact public access. The 2000 section 106 agreement provides for public

⁷² Ms Dawson §6.11

⁷³ Ms Dawson at §§5.2-5.3

⁷⁴ Ms Dawson at §§5.2-5.3

⁷⁵ Mr Jones §3.20

access to be excluded when minerals are being extracted (previous appeal DL76).

58. To ensure that public access is maximised without compromising safety and the operation of the Site, the Appeal Scheme now includes a detailed Public Access Strategy proposal.⁷⁶ The Strategy has been designed iteratively in consultation with local residents' groups, the Herts and Middlesex Ramblers Association, the HCC PROW Team and St Albans and District Footpath Society.⁷⁷

59. The Strategy makes clear that no more than two phases of the development would be removed from public access at any one time.⁷⁸ It also provides improved long-term access through a network of dedicated paths, as well as creating temporary permissive paths, with a minimum of two east/west and one north/south multipurpose routes crossing the site for connectivity at all times (as requested by the Ramblers and HCC PROW team).⁷⁹

60. Officers concluded that the new Strategy provides sufficient information on how members of the public can maintain access through the Site within each phase.⁸⁰ Mr Mutch will explain that the use of the proposed conditions and obligations would ensure the right balance is struck.

⁷⁶ CD2.7, see also draft Condition 18, which includes a requirement that the Access Strategy shall maximise the level of public access to unworked and restored areas of the site in each phase of mineral working and restoration for the lifetime of the quarry

⁷⁷ Mr Mutch §9.6

⁷⁸ Mr Mutch §9.11, as controlled by draft condition 75

⁷⁹ Mr Mutch §9.10

⁸⁰ CD2.9 Report to Committee §9.4

HIGHWAYS

61. The technical highways consultees that have reviewed the application are satisfied with the impacts of the Appeal Scheme and raise no objections.⁸¹

62. That was also the finding of the previous appeal Inspector, who noted that the technical evidence indicated that associated HGVs would not have an unacceptable impact on highway safety and, subject to appropriate planning conditions, found no conflict with relevant policy in this regard.⁸² The traffic generation from the Appeal Scheme is consistent with that proposed previously, with the potential to generate a total of 184 two-way vehicular movements throughout a typical 10-hour working weekday.⁸³

63. In terms of the site access, Mr Wares explains that the proposal reflects the observed traffic conditions (i.e. traffic flows and speeds) along the A1057, the anticipated level of vehicular traffic likely to be generated by the proposed development, and adheres to national design standards.⁸⁴ The results of the additional capacity modelling re-affirm that the access would operate with minimal impact on the local highway network.⁸⁵

64. As regards vulnerable road users, the proposed access incorporates an uncontrolled pedestrian crossing comprised of dropped kerbs and tactile

⁸¹ See CD11.12 §6 for the Local Highway Authority response and CD11.3 for National Highways' final consultation response

⁸² CD1.5 DL74

⁸³ Mr Wares §5.8

⁸⁴ Mr Wares §5.13 et seq., CD11.8 Site Access Plan (Drawing No. HQ7/1)

⁸⁵ Mr Wares §5.33

paving tiles, as well as a new section of footway.⁸⁶ The Public Access Strategy seeks to maintain the safety of users of the Ellenbrook Country, with the number of places where the internal access/haul road is crossed by pedestrians, cyclists, and equestrians minimised and all crossings designed to meet the safety requirements in the Quarries Regulations 1999.⁸⁷

65. Applying the test at §115 of the NPPF, Mr Wares is clear, in agreement with HCC, consultees and the previous Inspector, that there is no reason for refusing the scheme on highways grounds: there would not be an unacceptable impact on highway safety, and the residual cumulative impacts on the local and strategic road network could not be considered ‘severe’.⁸⁸

GROUNDWATER

66. The key question in terms of groundwater is whether appropriate planning conditions can ensure that the working is undertaken in a fashion and with sufficient control that an unacceptable risk is avoided.
67. The Appeal Scheme includes two additional measures above those previously proposed to protect the groundwater resource.⁸⁹ First, the stand off (i.e. the distance between mineral extraction in the Lower Mineral Horizon (‘LMH’) and the bromate plume) is 100m; this has been increased from 50m in the earlier application. Secondly, no dewatering (i.e. pumping of groundwater) would occur in the LMH; previously that had been intended.

⁸⁶ Mr Wares §5.39

⁸⁷ Mr Mutch §10.9, Mr Wares §§5.44-5.45

⁸⁸ Mr Wares at §§1.11-1.12, CD11.12, Paragraph 6

⁸⁹ As described by Dr Wilkinson and acknowledged in the Officers Report (CD2.9 §9.69)

68. The proposed conditions include a comprehensive Groundwater and Water Monitoring and Management Plan, which would provide ongoing assurance that mineral excavation activity is not disturbing the local hydrogeological flow regime.⁹⁰

69. Both the Environment Agency and Affinity Water are satisfied that, with appropriate planning conditions, the development would not harm groundwater resources.⁹¹ This is consistent with the position arrived at through the previous Appeal where the Inspector, HCC represented by Arup, the Environment Agency, Affinity Water, and the Appellant all agreed that the imposition of planning conditions would reduce the risk of bromate pollution to an acceptable level.⁹²

FLOODING

70. None of the former RfR related to flood risk or drainage matters, and there is no outstanding objection on flood risk grounds from any statutory consultee, subject to appropriate conditions.⁹³

71. However, as flooding has been raised by local residents, Mr Walton has provided a Proof of Evidence explaining that the Appeal Site lies in Flood Zone 1, and that the proposed surface water management strategy demonstrates that the Appeal Scheme would not increase flood risk

⁹⁰ Dr Wilkinson's overall conclusions in this regard are at section 6 of his Proof

⁹¹ This is recorded at §§9.70 and 9.72 of the Officers' Report (CD2.9)

⁹² previous appeal SOCG CD1.3B, previous Inspector's decision CD1.5 at DL62

⁹³ the LLFA's letter of 20 October 2023 is enclosed at Appendix E to Mr Walton's Proof

elsewhere.⁹⁴ The proposed conditions require, *inter alia*, submission of a detailed surface water drainage scheme, submission of detailed information relating to the design of the surface water management scheme, and submission of a water management plan for each phase of the mineral extraction.⁹⁵

72. Mr Walton explains that the Appeal Scheme would actually bring about flood risk benefits. During the operational phase, as the Site would drain to the Upper Mineral Lagoon with surface water runoff discharged to Upper Mineral Horizon, runoff from some 72ha of land would be removed from the River Nast's catchment.⁹⁶ Following restoration, the Site would drain to the combined Upper and Lower Mineral Lagoons, with the outfall to the River Nast restricted to a lower runoff rate than the pre-development situation, reducing flood risk downstream.⁹⁷

CUMULATIVE IMPACTS

73. Finally, the evidence set out within the Environmental Statement concludes that no significant impacts would arise for any of the environmental topics considered. There would, likewise, not be any significant accumulated impacts. There is no substantive or technical evidence going the other way.

PLANNING BALANCE

⁹⁴ Mr Walton at §§2.11-2.12

⁹⁵ Proposed conditions 70, 79, 80, 81

⁹⁶ Mr Walton §§4.1-4.2

⁹⁷ Mr Walton at §4.5

74. This is a case where, fortunately, the relevant policies are clear and their application is straightforward. Mr Jones concludes that the Appeal Scheme complies with the development plan, both in relation to the principle of development through the allocation and in terms of the key environmental policies. This must be the starting point in the determination of the appeal.
75. In this case, there are no material considerations that indicate an alternative conclusion. Consistent with the accepted principle in planning policy that there will be some adverse effects from winning and working minerals but these should be minimised, the impacts here would be acceptable and appropriately mitigated by planning controls.⁹⁸
76. The amendments made to the Appeal Scheme as compared to the 2016 application have resulted in a different balance to that set out by the previous Inspector. The magnitude of previous effects is reduced, with in particular the removal of the CBP meaning the Scheme can no longer be considered inappropriate development in the Green Belt.⁹⁹
77. Mr Jones is clear that the temporary adverse effects arising would be clearly outweighed by the “great weight” that must be afforded to mineral extraction, the adopted allocation, the urgent need for sand and gravel, and the mitigation and compensation offered. Even if VSC are needed, they are very clearly found.

⁹⁸ Mr Jones §1.22

⁹⁹ Mr Jones §7.14

78. Through all the evidence presented at the Inquiry, the Appellant will show that HCC's professional officers struck the right balance. The benefits are weighty and urgent, and the environmental effects can be mitigated and controlled. Hence, in due course, we will invite the Inspector to recommend approval, and the Secretary of State to allow the appeal, subject to appropriate conditions and obligations.

Richard Kimblin KC

Odette Chalaby

7th November 2024

No. 5 Chambers
London • Birmingham • Bristol

APPENDIX 1 – NOTE ON THE 2000 SECTION 106 AGREEMENT

Introduction

1. A distinct issue that the Inspector has been asked to consider is the 2000 section 106 Agreement ('the 2000 Agreement'). The Appellant's clear position is that no variation is required to the 2000 Agreement in advance of a grant of planning permission on the Appeal Site. That is the only legally sound analysis of the terms of the 2000 Agreement.
2. In summary, the 2000 Agreement clearly anticipates, and is wholly consistent with, the grant of planning permission for minerals development within Ellenbrook Park. The Appellant has been careful to design its proposals to accord with the requirements of the 2000 Agreement, and there is no legal basis for requiring a variation (whether prior to the grant of consent or prior to the commencement of development by way of a *Grampian* condition).
3. At the previous Inquiry, HCC's final position was to agree with the Appellant that the 2000 Agreement is essentially a private law matter and should not prevent the grant of planning consent.¹⁰⁰

Legal Principles

¹⁰⁰ CD13.8

4. The decision of Holgate J in *Norfolk Homes Ltd v North Norfolk District Council* [2020] EWHC 2265 sets out the legal principles that apply to interpretation of planning obligations¹⁰¹. In short:

- i) The process for interpreting planning obligations does not differ materially from that appropriate for other legal documents, such as contracts (§62, §65, §67);
- ii) However, the public nature of planning documents means that there is a more limited scope for use of extrinsic material and the shared knowledge of the parties in their interpretation (§70);
- iii) Interpretation is an objective exercise in which the court will have regard to the natural and ordinary meaning of the words, the overall purpose of the document, other provisions that cast light on the purpose of the relevant words, and common sense (§64, §66, §67, §71);
- iv) The court will read the terms in the context of other terms and of the agreement as a whole (§64, §72).

5. The latter point is important. It is emphasised in *Chitty on Contracts* 35th edition (2024):

- i) at §16-053: “...*The court must consider the contract as a whole...*”
- ii) at §16-071: “*And so Lord Davey said in N.E. Ry v Hastings, quoting Lord Watson: “The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible.”*”
- iii) at §16-082: “*Where the different parts of an instrument are inconsistent, effect must be given to that part which is calculated to carry into effect the purpose of the contract as gathered from the instrument as a whole and the available background, and that part which would defeat it must be rejected....*”

¹⁰¹ CD 12.15

The 2000 Agreement

6. The covenants that were entered into by BAE Hatfield and Arlington are contained within section 4. They include obligations:

- i) not to develop the land “*other than in broad accordance with the mix and disposition of uses contained in the Masterplan*” (§4.6);
- ii) to lay out the Ellenbrook Park to the reasonable satisfaction of the councils in accordance with a landscape framework to be agreed, and pending the grant of the Ellenbrook Park Lease to allow Ellenbrook Park to be accessible and freely available to the public, “*save during periods when public access needs to be excluded from parts thereof ... when minerals are being extracted pursuant to a planning permission*” (§4.83);
- iii) To provide to the satisfaction of the councils a network of footpaths/cycleways/bridleways and to permit public access at all times (§4.90);
- iv) Not without the written consent of the councils to use Ellenbrook Park “*other than for landscaping planting and open air sports use by the film industry recreational community education and amenity uses nature study landscape and wildlife improvements and a network of footpaths bridleways and cycleways.*” (§4.128)

7. These obligations on the landowner cannot be read in isolation, but must be understood as part of a coherent whole agreement drafted very carefully and

fully informed by specialist advisors for three planning authorities and four development partners.

8. Within Schedule 1, at Part 3 (Rights Excepted and Reserved), all of the easements, quasi-easements, rights and privileges which were enjoyed in, over and against the demised premises were accepted and reserved, in particular in respect of extraction of minerals in accordance with a planning permission at (4), which provides as follows:

“In the event that the Landlord or any person authorised by the Landlord obtains planning consent for the extraction of any minerals within the demised premises (but not any areas of ancient woodland) the right for the Landlord and all others authorised by the Landlord to enter onto those parts of the demised premises from which minerals are authorised to be extracted (but not otherwise) and to extract the said minerals in accordance with the relevant planning permission the person exercising such rights causing as little damage as possible and making safe and enabling the continued use of the demised premises forthwith for the Permitted Use and making good all damage thereby caused to the demised premises and restoring the land in strict compliance with the terms of the planning permission and LFP provisions relating to post-extraction landscaping restoration and aftercare of the demised premises and PROVIDED ALWAYS THAT the Landlord shall at its own expense: (1) carry out all remediation planting landscaping improvement restoration and the post extraction landscape restoration contained in the landscape aftercare and other planning conditions and (2) comply with and fulfil all other requirements of any minerals planning permission and any hereby indemnifies the Tenant in respect of all such requirements.”

9. The Ellenbrook Park Lease is incorporated at Schedule 10. At clause 6.5, the Lease provides as follows:

“Nothing in this Lease shall prevent the Landlord from exercising its rights to extract minerals from the demised premises in the event of him obtaining planning permission for mineral extraction PROVIDED ALWAYS THAT (1) the Landlord shall only be entitled to enter such

part or parts of the demised premises as are needed and are only actively used for such purposes but not otherwise and (2) the Landlord shall ensure that his method of working is such that members of the public may continue to safely and conveniently use and enjoy the remaining parts of the demised premises and that the areas of mineral extraction are securely fenced at all times and (3) the demised premises shall be returned to public use as soon as reasonably practicable following completion of extraction (4) the Landlord complies with Sub-Clauses 4.10 to 4.11.”

Submissions

79. Having regard to the relevant provisions, it is crystal clear that the 2000 Agreement anticipates the grant of planning permission for minerals development within Ellenbrook Park. So much is demonstrably the case by reference to:

- i) The exception in Clause 4.83;
- ii) The Ellenbrook Park Lease which excepts and reserves minerals and addresses the way in which any planning permission for minerals development is to be undertaken;
- iii) The fact that the 2000 Agreement defines (see Clause 1), refers to and includes the Ellenbrook Park Lease; and
- iv) The express references in the 2000 Agreement to the SPG (see Clause 1) which in turn sets out detailed guidance on the topic of mineral extraction.

80. Taking these in turn. Clause 4.83 of the 2000 Agreement expressly addresses the interaction between access to Ellenbrook Park by the public and the exclusion of the public when minerals are being extracted pursuant to a

planning permission. The Clauses of Section 4 are evidently drafted to be a coherent whole and to give effect to what the parties reasonably anticipated to take place in the future. Clauses 4.6, 4.83 and 4.128 are to be read together. When that is done, it is apparent that the use of Ellenbrook Park is carefully prescribed for sports, amenity, education and film uses also including nature study and the use of the bridleways and cycleways which are provided. Those descriptions of the scope of uses plainly relate to the Ellenbrook Park as a park, but subject to the anticipated event that a part of the Ellenbrook Park would have a use for mineral extraction. It is for that reason that Clause 4.83 includes both a proviso to exclude the public and to do so by reference to a carefully drafted lease, which makes express provision along the same lines.

81. The provisions of the Ellenbrook Park Lease reflect the substance of the 2000 Agreement. In particular, the Lease provides very carefully for mineral extraction such that the landlord shall only enter such part or parts of the premises as are needed. Further, the methods which are employed by the landlord to work the mineral are to ensure that the public may continue to safely and conveniently use and enjoy the remaining parts of the Park. Further, there is a requirement to return the premises to public use as soon as reasonably practicable.

82. The SPG is a defined term and a document to which the 2000 Agreement refers. The SPG expressly refers to future minerals extraction at its pages 36 to 39. Those detailed provisions refer to the need to strike a balance between maximising the use of the mineral resources and protecting the amenity of

existing residents at Ellenbrook and Smallford and other existing occupiers and users (see §9.27). The SPG is plainly supplementary to other adopted policy as it explains at its paragraph 3.1, which sets out the Development Plan Framework which was relevant at the time that the SPG was drafted and adopted. It expressly includes the Hertfordshire Minerals Local Plan 1991-2006, adopted in July 1998. In that regard, the planning authorities who are parties to the 2000 Agreement are to be taken to have made the agreement in the knowledge that the Minerals Local plan allocated land within Ellenbrook Park for minerals extraction. The SPG and contemporaneous minerals planning policy were within the knowledge and contemplation of the parties and to be consistent with the 2000 Agreement.

83. In short, no part of the 2000 Agreement is inconsistent with the principle of mineral extraction. It follows that there can be no legal requirement to agree a variation to the 2000 Agreement ahead of deciding whether or not to grant planning permission.

84. The question then arises as to the practical impact if permission is granted without a deed of variation and without a *Grampian* condition that requires one (the test for imposing such a condition being that of necessity). In particular, what happens to delivery of the wider Country Park? The answer is straightforward. The ‘backstop’ position under the 2000 Agreement remains that the landowner (who is not the Appellant) is legally required to provide public access to the Country Park and to maintain it in perpetuity. In addition, any minerals permission would also require the minerals developer to provide

the maximum extent of safe public access within the part of the Park that lies within the red line boundary.

Conclusion

85. The 2000 Agreement clearly allows for and envisages minerals development coming forward on the Appeal Site. It provides for a careful balance between public access and the benefits of such extraction. There is no requirement to vary the 2000 Agreement were the Appeal Scheme to go ahead. Even if a variation was required for the Appeal Scheme to be lawfully implemented, that would not prevent the lawful granting of planning permission and would not need to be secured prior to the granting of consent or indeed prior to development commencing by way of a *Grampian* condition.

TOWN AND COUNTRY PLANNING

ACT 1990

**FORMER HATFIELD
AERODROME**

Refs: APP/M1900/W/24/3346607

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