

WORCESTERSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

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

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

County Council Reference: 19/000053/CM

OPENING SUBMISSIONS ON BEHALF OF

WORCESTERSHIRE COUNTY COUNCIL

This is an appeal against the decision by Worcestershire County Council (“WCC” or “The Council”) to refuse consent for application 19/000053/CM (as set out above) on 27th May 2022.

The application was originally refused with 9 reasons for refusal. WCC’s Statement of Case indicated (and it was communicated to the Appellant at an early stage) that it was the intention of WCC only to defend reason for refusal 2 (“unacceptable impact on openness of the Green Belt”) and reason for refusal 3 (“unacceptable impact on residential amenity and local schools”) within this Inquiry.

Subsequently, WCC has carefully considered the additional submissions made by the Appellant with regard to ecology, noise and cumulative impact as requested by the Environmental Services Department of the Planning Inspectorate under Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

WCC has concluded that the Appellant has now provided sufficient information to determine that the proposal, in combination with other developments, would not cause amenity harm through noise or dust impacts to residential dwellings or Heathfield Knoll School and First Steps Nursery, subject to the implementation of proposed mitigation measures. WCC has elected therefore not continue to defend reason for refusal 3 (“Unacceptable impact on residential amenity and local schools”).

Furthermore, with reference to reason for refusal 3, the parties disagree about the scale of the impact on visual outlook of residential properties by the proposed siting of the screening bunds. However, in isolation, having since addressed cumulative impacts, and due to the limited timeframes of the siting of the bunds, such impact is not determined to be sufficiently harmful as to maintain the defence of reason for refusal 3. The bunds are still relevant to the issue of openness with regard to the Green Belt concerns, however.

Accordingly, WCC no longer defends reason for refusal 3, and this has been set out, in as timely a manner as possible, in the updated SOCG dated 10 February 2023; (updating the original signed SOCG dated 24th January 2023)

WCC maintains its defence of one single reason for refusal, namely RfR 2, with regard to Green Belt impacts, and the overall assessment of the planning balance presented in the Council’s proof of evidence is not materially affected by the additional evidence from the Appellant.

The Council’s case, (including all the concessions properly made), addresses the issues in the Inspector’s Pre-Conference Note for the Case Management Conference (CMC), namely:

1. The need for the proposed development with particular regard to the landbank position for sand and gravel and the need for inert waste disposal in the County;
2. The effect of the proposed development on living conditions of the occupants of nearby dwellings and the amenity of pupils and staff at Heathfield Knoll School and First Steps Day Nursery with particular regard to outlook, noise and dust;

3. The effect on the openness of the Green Belt and whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies.

4. If the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

The Council's witness, Mr Chris Whitehouse sets out the full analysis of all the relevant development plan policies.

The Worcestershire Minerals Local Plan (MLP – 2018-2036) was adopted on 14 July 2022; it is up to date and full weight can be afforded to its policies.

The appeal site lies within the North Worcestershire Strategic Corridor and Area of Search for Solid Sand and Gravel and Silica Sand. It is not an allocated site; (Policy MLP2).

It is accepted Worcestershire currently does not hold a sufficient landbank of minimum seven years as required by paragraph 213 of the NPPF (CD 11.01). Taking relevant planning permissions into account and assuming production figures are rolled forward, then the landbank of permitted reserves on 31 December 2022 would be approximately 4.75 million tonnes of sand and gravel, equating to about 5.74 years.

The Worcestershire Waste Core Strategy Development Plan Document (WCS - 2012-2027) was adopted in 2012, and full weight can be afforded to its policies.

Policy WCS 13 states that waste management facilities will be permitted within the Green Belt where the proposal does not constitute inappropriate development, or where very special circumstances exist.

The Wyre Forest Local Plan was adopted in April 2022. The whole of the appeal site is within the Green Belt and within the villages of Cookley and parts of Wolverley. The policies map also shows the Lea Castle Strategic Allocation site extended to the Wolverhampton road opposite the appeal site.

Policy DM.22 of the Local Plan provides that development in the Green Belt will not be permitted, except in very special circumstances, or unless the development accords with one of a list of developments defined as a) to g):

g): “other operations, including changes of use which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it”.

Furthermore, the policy states that proposals both within or conspicuous from the Green Belt, must “not be detrimental to the visual amenity of the Green Belt, by virtue of their siting, materials or design”.

These development plan policies concerning the Green Belt mirror those in the NPPF.

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

NPPF Paragraph 150 sets out those forms of development that are “not inappropriate”, and these include, at part a) mineral extraction and at part b) engineering operations, (such as formation of screen bunds). Minerals developments are not, however, thereby automatically allowable in the Green Belt, as further consideration must be given to the impact on openness, and the preservation thereof. Mineral extraction should be defined as set out by Mr Whitehouse in his Proof at paragraph 4.15, in accordance with section 55 of the 1990 Act, and it does not include the built development that comprises the “Plant Site” of the appeal proposal (including the portacabin offices, and described in full by Mr Whitehouse in his paragraph 4.32). This has not been appropriately addressed in the Appellant’s evidence, and there is contradiction between the Appellant’s landscape witness, Mr Furber, and the Appellant’s planning witness, Mr Toland in this regard.

NPPF Paragraph 149 says that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Mr Furber has incompletely analysed, and Mr Toland has improperly ignored the issue of the “Inappropriate Development” which is represented by the built development. Mr Furber places reliance upon the lower

level of the plant site, which fails fully to assess the impact on openness, and relies excessively on the visual element. The Appellant's witnesses have also given inadequate weight to the harm to openness represented by the very mitigation measures that they rely upon to preserve openness, namely the temporary soil storage/visual screening bunds. Mr Whitehouse analyses these issues in full, and his conclusions substantiate the Council's case.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Decision makers must ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. It is obviously important to identify and analyse these various elements accurately.

The purposes of including land within Green Belt are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The Council's case, as set out in its SOC, as noted by Mr Furber, and as analysed by Mr Whitehouse relates to purposes (a) and (c). Mr Toland has added a third – (b).

The Green Belt Review shows the appeal site within Parcel N7, and it comprises about 22% of that area. The review assesses Parcel N7 as making a contribution to preventing sprawl and encroachment. It is therefore inaccurate for Mr Furber and Mr Toland to conclude that the appeal site does not make any such contribution. It is incorrect to suggest that the appeal site itself must represent built development before it could have

any impact on “urban sprawl”. The converse is true – the appeal site serves a purpose in preventing sprawl by remaining open itself; both visually and spatially/volumetrically. The site, at its narrowest, sits within a 1.3 kilometre gap. The green belt review found that the appeal site directly contributed to the prevention of both the incremental encroachment of development into the open countryside and to the sprawl of Kidderminster along the A449; and accordingly had heightened purposes in relation to two of the five purposes of Green Belt land.

The Lea Castle site was permitted subsequently to the Green Belt Review, and this adds cumulative effects, and heightens the requirement of the appeal site to preserve the purposes of the Green Belt.

The Appellant’s case is heavily dependent upon the temporary duration of the operational phases of the proposal, and the mitigation measures. Mr Whitehouse’s evidence clearly demonstrates that, even for this space of time, the operational phase over eleven years, both in isolation and cumulatively has an impact on the landscape and causes harm to the openness of the Green Belt. The bunds, internal haul roads, plant areas and associated activity are all significant developments that affect openness. There would also be very significant lorry activity within a current provision of countryside land, together with an intensified access junction and associated highway movements. The Appellant has largely ignored the impact of the large bunds.

The Council’s case has appropriately and correctly analysed the impact of this proposal upon the Green Belt, and the Council is right to defend reason for refusal 2, which is sufficient, in and of itself to justify a refusal of this appeal.

Sarah Clover

Kings Chambers

27 February 2023