

Town and Country Planning Act 1990 – Section 78 Town and County  
Planning (Development Management Procedure) (England) Order  
2015 Town and Country Planning (Inquiries Procedure) (England)  
Rules 2002

Appeal by NRS Aggregates Ltd

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

Against the refusal of planning permission by Worcestershire County  
Council for application 19/000053/CM

“Proposed sand and gravel quarry with progressive restoration using  
site derived and imported inert material to agricultural parkland,  
public access and nature enhancement”

## Statement of Case

October 2022

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## Appendices

Appendix 1 – Justification for a Public Inquiry

# 1. Introduction

- 1.1 This Statement of Case is prepared on behalf of the appellant NRS Aggregates Ltd against the following planning application refused by Worcestershire County Council (WCC):
- Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement (Planning Application Reference: 19/000053/CM).
- 1.2 In light of WCC's decision to refuse planning permission, the purpose of this Statement and supporting documents is to demonstrate that the proposed development is acceptable in planning terms and should proceed subject to appropriate planning conditions.
- 1.3 The Appellant is firmly of the view that a Public Inquiry is the most appropriate procedure in which to test the matters in dispute between the main parties. A justification for this request is provided in accordance with the PINS Procedural Guidance (Annexe K – March 2021) at **Appendix 1**.
- 1.4 This Statement of Case is supported by a draft Core Documents list which currently comprises the original planning application documents, supplementary documents that were submitted during the determination stage, statutory consultee responses, the Officers Report, the Decision Notice, relevant policy documents and other relevant decisions/judgements. The Appellant will seek to agree a final Core Documents list with the Council.
- 1.5 The Appellant has also prepared a draft Statement of Common Ground (SoCG).

## 2. The Reasons for Refusal

2.1 This section details the reason for refusal and the main issues that were raised by Worcestershire County Council Planning and Regulatory Committee leading to the refusal of the proposal, contrary to the planning officer's firm recommendations to grant permission.

2.2 Planning application (ref: 19/000053/CM) was considered at Planning and Regulatory Committee on 24<sup>th</sup> May 2022 with officer recommendation for approval. A summary of the application was set out in paragraphs 939 - 1006 of the Committee Report (**CD10.01**), with the officers' conclusion set out in paragraph 1007, being:

*"In accordance with paragraph 11 d) of the NPPF, where the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. On balance, taking into account the provisions of the Development Plan and in particular Policy 2 of the adopted County of Hereford and Worcester Minerals Local Plan, Policies WCS 1, WCS 2, WCS 5, WCS 6, WCS 8, WCS 9, WCS 10, WCS 11, WCS 12, WCS 13, WCS 14 and WCS 15 of the adopted Worcestershire Waste Core Strategy, and Policies SP.1, SP.6, SP.7, SP.16, SP.20, SP.21, SP.22, SP.23, SP.24, SP.27, SP.28, SP.29, SP.30, SP.31, SP.32, SP.33, SP.34, SP.35, SP.37, DM.10, DM.22, DM.23, DM.24, DM.26, DM.28 and DM.32 of the adopted Wyre Forest District Local Plan, it is considered the proposal would not cause demonstrable harm to the interests intended to be protected by these policies or highway safety. However, this Council may not grant planning permission until the Secretary of State has notified the Council that he does not intend to call in the application for his own determination."*

2.3 In arriving at the recommendation for approval, the Planning Officer identified 15 key issues to be considered in determining whether the application is acceptable, namely:

- Worcestershire's landbank of sand and gravel reserves;
- Sieve test / methodology and Best and Most Versatile (BMV) agricultural land;
- Alternatives;
- Green Belt;
- Traffic, highway safety and impact upon public rights of way;
- Residential amenity (including noise, odour, dust, air quality, vibration, lighting and health impacts);
- Landscape character and appearance of the local area;
- Historic Environment;

- Ecology, Biodiversity and Geodiversity;
- Water Environment;
- Restoration and Aftercare of the Site;
- Economic impact;
- Climate change;
- Cumulative effects; and
- Prematurity.

2.4 However, despite the above recommendation, the decision notice issued by WCC on 27<sup>th</sup> May 2022 (CD10.02) refused the application for the following reasons:

1. *“Contrary to Policy 2 (Other Sand and Gravel Deposits) of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997) (Saved Policies);*
2. *Unacceptable impact on openness of the Green Belt;*
3. *Unacceptable impact on residential amenity and local schools;*
4. *Unacceptable impact on the local economy;*
5. *Loss of 2 Tree Preservation Order (TPO) trees;*
6. *Unsuitable bridleway next to the Wolverhampton Road (A449);*
7. *Unacceptable impact on highways;*
8. *Unacceptable general impact on environment and wildlife; and*
9. *Unacceptable impact on health of local population.”.*

2.5 This Statement of Case sets out the Appellant’s case that the proposal will not (contrary to the opinion of the Council) conflict with the Development Plan, indeed that it draws support from the local plan, the NPPF and other important material considerations. In preparing this Statement, regard has been given to PINS Guidance<sup>1</sup>. Given the nature of the issues in this Appeal, it is considered likely that the Appeal will proceed by way of a public inquiry so that proofs of expert evidence will be produced in due course. This Statement of Case is written on this basis.

2.6 The reasons for refusal fail to factor in and give proper consideration to all of the technical work and indeed the responses of statutory consultees. It is noted that none of the statutory consultees or other relevant bodies holding the necessary expertise and experience on the matters under consideration objected to the proposals (and indeed the Committee Minutes (CD10.03) show that many of these consultees were

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<sup>1</sup> Procedural Guide. Planning appeals – England. Planning Inspectorate March 2021

present at the debate and provided information and support to the Development Management Team Manager in rebutting the varied points raised by objectors/councillors).

- 2.7 Furthermore, the reason for refusal fails to factor in the benefits of the Appeal Proposal and consequently fails to provide a balanced assessment of the proposed development. The weight to be given to the benefits arising from the Appeal Proposals will be set out in evidence. It will be demonstrated that any potential impacts are clearly outweighed by the identified benefits and accordingly, the overall planning balance clearly lies in favour of the Appeal being allowed.
- 2.8 As such, it is established that the proposed developments should not be refused on the grounds argued at committee, rather the initial recommendations of the planning officer for approval should be supported and this Appeal upheld.

### 3. Background

- 3.1 The section of the Statement sets out an overview of the Appeal Site and an overview of the planning history.

#### Appeal Site and Surrounding Context

- 3.2 A full description of the Appeal Site and its surroundings is set out in the draft Statement of Common Ground for agreement with the Council. Further details on the site context are provided in the Environmental Statement (**CD1.03**) and the Planning Statement (**CD1.02**).

#### Planning History and Background

- 3.3 Historically, the site formed a part of the c.220ha grounds of Lea Castle, which was built around 1762 and demolished in 1945.
- 3.4 Planning permission was granted at Lea Castle Farm in May 1997 (WFDC ref. WF/0648/96) for the conversion of barns into eight dwellings, the erection of garages, construction of driveways, parking areas and new sewage treatment plant along with alterations to the existing access. In July 2001 planning permission was granted (WFDC ref. WF/0437/01) for the change of use of barns to 11 dwellings with the associated erection of garages, construction of hardstandings and new access drive.
- 3.5 A planning application for the construction of two golf courses at Lea Castle Farm was first submitted to WFDC in March 1999. The application included the proposed construction of one 18-hole and one 9-hole golf courses, the erection of a clubhouse with ancillary facilities, the construction of a new vehicular access onto Castle Road, new driveways and parking facilities, a golf practice area, and the diversion of a public footpath. The application (WFDC ref. WF/0260/99) was refused at Planning Committee on 14th March 2000 and a subsequent appeal was withdrawn. However, an application (WFDC ref. WF/0211/01) was permitted by Committee on 17th July 2001 for 'construction of two new golf courses (18 hole and 9 hole), new clubhouse and ancillary facilities, new access to Castle Road, Cookley, new driveways and parking facilities, golf practice area and diversion of public footpaths'.
- 3.6 The planning permission for the construction of golf courses at the application site was not implemented. Similarly, neither permission for the conversion of barns to residential uses at the site were implemented. The July 2001 permission (WF/0437/01) remains the most recent significant permission issued for the application site.
- 3.7 In terms of mineral development, the site was promoted within the Third Stage Consultation of the now adopted Worcestershire Minerals Local Plan (14th July 2022). The site was assessed and considered appropriate to be allocated 'Preferred Area Status' under the title of Land North of Wolverley Road (submission reference DO26-2397). Although the Third Stage Consultation on the Minerals Local Plan included "specific site" and "preferred area" site allocations, this approach was not carried forward in the Fourth Stage or the Publication Version stage.

## 4. The Appeal Proposal

- 4.1 This section of the Statement of Case sets out an overview of the proposed development, which is set out in detail in the Planning Statement (**CD1.02**).
- 4.2 The proposed development is for sand and gravel extraction together with progressive restoration over approximately 26 hectares of land at Lea Castle Farm from two distinct areas – western and eastern areas. The western area measures approximately 12.5 hectares and the eastern area measures approximately 13.5 hectares, although the full extent of the red line application boundary is about 46 hectares.
- 4.3 Vehicular access to the application site would be via a proposed new access and internal haul road onto the Wolverley Road (B4189) in the south-eastern area of the site. This access would provide direct access to Wolverhampton Road (A449) towards Kidderminster and Stourbridge.
- 4.4 The Appeal Proposal makes provision for the initial work to establish a new temporary access onto the B4189 Wolverley Road and Plant Site and subsequent phased extraction of sand and gravel and solid sand and its distribution. Extraction will be concurrent with restoration of extracted areas utilising both in situ site soils and overburden and imported inert materials.
- 4.5 A total of circa 3 million saleable tonnes of sand and gravel will be extracted across an initial works period and five subsequent phases over the course of approximately 10 years. The mineral comprising circa 1.57 million tonnes of sand and gravel and 1.43 million tonnes of solid sand. The mineral will be transported to the plant site for processing utilising both dump trucks and a conveyor system. This scheme has been designed based on an annual processed tonnage of 300,000 saleable tonnes. This will provide a source of mineral to supply the building and construction industries with aggregates for products such as building sand, mortar sand, drainage materials and concreting sand and gravel supplying local and midland markets.
- 4.6 The plant site is proposed to comprise the following:
- The processing plant;
  - Office and weighbridge and wheel wash;
  - Stocks of product;
  - 2 cylinders for a silt management/water cleansing system; and
  - Staff and visitor car parking.
- 4.7 The footprint of the operational processing plant site area would measure approximately 3.8 hectares and would be located about 7 metres below existing ground levels (plant site located at approximately 63.5 metres Above Ordnance Datum (AOD) and existing ground level at approximately 70.5 metres AOD, and surrounded by a soil storage / visual screening bund, which would measure approximately 3 metres high to the south and north and between 4 to 5 metres to the west, with higher ground to the east (up to



- approximately 80 metres AOD). An overburden bund (overburden is unsaleable materials such as clay or un-saleable silty sand that lies above the mineral) would be located within the north of the processing plant site area measuring approximately 6 metres high.
- 4.8 The phased extraction of all mineral would take place above the natural water table. The development will also include the restoration and enhancement of the site/local landscape setting and green infrastructure. A new agricultural parkland will be created designed to enhance local access, amenity and wellbeing with the provision of approximately 2.3km of new routes of public footpaths, cycleways, bridleways and pocket parks. Native woodland blocks will be re-established to reflect previous social historic land uses, hedges will be strengthened, and new acidic rich meadow grassland will be developed to promote biodiversity and educational opportunities.
- 4.9 To aid in this process c. 60,000 m<sup>3</sup> of inert material will be imported onto site per annum, c. 600,000 m<sup>3</sup> in total, to help create restoration formation levels onto which the original site soil profile will be placed. The Western Area of the site is proposed to be fully restored within 5 years of extraction commencing with the Eastern Area restoration being fully completed within one year after the cessation of mineral extraction.
- 4.10 Land Aftercare and Management agreements will be established to ensure the restoration/enhancement measures are financially sustainable and permanent.

## 5. Planning Policy

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination of planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

### Local Policy

5.2 The Planning and Compulsory Purchase Act 2004 defines the Development Plan as the Development Plan documents (taken as a whole) which have been adopted or approved in relation to that area.

5.3 The relevant statutory Development Plan for the appeal comprises:

- The Worcestershire Minerals Local Plan (adopted July 2022) (**CD11.03**);
- Worcestershire Waste Core Strategy Development Plan Document 2012 – 2027 (Adopted November 2012) (**CD11.04**); and
- Wyre Forest District Local Plan 2016 – 2036 (Adopted April 2022) (**CD11.05**).

5.4 It is noted that Reason for Refusal 1 relates to Policy 2 of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997), however, since the adoption of the Minerals Local Plan in July 2022, this Policy is now superseded and therefore, is no longer of relevance to the Appeal Proposal.

5.5 The Appellant will assess the relevant provisions of the Development Plan, including its consistency with current national policy, in evidence.

5.6 Policies MLP1 and MLP3 of the Adopted Minerals Local Plan (July 2022) are considered pertinent policies to the determinations of the Appeal.

5.7 Policy MLP 1: 'Spatial Strategy' seeks to direct minerals extraction within the Strategic Corridors stating that *"for most types of mineral, the majority of development over the life of the plan will be located in the Avon and Carrant Brook, Lower Severn, North East Worcestershire, North West Worcestershire and Salwarpe Tributaries Strategic Corridors: i. Development for sand and gravel...will be supported within the strategic corridors and will not normally be supported elsewhere in the county"*. The reasoned justification to Policy MLP 1 states that *"to serve market demand for mineral resources in and around Worcestershire, and to support the local and wider economy, five strategic corridors are ...The identification of the strategic corridors has been informed by the distribution of the mineral resources which are found in Worcestershire...The strategic corridors are the areas in the county where these are the greatest concentrations of sand and gravel, silica sand, and brick clay resources which are not affected by significant viability, environmental and amenity constraints"*. The reasoned justification to Policy MLP 1 goes onto state that *"concentrating mineral development in the strategic corridors will enable a co-ordinated approach to the working and restoration of mineral sites, giving greater opportunities to deliver integrated social, economic and environmental gains than if sites are considered in isolation. The character and*

*distinctiveness of each of the strategic corridors sets a framework for the cost-effective delivery of multifunctional green infrastructure priorities”.*

- 5.8 Policy MLP 3: ‘Strategic Location of Development – Areas of Search and Windfall Sites within the Strategic Corridors’ of the adopted Minerals Local Plan (July 2022) states that: *“a) planning permission will be granted for new mineral developments and extensions to extant sites within allocated areas of search where there is a shortfall in supply as demonstrated by Part c)”.*
- 5.9 Part c) of the policy states: *“a shortfall in supply for a broad mineral type will be considered to exist where: i) there is a shortfall in extant sites and allocated specific sites and / or preferred areas to meet the scale of provision required over the life of the plan...”*
- 5.10 The Appellant notes that the site is located within a strategic corridor and within an area of search as set out in the adopted Minerals Local Plan (July 2022).
- 5.11 Other policies of relevance to the appeal are:
- The Worcestershire Minerals Local Plan (adopted July 2022):
    - Policy MLP 7: Green Infrastructure;
    - Policy MLP 11: North West Worcestershire Strategic Corridor;
    - Policy MLP 14: Scale of Sand and Gravel Provision;
    - Policy MLP 15: Delivering Steady and Adequate Supply of Sand and Gravel;
    - Policy MLP 26: Efficient Use of Resources;
    - Policy MLP 27: Green Belt;
    - Policy MLP 28: Amenity;
    - Policy MLP 29: Air Quality;
    - Policy MLP 30: Access and Recreation;
    - Policy MLP 31: Biodiversity;
    - Policy MLP 32: Historic Environment;
    - Policy MLP 33: Landscape;
    - Policy MLP 34: Soils;
    - Policy MLP 35: Best and Most Versatile Agricultural Land;
    - Policy MLP 36: Geodiversity;
    - Policy MLP 37: Water Quality and Quantity;
    - Policy MLP 38: Flooding;
    - Policy MLP 39: Transport; and

- Policy MLP 40: Planning Obligations.
- The Worcestershire Waste Core Strategy Development Plan Document 2012 – 2027 (Adopted November 2012):
  - Policy WCS 1: Presumption in favour of sustainable development;
  - Policy WCS 2: Enabling Waste Management Capacity;
  - Policy WCS 5: Landfill and disposal;
  - Policy WCS 6: Compatible land uses;
  - Policy WCS 8: Site infrastructure and access;
  - Policy WCS 9: Environmental assets;
  - Policy WCS 10: Flood risk and water resources;
  - Policy WCS 11: Sustainable design and operation of facilities;
  - Policy WCS 12: Local characteristics;
  - Policy WCS 13: Green Belt;
  - Policy WCS 14: Amenity; and
  - Policy WCS 15: Social and economic benefits.
- Wyre Forest District Local Plan 2016 – 2036 (Adopted April 2022):
  - Policy SP.2 - Locating New Development;
  - Policy SP.7 - Strategic Green Belt Review;
  - Policy SP.16 - Health and Wellbeing;
  - Policy SP.21 - Historic Environment;
  - Policy SP.22 - Landscape Character;
  - Policy SP.23 - Protecting and Enhancing Biodiversity;
  - Policy SP.24 - Protecting and Enhancing Geodiversity;
  - Policy SP.27 - Transport and Accessibility in Wyre Forest;
  - Policy SP.29 - Water Conservation and Efficiency;
  - Policy SP.30 - Sewerage Systems and Water Quality;
  - Policy SP.31 - Flood Risk Management;
  - Policy SP.32 - Sustainable Drainage Systems (SuDS);
  - Policy SP.33 - Pollution and Land Instability;

- Policy SP.34 - Minerals;
- Policy SP.35 - Waste;
- Policy DM.22 - Safeguarding the Green Belt;
- Policy DM.23 - Safeguarding the Historic Environment;
- Policy DM.26 - Landscaping and Boundary Treatment;
- Policy DM.28 - Wyre Forest Waterways; and
- Policy DM.32 - Agricultural Land Quality.

#### Other Material Considerations

*Worcestershire Local Aggregates Assessment Data covering the period up to 31/12/2020 (February 2022)*  
**(CD11.07)**

- 5.12 The appellant will demonstrate that the Council cannot demonstrate a 7 year landbank as required by the NPPF. Furthermore, it is considered that the Appeal Proposal would contribute to providing a balanced geographical spread of mineral reserves and provide an additional mineral site, contributing to a steady and adequate supply of mineral (sand and gravel) and adding to resilience to the mineral (sand and gravel) supply in Worcestershire, which is currently provided by a limited number of active sites.

#### *National Planning Policy Framework (NPPF)*

- 5.13 The Appellant will demonstrate that, having regard to the proper application of the Framework, the Appeal Proposal meets the three overarching objectives of sustainable development under paragraph 8 and benefits from the presumption in favour of sustainable development under paragraph 11 of the Framework.
- 5.14 Section 13 of the NPPF states that *"the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence"* (Paragraph 135). Paragraph 138 of the NPPF states that *"Green Belt serves five purposes:*
- 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"*.
- 5.15 Paragraph 147 of the NPPF states in respect of proposals affecting the Green Belt that *"inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*. Paragraph 148 of the NPPF states *"when considering any planning application, local*

*planning authorities should 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".*

- 5.16 Minerals can only be worked where they are found, and mineral working is a temporary use of land. Paragraph 150 of the NPPF identifies certain forms of development as not inappropriate development within the Green Belt, this includes mineral extraction and engineering operations, *"provided they preserve its openness and do not conflict with the purposes of including land within it"*.
- 5.17 The appellant remains satisfied that the proposals preserve openness and do not conflict with the purposes of including land within the Green Belt. However, the appellant will demonstrate that given the clear need and sustainable benefits of developing a sand and gravel quarry within this location, the associated benefits to the local economy and the biodiversity and restoration benefits of the proposal, very special circumstances exist that justify the development of a quarry in this location.
- 5.18 Paragraph 209 of the NPPF re-states the long established concept that minerals *"can only be worked where they are found"*. Paragraph 211, sets out that *"when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy"*. Paragraph 213 adds that minerals planning authorities should plan for a steady and adequate supply of aggregates by inter alia maintaining sufficient reserves (landbank) of at least 7 years for sand and gravel, whilst ensuring that any aggregate materials of a specific type or quality which have a distinct and separate market are not compromised.

*National Planning Practice Guidance (PPG)*

- 5.19 The Appellant will refer to relevant elements of the PPG as required within evidence. In particular, paragraph 001 will be explored, which sets out that minerals *"make an essential contribution to the country's prosperity and quality of life"* and that:
- *"minerals can only be worked (ie extracted) where they naturally occur, so location options for the economically viable and environmentally acceptable extraction of minerals may be limited..*
  - *working is a temporary use of land...*
  - *working may have adverse and positive environmental effects, but some adverse effects can be effectively mitigated; and*
  - *following working, land should be restored to make it suitable for beneficial after-use"*.
- 5.20 The above documents will be included within the Core Documents list with the Council's agreement.
- 5.21 The Appellant may refer to other planning applications, appeal decisions and case law where relevant to the Appeal Proposal. These will be agreed with the Council and copies will be provided as Core Documents.

## 6. Appellant Response to Reasons for Refusal

- 6.1 This section of the Statement of Case sets out the Appellant's position in relation to the Council's Reasons for Refusal.
- 6.2 Whilst the Inspector is, of course, entitled to determine the Appeal anew it is emphasised that the Council is required to clearly state the reasons why it refused planning permission. Section 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) states that: "(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision".
- 6.3 Accordingly, it is inferred that the Council raises no other technical or policy objections to the Appeal Proposal.
- 6.4 As set out in Section 2 of this Statement, the Council has put forward nine reasons for refusal. These reasons are taken in turn in this section for the Appeal, with the Appellant's case put forward as to why the reason is incorrect. Based on this analysis, it is the Appellants case that no material reason for refusal has been substantiated, the Appeal should be allowed, and permission should be granted for the development scheme as submitted to the Council.

### Reason for Refusal 1 – Contrary to Policy 2 (Other Sand and Gravel Deposits) of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997) (Saved Policies)

- 6.5 It is noted that Reason for Refusal 1 relates to Policy 2 of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997), however, since the adoption of the Minerals Local Plan in July 2022, this Policy is now superseded and no longer part of the Development Plan. Furthermore, Policy 2 is not in accordance with the NPPF which does not operate a sieve test, or impose a blanket ban on all development within primary constraints, for example within AONBs, SSSIs or within a buffer strip of 200 metres from the boundary of a potential working area to the nearest main walls of the nearest property, Therefore, it is considered that reason for refusal 1 is no longer of relevance to the Appeal.
- 6.6 Notwithstanding the above, WCC's professional officers have set out quite clearly in the Committee Report (CD10.01) that the policy is met (through its internal 'exceptional circumstances' test). Therefore, even if Policy 2 did apply, the Appeal is capable of demonstrating exceptional circumstances, which along with the fact that there would be no adverse air pollution, noise, dust, vibration, odour or lighting impacts on residential amenity or that of human health, would justify departure from the strict outcome of the sieve test in Policy 2.

### Reason for Refusal 2 – Unacceptable impact on openness of the Green Belt

- 6.7 The Appellant accepts that great importance is attached to the Green Belt, noting the fundamental aim is to prevent urban sprawl by keeping land permanently open. It is also accepted that inappropriate

development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances, where 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. Notwithstanding this, the NPPF does indicate that both mineral extraction and engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The purposes referred to are set out in paragraph 138, namely:

- 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.

6.8 With regards the Council's reason for refusal, it appears that the concern is in relation to "*an unacceptable impact on openness of the Green Belt*" as this is the only justification for the reason set out in the information section of the Decision Notice. In noting that only openness is cited in the reason, it is presumed that the Council are not claiming that the proposals conflict with the purposes of including land within the Green Belt (i.e. points a to e in para 6.9 above). Furthermore, in review of the Minutes of the Committee Meeting (**CD10.03**), the Council appear to have given no consideration to very special circumstances to overcome this harm.

6.9 In relation to NPPF policy therefore, the consideration rests with whether there is a significant effect on the openness of the Green Belt.

6.10 The proposed development would, notwithstanding its duration, be a temporary activity and whilst the proposal would disturb the site for a period of time, the site would only progressively be disturbed and it would be progressively restored to an open state following completion of extraction and would be no more built up on completion of the development as a result of the proposal as it is now. Whilst the proposal would be visible, it would not be very visible due to the topography, proposed temporary soil storage / visual screening bunds, existing historic boundary walls and proposed planting, with any views being contained to relatively few receptors. It is considered that the visual impact on openness does not make this development "inappropriate".

6.11 It is considered that the proposal is in line with any typical mineral development in the Green Belt, and it is considered 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.



- 6.12 The assessment of WCC's Planning Team set out in the Committee Report (**CD10.01**) is that this is a proposal that would preserve the openness of the Green Belt and not conflict with the purposes of Green Belt. NPPF paragraph 150 is written on the premise that mineral extraction is an appropriate use in the Green Belt, and there is nothing unusual about this proposed quarry operation that is different from any other such use that it should be deemed to have an unacceptable impact on openness.
- 6.13 The Appellant's case is therefore that the proposed development, including restoration to a lower level, access, haul road, bunds, mineral processing plant, ancillary facilities and activity associated with the proposed mineral extraction when considered in isolation and in combination with other developments would not affect the openness of the Green Belt to an extent that would 'tip the balance' to make it inappropriate development.
- 6.14 Notwithstanding this, if it is found that any part of the Appeal Scheme is considered inappropriate development in the Green Belt, the Appellant will demonstrate that very special circumstances exist to overcome the 'great weight' attached to protecting Green Belts. It is the Appellant's case that very special circumstances exist from:
- The need for the development:
    - The need for the release of new mineral reserves to ensure a "*steady and adequate supply of aggregates*" and the great weight that is attached to mineral extraction; and
    - There is an urgent need for the release of mineral reserves in Worcestershire. The Appeal Scheme would be a major contributor to the Council's landbank, which is currently not in compliance with NPPF paragraph 213.
  - Sustainability benefits:
    - Unique logistical position in the marketplace, as Worcestershire has a clear divide in available resource. The northern half of the County in which the Appeal Site is located contains the solid sands (building and mortar markets) with the concreting sand and gravels from the terrace and glacial deposits in the south of the county. The two different resources serve different and distinct markets. Their location within the county would affect the distance they need to travel to market as well as the demand / pull on resources from outside the county to meet demand. The number of active and permitted sites (but non-operational) sites are also small in number which may affect the distance the reserves travel to market;
    - When looking at the supply of mineral within a county a balanced spread of geographical location supply sources is very important in promoting sustainable development. Aggregates being bulky in nature, costly to transport / typically only transported about 30 miles from source. The closest county sand and gravel quarry to Kidderminster is Clifton Quarry, located circa. 24 miles away. The Appeal Proposal would help provide a balanced geographical spread of mineral supply sources; and

- A further key consideration is the number of proposed and permitted large-scale residential schemes in close proximity to the Appeal Site. Large quantities of inert waste would arise from these large-scale schemes and the potential transport to and use of this material in the restoration scheme, aligns with the ethos of achieving sustainable development.
- Development, growth and economic benefits:
  - The Appellant will set out how the Appeal Scheme would help provide and secure jobs for people directly and indirectly employed as part of the quarry operations and which contribute to the local economy through wages, business rates, use of local suppliers, and at a national level; to the economy through aggregates levy [a tax on sand, gravel and rock] and other taxation processes.
- Restoration and biodiversity benefits:
  - The Appellant will demonstrate that the benefits resulting from this proposed development are substantial and wide reaching, with a significant net gain in biodiversity.

#### Reason for Refusal 3 – Unacceptable impact on residential amenity and local schools

- 6.15 The Appellant considers that this is a somewhat vague and generalised reason for refusal and the Council have failed to demonstrate precisely how residential amenity or the schools would be impacted.
- 6.16 In the Council's reasoning for the reason for refusal set out in the information section of the Decision Notice, it states that *"The site is located within the vicinity of several residential and commercial properties"* and *"There are also a number of schools within the context of the application site and the wider area including Heathfield Knoll School and First Steps Day Nursery located approximately 15 metres south of the application site, and approximately 80 metres at its closest point to the proposed mineral extraction. Due to the close proximity of the proposal to these receptors, it is considered it would have an unacceptable impact on residential amenity and local schools, particularly in terms of dust emissions"*.
- 6.17 In terms of residential amenity, the applicant has carried out a Noise Assessment, which demonstrates that the predicted site noise levels would be in compliance with the recommended site noise limits set out in the Government's Planning Practice Guidance (PPG) for both normal daytime operations and temporary operations.
- 6.18 A Dust Impact Assessment accompanied the application which assessed the impact of the proposal on the nearest sensitive receptors and concludes that it is unlikely that any significant decrease in local air quality would occur due to the proposed development. Any dust occurrence event would be limited and of short duration and would be minimised by implementation of the recommended dust mitigation measures.
- 6.19 The Dust Impact Assessment considers that the greatest potential for an air quality impact is from changes in traffic flows affecting new or existing residents. The pollutants of concern are nitrogen dioxide and fine

particles (PM10 and PM2.5), therefore, an Air Quality Assessment, which included dispersion modelling also formed part of the Dust Impact Assessment. The Assessment concludes that in relation to PM10 and PM2.5, the impact of the development is considered to be negligible for all of the assessed sensitive receptors, and concludes that overall, the effect on air quality of this development with the implementation of suitable dust mitigation measures is not significant.

6.20 In response to letters of representation raising concerns regarding adverse dust and health impacts, Worcestershire Regulatory Services reviewed the comments and reiterated that they are satisfied with the development's onsite dust and noise impact strategy, and as long as Worcestershire Regulatory Services' recommendations are appropriately conditioned, they consider that the strategy should be strong and flexible enough to deal with any subsequent issues.

6.21 Therefore, based on the advice of Worcestershire Regulatory Services, the Environment Agency, and the County Public Health Practitioner, the Head of Planning and Transport Planning considered that, subject to the imposition of appropriate conditions, there would be no adverse air pollution, noise, dust, vibration, odour or lighting impacts on residential amenity or that of human health.

6.22 With regards schools, there is no evidence whatsoever that there would be any adverse impact on the schools (there is nothing to suggest that they would close or fail to attract pupils etc as a result of this proposal). Even in respect of the closest school, this would be separated from the workings by the soil screening, existing woodland and Wolverley Road (B4189).

6.23 The Appellant therefore considers that there is no rational reason for this reason for refusal and is contrary to evidence and the detailed consideration of statutory consultees, which shows that the proposal would have no adverse air pollution, noise, dust, vibration, odour or lighting impacts on residential amenity or that of human health.

#### Reason for Refusal 4 – Unacceptable impact on the local economy

6.24 The Appellant considers that this reason for refusal is contrary to the evidence, which shows that the proposal is needed in economic terms and would provide economic benefits.

6.25 It is noted that paragraph 991 of the Committee Report sets out the following in terms of economic impact:

*"The Head of Planning and Transport Planning acknowledges that the NPPF affords significant weight to the need to support economic growth; it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs; and that great weight should be given to the benefits of the mineral extraction, including to the economy. It is considered that the proposal would provide a small number (up to 11 full-time equivalent jobs) of direct employment opportunities, together with indirect employment opportunities, as well as contributing to the wider growth aspirations for the county through the supply of local aggregates to the construction market. Therefore, it is considered that the proposal would provide substantial sustainable economic growth benefits to the local economy in accordance with the NPPF and this weighs in its favour".*

6.26 The Appellant will set out how the Appeal Scheme would help provide and secure jobs for people directly and indirectly employed as part of the quarry operations and which contribute to the local economy through wages, business rates, use of local suppliers, and at a national level; to the economy through aggregates levy [a tax on sand, gravel and rock] and other taxation processes as well as contributing to the wider growth aspirations for the county through the supply of local aggregates to the construction market.

Reason for Refusal 5 – Loss of 2 Tree Preservation Order (TPO) trees

6.27 In review of the information section of the Decision Notice (**CD10.02**), it is clear that the 2 TPO trees referred to are trees T9 and T10.

6.28 Tree T9 (Common oak) was identified as a Category B tree. The Environmental Statement (**CD1.03**) states that it is important to note that this tree has defects, including decay pockets, apical die back and major dead wood. On balance, because it is a Category B tree, and because it is protected by a TPO, the resulting impact of its removal is considered to be moderate.

6.29 Tree T10 is classified as a Category C tree. The Environmental Statement (**CD1.03**) states that tree T10 shows a number of defects which were present throughout and bark wounding, including a large area of decay at its base, poor unions, major dead wood, and decay pockets. Therefore the tree is assessed as having limited future potential.

6.30 To help provide mitigation for the trees (and hedgerow) proposed for removal, the Appellant proposes that new tree planting is undertaken as part of the restoration scheme. The proposed planting would mitigate and enhance over and above the trees that would be lost and would also improve and enhance the degraded parkland setting in which these trees are located.

6.31 Furthermore, the Outline Aftercare Strategy submitted outlines the measures for the establishment and management of advanced planting and restored land at the site. It identifies that approximately 9,750 trees would be planted to create woodland blocks (approximately 3.42 hectares in area); approximately 50 parkland trees to be planted in agricultural grassland / cropping and approximately 120 trees to be planted along the parkland avenue to reflect the former parkland setting; approximately 7.5 hectares of acid grassland creation; and approximately 1,018 metres of linear hedgerow planting (approximately 439 metres of existing strengthened hedgerows and approximately 579 metres proposed new hedgerows).

6.32 None of Natural England, the Worcestershire Wildlife Trust, the District Council's Countryside and Parks Manager, the County Ecologist, Woodland Trust and the Forestry Commission have objected to the loss of T9 and T10. It is noted however that the Wyre Forest District Council Tree Officer objects to the removal of T9 and T10.

6.33 Furthermore, at paragraph 736, the Committee report sets out the following in terms of the loss of T9 and T10 in relation to Paragraph Reference ID: 36-083-20150415 of the PPG, which confirms that:

*"the Local Planning Authority's consent is not required to carry out work on trees subject to a TPO so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a*

*tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt”.*

- 6.34 The Appellant considers that the loss of the two TPO trees is a loss that would go into the planning balance, but cannot in the Appellant’s view come anywhere close to being sufficient to justify refusal of the application having regard to the benefits of the proposal and its conformity with the development plan, when that plan is read as a whole.
- 6.35 The Appellants case is therefore that sufficient information has been provided and based on the lack of objection from Natural England, the Worcestershire Wildlife Trust, the District Council’s Countryside and Parks Manager, the County Ecologist, Woodland Trust, the Forestry Commission together with the planning officer’s own assessment as presented in the committee report (CD10.01), there is no rational reason for the Reason 5.

Reason for Refusal 6 – Unsuitable bridleway next to the Wolverhampton Road (A449)

- 6.36 In terms of reason for refusal 6, the Council’s reasoning set out in the information section of the Decision Notice states that:

*“A new public right of way (bridleway) measuring approximately 2.3 kilometres in length is proposed to be created around the perimeter of the site, going from the north-eastern corner of the site, along the western boundary of Wolverhampton Road (A449) located to the east of the site, along the northern boundary of Wolverley Road (B4189), which is located to the south of the site, and finishing in the south-western corner of the site, connecting to footpath WC-622. The section of the bridleway next to the Wolverhampton Road (A449) is considered to be unsuitable for horses”.*

- 6.37 Therefore, it is clear from the above that reason for refusal 6 solely relates to the apparent unsuitability of the bridleway next to Wolverhampton Road for horses. This reasoning is not founded on any evidence and it is worth noting that the British Horse Society raise no objections to the proposal, subject to all footpaths within the site being upgraded to public bridleways.
- 6.38 The Appeal Scheme proposes to create a new public right of way (bridleway) measuring approximately 2.3 kilometres in length around the perimeter of the site, with only a small section of this being the reason for refusal. In addition, permissive routes (bridleway standard) measuring approximately 0.4 kilometres in length (combined) are proposed as part of the final restoration of the site, equating to 2.7 kilometres of proposed public bridleways and permissive bridleways.
- 6.39 Therefore, given the level of bridleways and permissive paths being provided by the Appeal Scheme together with there being no objection from the British Horse Society, the County Footpath Officer together with the planning officer’s own assessment as presented in the committee report (CD10.01), it is nonsensical that this is a reason for refusal.
- 6.40 The Appellants case is therefore that there is no rational reason for the Reason 6.

Reason for Refusal 7 – Unacceptable impact on highways

- 6.41 In terms of reason for refusal 7, the Council's reasoning set out in the information section of the Decision Notice states that:
- "The proposed development includes the construction of a new access located along Wolverley Road (B4189). The proposal would generate a worst-case scenario of approximately 154 HGV movements per day (77 entering the site and 77 exiting the site per day). This equates to approximately 13 HGV movements per hour. In view of this it is considered that the proposal would have an unacceptable impact on highways, particularly in terms of increased highway maintenance and conflict with users, such as school children walking to school".*
- 6.42 As set out in the Environmental Statement (CD1.03) and Transport Statement (CD1.09), the Appellant anticipates that the proposal would generate approximately 154 HGV movements per day (77 entering the site and 77 exiting the site per day). This equates to approximately 13 HGV movements per hour. This is the worst-case scenario as the Appellant intends to take advantage of back-hauling where possible. In addition, there would also be staff movements associated with the proposal. Based on the worst-case scenario whereby all 11 employees travel independently in a private vehicle, a further 22 movements would be anticipated on the network, with 11 arrivals in the morning and 11 departures in the evening.
- 6.43 The Transport Statement (CD1.09) identifies that the highest anticipated increase in traffic as a result of the proposal (over any baseline flow) was found to be approximately 1.8% on Wolverley Road (B4189) to the east of the proposed access, which falls well below the 5% threshold considered to represent a material increase in traffic.
- 6.44 As set out at paragraph 962 of the Committee Report (CD10.01), *"The County Highways Officer has been consulted and raised no objections subject to appropriate conditions regarding implementation of submitted details relating to access, parking and turning facilities; provision and maintenance of visibility splays; surfacing of first 5 metres of access from the public highway; provision of electric vehicle charging space, sheltered and secure cycle parking, and accessible car parking spaces; and HGV Management Plan. The County Highways Officer states that they have undertaken a robust assessment of the planning application. Based on the analysis of the information submitted and consultation responses from third parties, they conclude that there would not be a severe impact and, therefore, there are no justifiable grounds on which an objection could be maintained, subject to imposition of appropriate conditions".*
- 6.45 As part of the Regulation 25 Request Submission (October 2020), the applicant submitted a Stage 1 Road Safety Audit, which reviewed all collision data (not just involving HGVs as outlined above) for the highway network in the vicinity of the proposed access, over a 5-year period (2015 to 2019). The review identified 12 collisions between (and inclusive of) Sion Hill / Wolverley Road (B4189) junction and the Wolverhampton Road (A449) / Wolverley Road (B4189) junction. Of these 12 collisions, 9 were recorded at the Wolverhampton Road (A449) / Wolverley Road (B4189) signalised junction and all resulted in 'slight' injuries; 3 of these collisions involved motorcyclists. Of the remaining 3 collisions, 2 were recorded on the Wolverley Road (B4189) between Sion Hill and Wolverhampton Road (A449). 1 of these collisions resulted in fatal injury to a pedestrian and was recorded adjacent to a private access, located approximately 75

metres to the east of Sion Hill. The second collision occurred on the Wolverley Road (B4189) approach to the Wolverhampton Road (A449) junction and resulted in 'serious' injury to a motorcyclist. The final collision took place on the immediate westbound approach to the Sion Hill junction and resulted in 'serious' injury to a vehicle occupant.

- 6.46 With regards to highway safety, at paragraph 498 of the Committee Report, the county Highways officer states that, *"access visibility is acceptable. The access has been subject to a Stage 1 Road Safety Audit. The access layout has been accepted as being suitable, however the layout would still be subject to further review at the detailed design stage prior to full technical approval"*.
- 6.47 At paragraph 499, with regard to the review of accident data, the County Highways Officer states that they *"accept that there is no common factor or patterns to the collisions recorded, and they occurred in both dry and wet conditions and at different times of the day, with causation factors that varied from poor due care and attention, driver error and poor judgement at the traffic signal junction"*.
- 6.48 On the basis of the above, it is considered that no evidence exists to justify the reason for refusal, and the Highway Authority was clear that the 'severe' test set out in the NPPF in respect of all matters to do with highways was not breached. Neither was there any objection from the Head of Planning or Transport Planning.
- 6.49 Overall therefore, the Appellant considers it has demonstrated that the proposed operations would not lead to an unacceptable impact on highways. This will be demonstrated through evidence presented to the inquiry by Expert Witnesses addressing transportation and access.

#### Reason for Refusal 8 – Unacceptable general impact on environment and wildlife

- 6.50 In terms of reason for refusal 8, there is no evidence contained within the information section of the Decision Notice (CD10.02) to justify or provide any reason behind it.
- 6.51 The Appellant considers that the proposed development would not have an unacceptable impact on the ecology, biodiversity and geodiversity at the site or in the surrounding area, including European sites, and would protect, conserve and enhance the application site's value for biodiversity and geodiversity,
- 6.52 As set out in the Committee Report (CD10.01), the proposals were carefully considered by Natural England, Worcestershire Wildlife Trust, the District Council's Countryside and Parks Officer, the County Ecologist, the Woodland Trust, the Forestry Commission and the Earth Heritage Trust, none of whom objected.
- 6.53 The Appellants case is therefore that there is no rational reason for the Reason 8.

#### Reason for Refusal 9 – Unacceptable impact on health of local population

- 6.54 As with reason for refusal 8, there is no evidence contained within the information section of the Decision Notice (CD10.02) to any reasoning and justification behind reason 9.

- 6.55 All the usual 'pathways' through which health could be adversely impacted (noise, odour, dust, air quality, vibration, lighting etc) have been considered through technical evidence, and the proposal has not been shown as breaching any of the relevant guidelines.
- 6.56 Therefore, based on the advice of Worcestershire Regulatory Services, the Environment Agency, and the County Public Health Practitioner, the Head of Planning and Transport Planning considered that, subject to the imposition of appropriate conditions, there would be no adverse air pollution, noise, dust, vibration, odour or lighting impacts on residential amenity or that of human health.
- 6.57 The Appellant therefore considers that there is no rational reason for this reason for refusal and is contrary to evidence and the detailed consideration of statutory consultees.



## 7. Proposed Draft Planning Conditions

- 7.1 Should the Appeal be upheld, the Appellant would be prepared to accept all of the conditions suggested by the Planning Officer in Section 10 of the September 2021 Strategic Planning Committee Report. A list of these can be found at **CD10.01**.
- 7.2 The Appellant considers these conditions to be reasonable and relevant to the proposed development and sufficient to ameliorate environmental and amenity effects so that they do not have “unacceptable” impacts. However, a thorough review of the conditions will be carried out in discussion with the Council.

## **Appendix 1 – Justification for a Public Inquiry**

## 1. Introduction

- 1.1 With reference to Annexe K of The Planning Inspectorate's Procedural Guidance for Planning Appeals – England (March 2021), the Appellant requests a Public Inquiry for the reasons set out below.

## 2. Need for the Evidence to be tested through Formal Questioning by an Advocate

- 2.1 The reasons for refusal fail to factor in and give proper consideration to all of the technical work and indeed the responses of statutory consultees. It is noted that none of the statutory consultees or other relevant bodies holding the necessary expertise and experience on the matters under consideration objected to the proposals (and indeed the Committee Minutes (**CD10.01**) show that many of these consultees were present at the debate and provided information and support to the Head of Planning and Transport Planning in rebutting the varied and numerous points raised by objectors/councillors).
- 2.2 Furthermore, the reason for refusal fails to factor in the benefits of the appeal proposal and consequently fails to provide a balanced assessment of the proposed development. The weight to be given to the benefits arising from the appeal proposals will be set out in evidence. It will be demonstrated that any potential impacts are clearly outweighed by the identified benefits and accordingly, the overall planning balance clearly lies in favour of the appeal being allowed.
- 2.3 Case law in relation to the interpretation of policies means detailed legal submissions will be necessary and a clear need for evidence to be tested through formal questioning.
- 2.4 In this case, the appellant wishes to present its expert evidence formally so that the planning authority and the Inspector fully understand the appellant's case as to: need, environment and sustainability benefits, development, growth and economic considerations and the restoration and biodiversity benefits.
- 2.5 Likewise, the appellant will call an experienced minerals planner and an experienced transport consultant to present the appellant's positive policy, need, benefits and highways case.
- 2.6 Further, the appellant wishes to have the planning authority's case put to its witnesses. This is an aspect of an inquiry which is sometimes omitted from consideration. Here, it is very important. The appellant is entitled to have the contrary case put to its witnesses so that it can answer that case and demonstrate why it is wrong<sup>1</sup>.
- 2.7 The planning authority will call either a planner, highways advisor or local councillors in support of the member's reason for refusal. It is essential that the appellant has a full opportunity to test whatever

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<sup>1</sup> For a discussion of the benefits and purpose of cross-examination see the article by Lionel Read QC (1997) JPEL 24.

evidence the planning authority is able to call.

### **3. Complexity of Issues**

- 3.1 Matters relating to the need and benefits, environmental and amenity considerations of the appeal proposals and the overall planning balance will raise matters of significant complexity.
- 3.2 As such, it is the view of the Appellant that these matters will require cross examination to establish the extent of the evidence which underpins the Council's refusal of the planning permissions. This will necessarily entail significant amounts of technical data in respect of these topics.

### **4. Likely length of proceedings**

- 4.1 It is considered that to address all matters, 4 sitting days will be required. This exceeds the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances). Annexe K therefore suggests that a Public Inquiry would be necessary.

### **5. Summary**

- 5.1 For the above reasons, the Appellant considers a Public Inquiry is the most appropriate procedure in this case.
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