LAND AT HATFIELD AERODROME, OFF HATFIELD ROAD

HCC ref: PL/0232/21

PINS ref: APP/M1900/W/24/3346607

OPENING STATEMENT on behalf of

HERTFORDSHIRE COUNTY COUNCIL

Introduction

1. This appeal arises from Hertfordshire County Council ("**HCC**") decision to refuse planning permission on the application of Brett Aggregates Limited ("**the Appellant**") made in September 2021.

2. The application sought planning permission for development comprising:

> "the establishment of a new quarry on land at the former Hatfield Aerodrome, including new access onto the A1057, aggregate processing plant and other ancillary facilities, together with the importation of inert fill material to restore the mineral workings"

3. On 31 October 2023, HCC's Development Control Committee ("**the Committee**") resolved to refuse permission on eight grounds and a decision notice was issued on 12 January 2024. However, following the bringing of the appeal, HCC confirmed that it would not be calling evidence in support of the reasons for refusal and on 24 September 2024 the Committee formally resolved to withdraw the reasons for refusal.

4. HCC now agrees that subject to the imposition of suitable conditions (one of which is intended to secure a Deed of Variation to the December 2000 planning obligation ("**the 2000 Agreement**")) and the completion of a suitable s.106 planning obligation – an agreed and signed draft of which is before the inquiry – permission should be granted and the appeal allowed.

Need for the Development

5. The background to the application was set out in HCC's statement of case, Part 8 of which has now been withdrawn, and in the officer's report to the Committee ("**the OCR**")[1].

6. The Site lies[2] within Preferred Area 1 as set out in Policy 3 of the Minerals Local Plan 2007 ("**the MLP**"). As set out in the Need SoCG signed by the HCC and the Appellant (CD14.13), it is agreed that the MLP:

   (1) Requires the maintenance of a landbank

   (2) Specifically allocated the Site for mineral extraction;

   (3) Gives rise to an expectation that the Site will be worked (subject to its contribution to local, regional and national supplies and fulfilling the requirements of the Site Brief) and that

   (4) There is a preference to maintain supply from the Preferred Areas before any other areas of land are released.

7. Against that background, the MPA also accepts that the landbank of permitted reserves of sand and gravel within Hertfordshire is low and that there is therefore a clear need for the Appeal Scheme which would make a significant contribution to the landbank.

8. In addition, the MPA considers that the Appeal Scheme will meet a forecast need for capacity for the recovery of inert waste. Inert infill is necessary to deliver the quarry's restoration scheme. The Appeal Site is well placed to attract the infill materials required to deliver the restoration scheme. The number of sites able to accept inert waste arisings within the county is declining, as is the remaining void within these sites. There is over 1.0 million tonnes a year of residual inert waste arisings that are incapable of being recycled that need to be beneficially disposed of within Hertfordshire. By c. 2030 it is likely that there will be insufficient capacity to manage the annual amount of inert waste.

9. This need case should form the context against which the Inspector's main issues fall to be considered and will be central to the application of the statutory test required by

[1] CD2.9
[2] Almost entirely.

s.70(2) of the Town and Country Planning Act 1990 and s.38(6) of the Planning and Compulsory Purchase Act 2004.

10. With this point made, this statement will turn to address in turn the range of issues set out in the Inspector's first CMC note.

Whether the proposal would be inappropriate development in the green belt?

11. Reason for refusal 1 alleged that the proposal represented inappropriate development in the Green Belt. This is no longer maintained.

12. NPPF 155(a) provides that "*mineral extraction"* will not be inappropriate development in the Green Belt "*provided they preserve its openness and do not conflict with the purposes of including land within it.*" A similar exception is made in respect of engineering operations, which would include the creation of the bunds.

13. The central question is therefore whether the Proposal would preserve openness and not conflict with the purposes of holding land in the Green Belt. HCC considers that it would. That position is informed by the analysis of Inspector Woolcock in the 2022 Appeal Decision and a comparison between the proposals considered then and now. The current scheme excludes the concrete batching plant which was the sole aspect of the previous scheme found to be inappropriate, and has reduced the area of the processing plant. HCC is satisfied that each of the elements of the Appeal Scheme are the minimum necessary to facilitate the winning and working of minerals at the Appeal Site. In particular:

    (1) The height of the stockpiles at 5m allows for the campaign working that is necessary to ensure the water environment is protected.

    (2) The screen and perimeter bunds are necessary to store topsoil, overburden and interburden required to access the mineral reserve and serve the functions required by the SPG to ensure visual and acoustic screening.

    (3) The recharge lagoons are necessary as part of the drainage scheme and to avoid off-site flood risk but in any event these do not affect openness.[3]

[3] Main SoCG at 6.10

14. This was the position of officers as set out in the Addendum Note presented to the Committee.[4]

The character and appearance of the site and area and landscape character

15. Reason for refusal 4 alleged harm to landscape character and visual amenity.

16. HCC consider that the Scheme will give rise to adverse effects on the character and appearance of the local landscape during the operational phases of the mineral extraction. The land currently has a derelict appearance whilst being generally flat and open[5]. The Site falls within the De Havilland Plateau Landscape Character Area[6]. It does not form part of or contribute to any designated landscape or constitute a valued landscape for the purposes of NPPF 180(a).

17. However, progressive restoration of each phase is capable of delivering an enhanced landscape and supporting the provision of a country park standard fit for the Ellenbrook Park.

18. While impact on the character and appearance to the site and area during the period of the mineral workings is considered to be a harm, it is capable of being outweighed by the benefits of the scheme, and in this case is.

Biodiversity

19. Reason for refusal 5 alleged that the proposals had not sufficiently minimised the impacts of the development or provided for adequate net gain.

20. This is no longer maintained and HCC accepts that the Restoration Plan contains sufficient detail to minimise the impacts of the development and ensure suitable gains upon restoration. It should be noted that there is no policy or statutory requirement for a particular level of net gain, which suggests that any secured gain is a benefit. However, HCC's view is that given the delay until any such gains will be realised it is a benefit of limited weight in the overall balance.

[4] CD2.9.3
[5] See OCR at 3.14
[6] As defined in the Hertfordshire Landscape Character Assessment [CD10.1]

Heritage assets

21. The impact of the Scheme on the listed buildings at Popefield Farm was raised by reason for refusal 2.

22. In this regard, HCC's position remains that the proposals will cause less than substantial harm to the listed buildings at Popefield Farm, through the proximity of the bunds and activity associated with the extraction and infill works to be carried out. This negative effect will be mitigated to some degree by the restoration of the land to a country park but – in line with Inspector Woolcock – HCC agrees with the Appellant that (i) the harm is at the lower end of less than substantial and (ii) the harm will outweigh the heritage benefits.

23. However, any harm falls to be weighed against the public benefits of the Scheme under NPPF 202 (as well as in the final balance).

24. HCC considers that those benefits are more than sufficient to outweigh the harm to the listed buildings, even giving the desirability of preserving them the special regard required by s.66 of the Listed Buildings Act 1990.

Residential amenity at Popefield Farm and in the surrounding area and including noise and dust.

25. Under reason for refusal 3, HCC alleged that the proposals did not provide an adequate buffer distance and landscape planting to protect the residential amenities of the occupiers of Popefield Farm.

26. It is agreed that the extent of separation between Popefield Farmhouse and the area of mineral working has been increased and the landscaping measures are more extensive than previously proposed in the 2016 application / 2021 Appeal.

27. HCC now accepts there are no amenity issues (noise or dust/particulate) to residential receptors surrounding the site save for Popefield Farm and then in relation to noise only. The noise impact assessment predicts that the noise at the nearest noise sensitive receptor would not exceed the maximum noise limits in the NPPF. Specific maximum noise limits, during normal activities, for sensitive receptor is also considered appropriate to protect amenity and for future monitoring.

28. This was contrary to the advice of officers in the OCR who considered (i) that an acceptable noise environment could be maintained subject to the imposition of the

proposed mitigation measures and (ii) that the operation of the site would not give rise to unacceptable impacts on air quality including cumulatively with the neighbouring quarry. The HCC no longer maintain the reason for refusal and accept that mitigation will appropriately control impacts.

The users of Ellenbrook Park

29. Reason for refusal 6 raised a concern over the impact on the users of the Park during the mineral workings. This is to be controlled primarily by the Public Access Strategy, which is to be secured under draft condition 17.

30. HCC no longer maintains the reason for refusal. There is an outstanding issue about how the access and user covenants secured under the 2000 Agreement will interact with this scheme (see further below). However, HCC accepts that the Public Access Strategy submitted is adequate and that this matter can be adequately controlled by conditions.

Highway safety and the free flow of traffic

31. Reason for refusal 7 raised an issue in relation to the cumulative impacts of the Scheme in terms of additional HGV movements, and the impact on the highway network and the safety of vulnerable road users.

32. Prior to determination, HCC as highways authority had taken a thorough review of the information submitted by the Appellant and come to the conclusion that the development would not have significant adverse impact on the operation of the Highway and would comply with relevant policies including Policies 16 (Transport) and 18 (Operational criteria for the control of mineral development) of the MLP[7].

33. HCC no longer maintains the reason for refusal or considers that any unacceptable impact on the highway network or highways safety arises.

Groundwater

34. The risks to groundwater from disturbance of the bromate plume has been a significant consideration for HCC throughout its consideration of the implications of both the current Appeal Scheme and that previously proposed. The history behind this, in terms

[7] See OCR paras 9.82, 9.83, 9.87.

of local bromate contamination, are recorded in Inspector Woolcock's decision at DL8-9[8].

35. The proposed quarry is located outside but near to the southern edge of the bromate plume, based upon the results of several phases of investigation and groundwater monitoring by SLR Consulting Ltd (SLR) on behalf of the Appellants. Groundwater monitoring to establish the extent of the bromate plume close to the application site, and its absence within the application site has been undertaken since 2013; thus the data set spans 10 years and comprises multiple quarterly and annual sampling events (around 30 in total).The Environment Agency has not objected to the Proposed Development.

36. HCC no longer maintain the reason for refusal and accept that, in line with the OCR, and in the light of the evidence considered at the previous inquiry and Inspector Woolcock's conclusions, that subject to the imposition of the proposed conditions the risk can be appropriately managed.

Flooding

37. Flooding was not raised by HCC's reasons for refusal.

38. Neither the Lead Local Flood Authority or the Environment Agency objected to the proposed drainage strategy and flood risk, subject to the imposition of suitable conditions including draft condition 70 which requires compliance with the submitted Flood Risk Assessment.

Conditions and s.106

39. A s.106 planning obligation has been agreed and signed.

40. On conditions, the Inspector has a draft set of conditions which are largely agreed. These will be addressed in the conditions session.

41. One issue between HCC and the Appellant relates to whether a Grampian condition should be imposed on the grant of permission which requires the completion of a Deed of Variation to the 2000 Agreement. This was something which officers recommended in October 2023.[9]

[8] CD1.15
[9] See CD2.9 at para 2.9-2.11.

42. The need for the Deed of Variation has already been addressed by Welwyn Hatfield Borough Council in their written representations. Their position is that the 2000 Agreement could be enforced to prevent either some or all of the development proposed under the Appeal Scheme from going ahead.

43. This is a question of law which ultimately would have to be determined by a court. However, HCC consider that the *possibility* of the 2000 Agreement being enforced as suggested has significant implications for the Appeal Scheme in the following way:

    (1) It gives rise to risks that the Appeal Scheme might not be delivered as a coherent whole – which in turn would risk giving rise to impacts which go beyond what has been proposed and assessed under the Environmental Statement. Specifically, if the minerals processing elements of the Scheme could not be delivered but the rest of the Scheme was, this would result in significantly greater transport impacts.

    (2) It gives rise to a risk that the Appeal Scheme will never be delivered or will be substantially delayed.

44. The first issue can at least in principle be addressed by careful drafting of conditions and HCC continue to consider whether any amendments to what is proposed are required. If for whatever reason the conditions could not achieve the goal of preventing only part of the Proposed Development from being delivered this would be a further (and overwhelming) argument for the imposition of a Grampian condition as proposed below.

45. By contrast the second issue can only, HCC say, be remedied by the completion of a Deed of Variation which makes full and proper provision within the 2000 Agreement for the delivery of this Scheme. As set out in HCC's statement of case, there have been extensive discussions between the relevant parties in relation to this which are ongoing.

46. In order to ensure that a Deed of Variation comes forward, HCC say that it is necessary, relevant and otherwise reasonable and in accordance with the six tests, for a condition to be imposed on the grant of the permission which requires a deed of variation to be completed prior to commencement. Without it, there would be a risk that the Appellant would either be prevented from implementing the permission prospectively or seek to implement the permission without varying the 2000 Agreement and then be subject to action to prevent or suspend further works. Both of these scenarios would

give rise to uncertainty and delay which go not only to the ability of the Appeal Scheme to meet the identified minerals and landfill needs (as identified above) but also to HCC's ability to adequately assess and plan to meet those needs on other sites. They would also significantly increase the risk of partial implementation and development which would be unacceptable.

47. A Grampian condition of the kind proposed would mitigate all of those risks and overcome the planning harms identified.

Planning balance

48. HCC have accepted that the proposals amount to "not inappropriate" development in the Green Belt. It also agrees that the Proposed Development is in accordance with the development plan taken as a whole notwithstanding the identified impacts of the scheme in terms of heritage and landscape. No external material considerations have been identified to justify refusing permission.

49. It follows that HCC considers that planning permission should be granted and the appeal allowed.

Matthew Dale-Harris

LANDMARK CHAMBERS

19 November 2024.